State of Iowa

Iowa Administrative Code Supplement

Biweekly
December 29, 1999

KATHLEEN K. BATES
ADMINISTRATIVE CODE EDITOR

ROSEMARY DRAKE
DEPUTY EDITOR

PUBLISHED BY THE
STATE OF IOWA
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

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

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

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

INSTRUCTIONS

FOR

Updating Iowa Administrative Code
with Biweekly Supplement

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

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

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

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

UPDATING INSTRUCTIONS
December 29, 1999, Biweekly Supplement

[Previous Supplement dated 12/15/99]

IOWA ADMINISTRATIVE CODE

	Remove Old Pages*	Insert New Pages
BLIND, DEPARTMENT FOR THE[111]	Analysis, p. 1, 2 Ch 10, p. 3—Ch 10, p. 6	Analysis, p. 1, 2 Ch 10, p. 3—Ch 10, p. 6
Utilities Division[199]	Ch 19, p. 17, 18 Ch 19, p. 41, 42 Ch 20, p. 19, 20 Ch 20, p. 49 Ch 21, p. 7—Ch 21, p. 10 Ch 21, p. 13 Ch 22, p. 17, 18 Ch 22, p. 43	Ch 19, p. 17, 18 Ch 19, p. 41, 42 Ch 20, p. 19, 20 Ch 20, p. 49 Ch 21, p. 7—Ch 21, p. 10 Ch 21, p. 13 Ch 22, p. 17, 18 Ch 22, p. 43
EDUCATION DEPARTMENT[281]	Analysis, p. 5—Analysis, p. 8 Ch 41, p. 1—Ch 41, p. 56	Analysis, p. 5—Analysis, p. 8 Ch 41, p. 1—Ch 41, p. 66
ELDER AFFAIRS DEPARTMENT[321]	Ch 27, p. 1—Ch 27, p. 9	Ch 27, p. 1—Ch 27, p. 10
HUMAN SERVICES DEPARTMENT[441]	Ch 1, p. 1—Ch 1, p. 6 Ch 1, p. 9, 10	Ch 1, p. 1—Ch 1, p. 6 Ch 1, p. 9, 10

*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.

	Remove Old Pages*	Insert New Pages
HUMAN SERVICES DEPARTMENT[441] (Cont'd)	Ch 40, p. 1, 2	Ch 40, p. 1, 2
	Ch 40, p. 7—Ch 40, p. 10	Ch 40, p. 7—Ch 40, p. 10
	Ch 41, p. 23—Ch 41, p. 28	Ch 41, p. 23—Ch 41, p. 28
	Ch 41, p. 31—Ch 41, p. 34	Ch 41, p. 31—Ch 41, p. 34
	Ch 41, p. 37, 38	Ch 41, p. 37, 38
	Ch 41, p. 41, 42	Ch 41, p. 41, 42
	Ch 41, p. 47	Ch 41, p. 47, 48
	Ch 51, p. 1—Ch 52, p. 4	Ch 51, p. 1—Ch 52, p. 4
	Ch 65, p. 3—Ch 65, p. 6	Ch 65, p. 3—Ch 65, p. 6
	Ch 65, p. 9, 10	Ch 65, p. 9, 10
	Ch 65, p. 29, 30	Ch 65, p. 29, 30
	Ch 75, p. 17, 18	Ch 75, p. 17—Ch 75, p. 18c
	Ch 75, p. 23, 24	Ch 75, p. 23, 24
	Ch 75, p. 31, 32	Ch 75, p. 31, 32
	Ch 75, p. 41, 42	Ch 75, p. 41, 42
	Ch 75, p. 91, 92	Ch 75, p. 91, 92
	Ch 95, p. 7—Ch 95, p. 12	Ch 95, p. 7—Ch 95, p. 12
	Ch 177, p. 1—Ch 177, p. 6	Ch 177, p. 1—Ch 177, p. 6
Natural Resource Commission[571]	Ch 28, p. 3—Ch 28, p. 6	Ch 28, p. 3—Ch 28, p. 6
	Ch 61, p. 5—Ch 61, p. 12	Ch 61, p. 5—Ch 61, p. 12
	Ch 61, p. 19, 20	Ch 61, p. 19, 20
	Ch 76, p. 1—Ch 77, p. 13	Ch 76, p. 1—Ch 77, p. 14
Professional Licensure Division[645]	Ch 260, p. 3, 4	Ch 260, p. 3, 4
	Ch 260, p. 9, 10	Ch 260, p. 9, 10
Medical Examiners Board[653]	Ch 11, p. 13—Ch 11, p. 17	Ch 11, p. 13—Ch 11, p. 17
Nursing Board[655]	Ch 3, p. 5, 6	Ch 3, p. 5, 6
	Ch 3, p. 15, 16	Ch 3, p. 15, 16
	Ch 7, p. 1—Ch 7, p. 4	Ch 7, p. 1—Ch 7, p. 4
REVENUE AND FINANCE DEPARTMENT[701]	Analysis, p. 5—Analysis, p. 12	Analysis, p. 5—Analysis, p. 12
	Analysis, p. 23, 24	Analysis, p. 23, 24
	Ch 10, p. 3—Ch 10, p. 6	Ch 10, p. 3—Ch 10, p. 6
	Ch 10, p. 55, 56	Ch 10, p. 55—Ch 10, p. 56a
	Ch 10, p. 71—Ch 11, p. 2	Ch 10, p. 71—Ch 11, p. 2
	Ch 11, p. 11	Ch 11, p. 11
	Ch 13, p. 1—Ch 13, p. 5	Ch 13, p. 1—Ch 13, p. 5
	Ch 15, p. 1—Ch 15, p. 4	Ch 15, p. 1—Ch 15, p. 4
	Ch 15, p. 11—Ch 15, p. 18	Ch 15, p. 11—Ch 15, p. 18
	Ch 17, p. 9, 10	Ch 17, p. 9, 10
	Ch 17, p. 21	Ch 17, p. 21, 22

*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.

	Remove Old Pages*	Insert New Pages
REVENUE AND FINANCE DEPARTMENT[701] (Cont'd)	Ch 18, p. 23, 24	Ch 18, p. 23, 24
	Ch 18, p. 41, 42	Ch 18, p. 41, 42
	Ch 18, p. 59, 60	Ch 18, p. 59, 60
	Ch 18, p. 71—Ch 18, p. 74	Ch 18, p. 71—Ch 18, p. 74
	Ch 19, p. 7—Ch 19, p. 10	Ch 19, p. 7—Ch 19, p. 10
	Ch 19, p. 15—Ch 19, p. 18	Ch 19, p. 15—Ch 19, p. 18
	Ch 19, p. 21	Ch 19, p. 21
	Ch 26, p. 1, 2	Ch 26, p. 1, 2
	Ch 26, p. 9, 10	Ch 26, p. 9, 10
	Ch 26, p. 35	Ch 26, p. 35
	Ch 31, p. 7—Ch 32, p. 2	Ch 31, p. 7—Ch 32, p. 2
	Ch 32, p. 5—Ch 34, p. 2	Ch 32, p. 5—Ch 34, p. 2
	Ch 34, p. 5	Ch 34, p. 5
	Ch 81, p. 1—Ch 83, p. 5	Ch 81, p. 1—Ch 83, p. 5
	Ch 86, p. 1, 2	Ch 86, p. 1, 2
	Ch 86, p. 5—Ch 86, p. 12	Ch 86, p. 5—Ch 86, p. 12a
	Ch 86, p. 25, 26	Ch 86, p. 25, 26
	Ch 86, p. 57, 58	Ch 86, p. 57, 58
	Ch 86, p. 67—Ch 87, p. 2	Ch 86, p. 67—Ch 87, p. 2
	Ch 87, p. 7	Ch 87, p. 7
	Ch 89, p. 7, 8	Ch 89, p. 7, 8
	Ch 89, p. 25, 26	Ch 89, p. 25, 26
TREASURER OF STATE[781]	Analysis, p. 1, 2	Analysis, p. 1, 2
	Ch 4, p. 5, 6	Ch 4, p. 5, 6
VETERANS AFFAIRS COMMISSION[801]	Analysis, p. 1, 2	Analysis, p. 1, 2
	Ch 1, p. 3—Ch 1, p. 5	Ch 1, p. 3—Ch 1, p. 5
Index Volume	"E" Tab, p. 27-40	"E" Tab, p. 27-40

*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.

BLIND, DEPARTMENT FOR THE[111]

[Prior to 7/1/87, see Commission for the Blind[160] Chs 1 to 10]
The Division for the Blind was created within the Department of Human Rights[421] by 1986 Iowa Acts, Chapter 1245
Renamed Department for the Blind, 1988 Iowa Acts, Senate File 2310, sections 29 to 31; section 31 of the Act renumbered sections 601K.121 to 601K.127 as a new chapter.

10.6(5) In the event that severe revenue shortages make budget reductions necessary, the department may invoke a limitation on payment of tuition each semester to a rate no greater than the maximum tuition rate effective at institutions operated by the Iowa board of regents for each semester of the consumer's enrollment. When it is necessary to invoke this limitation with general notice to the public and to consumers potentially affected, exceptions may be made in cases in which a reasonable necessity for a waiver can be demonstrated, the consumer's counselor recommends a waiver, and the program administrator approves the waiver before the consumer's enrollment. In no case, however, shall this rule be construed as discouragement of a consumer's attending private or out-of-state institutions when utilization of other available funds makes it possible to do so.

111—10.7(216B) Termination of services.

10.7(1) A decision to terminate vocational rehabilitation services shall be made only after providing an opportunity for full consultation with the individual or, if appropriate, with the individual's representative.

10.7(2) The individual will be informed in writing of the reasons for the termination of services; furnished information on how the individual may appeal the decision as provided in rule 10.8(216B); and provided with a description of the services of the Iowa client assistance program and how to contact that program.

10.7(3) For those individuals who have been determined incapable of achieving an employment outcome, their circumstances will be reviewed annually unless they have refused services, are no longer in the state, their whereabouts are unknown, or they have a medical condition which is rapidly progressive or terminal.

111—10.8(216B) Dispute resolution process. This rule defines the procedures under which the dispute resolution process, required by the federal Vocational Rehabilitation Act of 1973 as amended through 1998, shall be conducted by the department.

10.8(1) Definitions:

"Administrative review" means a procedure by which the department may provide an opportunity for an applicant or eligible individual to express and seek remedy for dissatisfaction with a decision regarding the furnishing or denial of services.

"Formal hearing" means a procedure whereby an applicant or eligible individual who is dissatisfied with the findings of an administrative review or mediation concerning the furnishing or denial of services may request a timely review of those determinations before an impartial hearing officer.

While the department encourages the use of the administrative review process to resolve grievances, the administrative review process is not to be used as a means to delay mediation or a formal hearing before an impartial hearing officer unless the parties jointly agree to a delay. An applicant or eligible individual may elect to proceed directly either to mediation or to the formal hearing process. The department will not suspend, reduce, or terminate vocational rehabilitation services to any applicant or eligible individual throughout the administrative review, mediation or formal hearing process before a final agreement or decision is made, unless the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative so requests, or the department has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the applicant or eligible individual.

"Mediation" means an alternative which an applicant or eligible individual may choose if the applicant or eligible individual is dissatisfied with the findings of an administrative review concerning the furnishing or denial of services.

10.8(2) Administrative review. An applicant or eligible individual may request review of a decision regarding furnishing or denial of services with which the applicant or eligible individual is dissatisfied by submitting a letter to the program administrator of field operations.

a. The program administrator shall acknowledge receipt of the letter and arrangements shall be made for the administrative review to be held at a mutually convenient date, time, and place which shall be within ten days after receipt of the request for review. The applicant or eligible individual shall also be notified of the applicant's or eligible individual's right to obtain assistance through the Iowa client assistance program.

b. The administrative review shall consist of review of the case file and any other documentation involved in the subject matter of the review; interviews with the service specialists for the blind and any others directly involved with the subject matter of the review; and an interview with the applicant or eligible individual or, as appropriate, a representative of the applicant or eligible individual.

c. The program administrator shall issue a written decision within five days of the review. The decision shall set forth the issue, principle, and relevant facts established during the review; pertinent provision of law, administrative rule or department policy; and the reasoning upon which the decision is based. The letter transmitting the decision shall advise the applicant or eligible individual that the applicant or eligible individual shall inform the program administrator within seven days that either: (1) the applicant or eligible individual accepts the decision; or (2) the applicant or eligible individual does not accept the decision and wishes to proceed either to mediation or to a formal hearing.

d. A record of the decision and any action resulting from the decision shall be sent to the applicant or eligible individual by mail. The decision and a record of any action resulting from the decision shall be entered into the case file.

10.8(3) Mediation. An applicant or eligible individual who is dissatisfied with the findings of an administrative review or who has elected to bypass the administrative review process may request mediation by submitting a letter to the program administrator. This letter must be received within seven days of the date of determination of the administrative review, if an administrative review has been conducted.

a. The program administrator shall acknowledge receipt of the request for mediation and shall make arrangements for mediation to occur within 30 days of the request to initiate the dispute resolution process. The date, time, and place shall be mutually agreeable to all parties. The applicant or eligible individual shall be notified in writing of the right to submit evidence or information to support the applicant's or eligible individual's position and to obtain representation to be present during the mediation sessions. The applicant or eligible individual shall also be notified of the applicant's or eligible individual's right to obtain assistance through the Iowa client assistance program. All mediation sessions shall be held in a timely manner and shall be concluded within 45 days of the date that the applicant or eligible individual initiated the dispute resolution process, unless an extension of this time is agreed upon by all parties. The department will pay costs for the mediator and, when appropriate, transportation, meals and lodging expenses for the applicant or eligible individual which are directly associated with the mediation process. The program administrator will determine who will represent the department during mediation sessions.

b. The department, in conjunction with the Iowa department of education, division of vocational rehabilitation services, will maintain a list of individuals who are impartial, qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services. Potential mediators will be identified by the division of vocational rehabilitation services utilizing three primary sources: mediators used by the department of education, the Iowa peace institute, and the Iowa extension service. The department and the division of vocational rehabilitation services will train potential mediators in the laws and regulations governing vocational rehabilitation.

c. A mediator will be selected at random or by agreement of the director and the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative from the list described in paragraph *"b."*

d. Discussions which occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

e. All agreements reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement. This agreement shall be prepared by the mediator and mailed within seven days to all parties.

f. Either party to the dispute may request a formal hearing. This request must be in writing and must be submitted to the director within seven days of the date of the written mediation agreement.

10.8(4) Formal hearing. An applicant or eligible individual who is dissatisfied with any determinations made concerning the furnishing or denial of vocational rehabilitation services, or the findings of an administrative review or mediation if an administrative review or mediation took place, may request a formal hearing by submitting a letter to the director.

a. The director shall acknowledge receipt of the request and make arrangements for a formal hearing to be held within 45 days of the request of the applicant or eligible individual to initiate the dispute resolution process at a date, time, and place mutually agreeable to both parties. The applicant or eligible individual shall also be notified of the right to have a representative present at the formal hearing and to seek assistance through the Iowa client assistance program. Reasonable time extensions shall be granted for good cause shown at the request of a party or at the request of both parties.

b. The impartial hearing officer shall be an individual who is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education. (An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer.) The hearing officer (1) is not a member of the commission for the blind; (2) has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual; (3) has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal and state regulations governing the provision of services; (4) has received training with respect to the performance of official duties; and (5) has no personal, professional, or financial interest that would be in conflict with the hearing officer's objectivity. The director may also request that other designated department personnel be present at the formal hearing. At the request of the applicant or eligible individual, a representative of the applicant or eligible individual and a representative of the Iowa client assistance program may also be present. Any of these persons shall have the opportunity to present relevant evidence.

c. An impartial hearing officer must be selected on a random basis or by agreement between the director and the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative from a pool of persons qualified to be an impartial hearing officer.

d. The impartial hearing officer shall inform those present of the confidentiality of matters discussed. The proceedings shall be recorded and, if necessary, transcribed.

e. Within 30 days of the completion of the formal hearing, the decision of the impartial hearing officer shall be mailed to the applicant or eligible individual or, if appropriate, the applicant's or eligible individual's representative, and the director. A representative of the Iowa client assistance program who has attended the formal hearing shall also receive a copy of the decision. The applicant or eligible individual may receive a copy of the transcript of the hearing upon written request to the director.

The decision of the impartial hearing officer shall be based upon the provisions of the approved state plan, the federal Vocational Rehabilitation Act of 1973 as amended through 1998, federal vocational rehabilitation regulations, and state regulations and policies.

f. The decision of the hearing officer is final.

10.8(5) Transcripts, notices, responses, and other documents which are an integral part of the dispute resolution process shall be provided to involved parties in standard print format. An applicant or eligible individual, or representative of an applicant or eligible individual, or other involved party may request provision of documents in the alternative medium of braille, cassette tape, or large-type format. Documents in the alternative medium shall be provided in a timely manner.

111—10.9(216B) Applicant and consumer rights. The counselor/teacher must inform the applicant or consumer of the applicant's or consumer's rights as follows:

10.9(1) A written statement of rights, which sets forth the department's policies and practices with regard to administrative review, fair hearing, confidentiality of records and nondiscrimination, shall be provided to the applicant as a part of the application process.

10.9(2) When an applicant is determined ineligible to receive vocational rehabilitation services, the applicant shall receive written notification of the right to appeal and information concerning services available through the Iowa client assistance program.

10.9(3) The individual written rehabilitation plan will include a statement that the consumer has been informed of the department's policies regarding administrative review, fair hearing, confidentiality of records and nondiscrimination.

10.9(4) Upon termination of services through the standard case closure procedure, the consumer shall be given a written statement of the right to appeal the termination, including information about services available through the Iowa client assistance program.

10.9(5) When disagreement occurs, staff shall verbally inform the applicant or consumer of the right to appeal and provide information about services available through the Iowa client assistance program.

111—10.10(17A) Forms. The following forms are used by the vocational rehabilitation services program:

1. Application for rehabilitation services—used for application for vocational rehabilitation services from the department. Also contains statement of compliance with the Civil Rights Act of 1964 and release of information form.

2. Individual written rehabilitation plan (IWRP)—used by the counselor/teacher and consumer to develop a blind person's program for rehabilitation. Printed on the form are the following statements: mutual agreement and understanding between consumer and counselor; department's program responsibilities; consumer responsibilities; review and evaluation of progress toward objectives and goal; and consumer rights and remedies. In addition, the IWRP provides for mutual development of a vocational goal, intermediate objectives, summary of planned services, accepted criteria for review and evaluation purposes and consumer acceptance and response.

These rules are intended to implement Iowa Code section 17A.3 and chapter 216B.

[Filed 9/23/76, Notice 8/9/76—published 10/20/76, effective 11/24/76]
[Filed 10/7/83, Notice 5/11/83—published 10/26/83, effective 12/1/83]
[Filed 8/24/84, Notice 3/14/84—published 9/12/84, effective 10/18/84]
[Filed 2/23/87, Notice 10/8/86—published 3/11/87, effective 4/15/87]
[Filed 6/9/87, Notice 3/25/87—published 7/1/87, effective 8/5/87]
[Filed 12/23/87, Notice 10/21/87—published 1/13/88, effective 2/17/88]
[Filed emergency 9/1/88—published 9/21/88, effective 9/1/88]
[Filed emergency 9/2/88—published 9/21/88, effective 9/2/88]
[Filed 2/1/90, Notice 11/15/89—published 2/21/90, effective 3/28/90]
[Filed 6/27/97, Notice 5/7/97—published 7/16/97, effective 8/20/97]◊
[Filed 12/8/99, Notice 10/20/99—published 12/29/99, effective 2/2/00]

◊Two ARCs

If the customer makes partial payment in a timely manner, and does not designate the service or product for which payment is made, the payment shall be credited pro rata between the bill for utility services and related taxes.

Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules shall be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period. The rules shall state how the customer is notified the eligibility has been used. Complete forgiveness prohibits any effect upon the credit rating of the customer or collection of late payment charge.

All residential customers or other customers whose consumption is less than 250 ccf per month may select a plan of level payments. These rules for such plan shall include at least the following:

a. Be offered when the customer initially requests service.

b. Have a date of delinquency changeable for cause in writing; such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment. The rules may provide that the delinquency date may not be changed to a date later than 30 days after the date of preparation of the previous bill.

c. Provide for entry into the level payment plan anytime during the calendar year. The month of entry shall be that customer's anniversary month.

d. The billing period level payment to be the sum of estimated charges divided by the number of standard billing intervals, all for the next 12 consecutive months.

e. A customer may request termination of the plan (or withdrawal from the plan) at any time. If the customer's account is in arrears, the customer may be required to bring the account to a current balance before termination or withdrawal. If there is a credit balance, the customer shall be allowed the option of obtaining a refund or applying the credit to charges for subsequent months' service.

f. The level payment plan account balance on the anniversary date shall be carried forward and added to the estimated charges for service during the next year, and this total will be the basis for computing the next year's periodic billing interval level payment amount. The customer shall be given the option of applying any credit to payments of subsequent months' level payment amounts due or obtaining a refund of any credit in excess of $10. For purposes of this paragraph the anniversary date account balance shall not carry forward on unpaid level payment bill. For delinquency on a level payment plan amount see 19.4(11)*"i."*

g. The amount to be paid in each billing interval by a customer on a level payment plan shall be computed at the time of entry into the plan. It may be recomputed on each anniversary date, when requested by the customer or whenever price, consumption, alone or in combination result in a new estimate differing by 10 percent or more from that in use.

When a customer's payment level is recomputed, the customer shall be notified of the revised payment amount and the reason for the change. The notice shall be served not less than 30 days prior to the date of delinquency for the first revised payment. The notice may accompany the bill prior to the bill affected by the revised payment amount.

h. The account shall be balanced upon termination of service or withdrawal in accord with the tariff.

i. Irrespective of the account balance, a delinquency in payment shall be subject to the same procedures as other accounts on late payment charge on the level payment amount. If the account balance is a debit, a delinquency in payment shall be subject to the same procedures as other accounts for collection or cut-off. If the account balance is a credit, the level payment plan shall terminate after not less than 30 days nor more than 60 days of delinquency.

19.4(12) *Customer records.* The utility shall retain customer billing records for the length of time necessary to permit the utility to comply with 19.4(13) but not less than three years.

19.4(13) *Adjustment of bills.* Bills which are incorrect due to billing errors or faulty metering installation are to be adjusted as follows:

a. Fast metering. Whenever a metering installation is tested and found to have overregistered more than 2 percent, the utility shall recalculate the bills for service.

(1) The bills for service shall be recalculated from the time at which the error first developed or occurred if that time can be definitely determined.

(2) If the time at which the error first developed or occurred cannot be definitely determined, it shall be assumed that the overregistration has existed for the shortest time period calculated as one-half the time since the meter was installed or one-half the time elapsed since the last meter test unless otherwise ordered by the board.

(3) If the recalculated bills indicate that $5 or more is due an existing customer or $10 or more is due a person no longer a customer of the utility, the tariff shall provide for refunding of the full amount of the calculated difference between the amount paid and the recalculated amount. Refunds shall be made to the two most recent customers who received service through the metering installation during the time the error existed. In the case of a previous customer who is no longer a customer of the utility, a notice of the amount subject to refund shall be mailed to such previous customer at the last-known address, and the utility shall, upon demand made within three months thereafter, refund the same.

Refunds shall be completed within six months following the date of the metering installation test.

b. Slow metering. Whenever a meter is found to be more than 2 percent slow, the tariff may provide for back billing the customer for the amount the test indicates has been undercharged for the period of inaccuracy.

When the average error cannot be determined by test because of failure of part or all of the metering equipment, the tariff may provide for use of the registration of check metering installation, if any, or for estimating the quantity consumed based on available data. The customer must be advised of the failure and of the basis for the estimate of quantity billed.

(1) The utility may not back bill due to underregistration unless a minimum back bill amount is specified in its tariff. The minimum amount specified for back billing shall not be less than, but may be greater than, $5 for an existing customer or $10 for a former customer. All recalculations resulting in an amount due equal or greater than the tariff specified minimum shall result in issuance of a back bill.

(2) The period for back billing shall not exceed the last six months the meter was in service unless otherwise ordered by the board.

(3) Back billings shall be rendered no later than six months following the date of the metering installation test.

c. Billing adjustments due to fast or slow meters shall be calculated on the basis that the meter should be 100 percent accurate. For the purpose of billing adjustment the meter error shall be one-half of the algebraic sum of the error at full-rated flow plus the error at check flow.

d. When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the meter, or other similar reasons, the amount of the overcharge shall be adjusted, refunded, or credited to the customer. The time period for which the utility is required to adjust, refund, or credit the customer's bill shall not exceed five years unless otherwise ordered by the board.

e. When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the meter, or other similar reasons, the amount of the undercharge may be billed to the customer. The time period for which the utility may adjust for the undercharge shall not exceed five years unless otherwise ordered by the board. The maximum back bill shall not exceed the billing for like charges (e.g., usage-based, fixed or service charges) in the 12 months preceding discovery of the error unless otherwise ordered by the board.

19.4(14) *Credits and explanations.* Credits due a customer because of meter inaccuracies, errors in billing, or misapplication of rates shall be separately identified.

[Filed 9/9/83, Notice 6/8/83—published 9/28/83, effective 11/2/83]
[Filed 9/9/83, Notice 6/8/83—published 9/28/83, effective 1/1/84]
[Filed 11/4/83, Notice 8/31/83—published 11/23/83, effective 1/1/84]
[Filed emergency 12/16/83 after Notice 9/28/83—published 1/4/84, effective 1/1/84]
[Filed 12/16/83, Notice 9/14/83—published 1/4/84, effective 2/8/84]
[Filed 1/13/84, Notice 11/9/83—published 2/1/84, effective 3/7/84]
[Filed 1/27/84, Notice 11/23/84—published 2/15/84, effective 3/21/84]*
[Filed 4/9/84, Notice 1/18/84—published 4/25/84, effective 5/30/84]
[Filed 4/20/84, Notice 2/15/84—published 5/9/84, effective 6/13/84]**
[Filed 5/4/84, Notice 1/4/84—published 5/23/84, effective 6/27/84]
[Filed emergency 6/1/84—published 6/20/84, effective 6/1/84]
[Filed emergency 6/15/84—published 7/4/84, effective 6/15/84]
[Filed 8/24/84, Notice 1/18/84—published 9/12/84, effective 10/17/84]
[Filed 9/10/84, Notice 7/18/84—published 9/26/84, effective 10/31/84]
[Filed 9/21/84, Notice 5/23/84—published 10/10/84, effective 11/14/84]
[Filed 10/19/84, Notice 8/15/84—published 11/7/84, effective 12/26/84]
[Filed 1/14/85, Notice 11/7/84—published 1/30/85, effective 3/6/85]
[Filed 4/19/85, Notice 2/13/85—published 5/8/85, effective 6/12/85]
[Filed 5/6/85, Notice 1/2/85—published 5/22/85, effective 6/26/85]
[Filed 6/14/85, Notice 4/10/85—published 7/3/85, effective 8/7/85]
[Filed 8/9/85, Notice 6/19/85—published 8/28/85, effective 10/2/85]
[Filed emergency 2/7/86 after Notices 10/9/85, 12/4/85—published 2/26/86, effective 3/31/86]
[Filed 8/8/86, Notice 5/7/86—published 8/27/86, effective 10/1/86]◊◊
[Filed 8/22/86, Notice 6/18/86—published 9/10/86, effective 10/15/86]◊◊
[Filed 8/22/86, Notices 5/21/86, 6/4/86—published 9/10/86, effective 10/15/86]†
[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]
[Filed 4/3/87, Notices 11/5/86, 12/3/86, 2/25/87—published 4/22/87, effective 5/27/87]
[Filed 4/17/87, Notice 12/3/86—published 5/6/87, effective 6/10/87]
[Filed 11/13/87, Notice 10/7/87—published 12/2/87, effective 1/6/88]
[Filed 9/2/88, Notice 3/9/88—published 9/21/88, effective 10/26/88]
[Filed 9/2/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]
[Filed 12/8/88, Notice 10/19/88—published 12/28/88, effective 2/1/89]
[Filed 1/6/89, Notices 7/1/87, 1/13/88, 7/27/88—published 1/25/89, effective 3/1/89]
[Filed 3/30/89, Notice 10/19/88—published 4/19/89, effective 5/24/89]
[Filed 4/28/89, Notice 9/21/88—published 5/17/89, effective 6/21/89]
[Filed 5/24/89, Notices 5/4/88, 6/29/88, 12/14/88—published 6/14/89, effective 7/19/89]
[Filed 5/24/89, Notice 1/11/89—published 6/14/89, effective 7/19/89]
[Filed 11/27/89, Notice 9/6/89—published 12/13/89, effective 1/17/90]
[Filed 2/1/90, Notice 9/20/89—published 2/21/90, effective 3/28/90]
[Filed 2/28/90, Notice 11/1/89—published 3/21/90, effective 4/25/90]◊
[Filed emergency 4/13/90—published 5/2/90, effective 4/13/90]
[Filed 4/13/90, Notice 10/18/89—published 5/2/90, effective 6/6/90]
[Filed 5/11/90, Notice 10/18/89—published 5/30/90, effective 7/4/90]
[Filed 5/25/90, Notice 2/21/90—published 6/13/90, effective 7/18/90]
[Filed 9/14/90, Notice 11/29/89—published 10/3/90, effective 11/7/90]
[Filed 11/21/90, Notice 5/2/90—published 12/12/90, effective 1/16/91]
[Filed 12/21/90, Notice 6/27/90—published 1/9/91, effective 2/13/91]

*Effective date of 19.3(10) "*a*," "*b*,"(1), (2), (2)"1," (3) and (4) delayed 70 days by administrative rules review committee.
**Effective date of 19.4(11), third unnumbered paragraph, delayed 70 days by administrative rules review committee.
†Published in Notice portion of IAB 9/10/86; See IAB 10/22/86
◊Two ARCs
◊◊See IAB, Utilities Division

[Filed emergency 3/15/91 after Notice 1/23/91—published 4/3/91, effective 3/15/91]
[Filed 3/28/91, Notice 10/3/90—published 4/17/91, effective 5/22/91]
[Filed emergency 7/16/91 after Notice 6/12/91—published 8/7/91, effective 7/16/91]
[Filed emergency 8/16/91 after Notice 5/1/91—published 9/4/91, effective 10/1/91]
[Filed 3/20/92, Notice 8/7/91—published 4/15/92, effective 5/20/92]
[Filed 4/23/92, Notice 10/30/91—published 5/13/92, effective 6/17/92]
[Filed 2/12/93, Notice 9/16/92—published 3/3/93, effective 4/7/93]
[Filed 8/11/93, Notice 5/12/93—published 9/1/93, effective 10/6/93]*
[Filed emergency 4/21/94—published 5/11/94, effective 4/21/94]
[Filed emergency 7/15/94 after Notice 3/16/94—published 8/3/94, effective 8/1/94]
[Filed 4/21/95, Notice 9/28/94—published 5/10/95, effective 6/14/95]
[Filed 12/23/96, Notice 9/11/96—published 1/15/97, effective 2/19/97]
[Filed 9/4/97, Notice 3/12/97—published 9/24/97, effective 10/29/97]
[Filed 10/31/97, Notices 1/29/97, 3/12/97—published 11/19/97, effective 12/24/97]
[Filed 10/31/97, Notice 5/7/97—published 11/19/97, effective 12/24/97]
[Filed 1/23/98, Notice 7/2/97—published 2/11/98, effective 3/18/98]
[Published 6/17/98 to update name and address of board]
[Filed 10/13/99, Notice 5/19/99—published 11/3/99, effective 12/8/99]
[Filed 12/8/99, Notice 4/21/99—published 12/29/99, effective 2/2/00]

*Effective date of 19.4(3) delayed until the adjournment of the 1994 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its meeting held September 15, 1993.

b. Determination of adjustment. Recalculation of bills shall be on the basis of actual monthly consumption except that if service has been measured by self-contained single-phase meters or three-wire network meters and involves no billing other than for kilowatt-hours, the recalculation of bills may be based on the average monthly consumption determined from the most recent 36 months, consumption data.

When the average error cannot be determined by test because of failure of part or all of the metering equipment, it shall be permissible to use the registration of check metering installations, if any, or to estimate the quantity of energy consumed based on available data. The customer must be advised of the failure and of the basis for the estimate of quantity billed. The periods of error shall be used as defined in immediately following subparagraphs (1) and (2).

(1) Overregistration. If the date when overregistration began can be determined, such date shall be the starting point for determination of the amount of the adjustment. If the date when overregistration began cannot be determined, it shall be assumed that the error has existed for the shortest time period calculated as one-half the time since the meter was installed, or one-half the time elapsed since the last meter test unless otherwise ordered by the board.

The overregistration due to creep shall be calculated by timing the rate of creeping and assuming that the creeping affected the registration of the meter for 25 percent of the time since the more recent of either metering installation or last previous test.

(2) Underregistration. If the date when underregistration began can be determined, it shall be the starting point for determination of the amount of the adjustment except that billing adjustment shall be limited to the preceding six months. If the date when underregistration began cannot be determined, it shall be assumed that the error has existed for one-half of the time elapsed since the more recent of either meter installation or the last meter test, except that billing adjustment shall be limited to the preceding six months unless otherwise ordered by the board.

The underregistration due to creep shall be calculated by timing the rate of creeping and assuming that this creeping affected the registration for 25 percent of the time since the more recent of either metering installation or last previous test, except that billing adjustment shall be limited to the preceding six months.

c. Refunds. If the recalculated bills indicate that $5 or more is due an existing customer or $10 or more is due a person no longer a customer of the utility, the tariff shall provide refunding of the full amount of the calculated difference between the amount paid and the recalculated amount. Refunds shall be made to the two most recent customers who received service through the metering installation found to be in error. In the case of a previous customer who is no longer a customer of the utility, a notice of the amount subject to refund shall be mailed to such previous customer at the last-known address, and the utility shall, upon demand made within three months thereafter, refund the same.

Refunds shall be completed within six months following the date of the metering installation test.

d. Back billing. A utility may not back bill due to underregistration unless a minimum back bill amount is specified in its tariff. The minimum amount specified for back billing shall not be less than, but may be greater than, $5 for an existing customer or $10 for a former customer. All recalculations resulting in an amount due equal or greater than the tariff specified minimum shall result in issuance of a back bill.

Back billings shall be rendered no later than six months following the date of the metering installation test.

e. Overcharges. When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation or other similar reasons, the amount of the overcharge shall be adjusted, refunded or credited to the customer. The time period for which the utility is required to adjust, refund, or credit the customer's bill shall not exceed five years unless otherwise ordered by the board.

f. Undercharges. When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation or other similar reasons, the tariff may provide for billing the amount of the undercharge to the customer. The time period for which the utility may adjust for the undercharge need not exceed five years unless otherwise ordered by the board. The maximum bill shall not exceed the billing for like charges (e.g., usage-based, fixed or service charges) in the 12 months preceding discovery of the error unless otherwise ordered by the board.

20.4(15) *Refusal or disconnection of service.* Notice of a pending disconnection shall be rendered, and electric service refused or disconnected as set forth in the tariff.

The notice of pending disconnection required by these rules shall be a written notice setting forth the reason for the notice, and the final date by which the account is to be settled or specific action taken. The notice shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail the notice shall be considered rendered when delivered to the last-known address of the person responsible for payment for the service. The date for refusal or disconnection of service shall be not less than 12 days after the notice is rendered. The date for refusal or disconnection of service for customers on shorter billing intervals under subrule 20.3(6) shall not be less than 24 hours after the notice is posted at the service premises.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for refusal or disconnection of service. The notice shall also state the final date by which the account is to be settled or other specific action taken. In determining the final date, the days of notice for the causes shall be concurrent.

Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in 20.4(15) *"a," "b," "c,"* and *"d,"* no service shall be disconnected on the day preceding or day on which the utility's local business office or local authorized agent is closed. Service may be refused or disconnected:

a. Without notice in the event of a condition on the customer's premises determined by the utility to be hazardous.

b. Without notice in the event of customer use of equipment in a manner which adversely affects the utility's equipment or the utility's service to others.

c. Without notice in the event of tampering with the equipment furnished and owned by the utility. For the purposes of this subrule, a broken or absent meter seal alone shall not constitute tampering.

d. Without notice in the event of unauthorized use.

e. For violation of or noncompliance with the utility's rules on file with the utilities division.

f. For failure of the customer or prospective customer to furnish the service equipment, permits, certificates or rights-of-way which are specified to be furnished, in the utility's rules filed with the utilities division, as conditions of obtaining service, or for the withdrawal of that same equipment or for the termination of those same permissions or rights, or for the failure of the customer or prospective customer to fulfill the contractual obligations imposed as conditions of obtaining service by any contract filed with and subject to the regulatory authority of the utilities division.

g. For failure of the customer to permit the utility reasonable access to its equipment.

h. For nonpayment of a bill or deposit, except as restricted by 20.4(16) and 20.4(17), provided that the utility has:

(1) Made a reasonable attempt to effect collection;

[Filed emergency 3/15/91, after Notice 1/23/91—published 4/3/91, effective 3/15/91]
[Filed 3/28/91, Notice 10/3/90—published 4/17/91, effective 5/22/91]
[Filed 4/25/91, Notice 12/26/90—published 5/15/91, effective 6/19/91]
[Filed 11/18/91, Notice 4/17/91—published 12/11/91, effective 1/15/92]
[Filed 3/20/92, Notice 8/7/91—published 4/15/92, effective 5/20/92]
[Filed 10/9/92, Notice 4/29/92—published 10/28/92, effective 12/2/92]
[Filed 7/27/93, Notice 3/3/93—published 8/18/93, effective 9/22/93]
[Filed 8/11/93, Notice 5/12/93—published 9/1/93, effective 10/6/93]***
[Filed 12/2/93, Notice 9/15/93—published 12/22/93, effective 1/26/94]
[Filed emergency 4/21/94—published 5/11/94, effective 4/21/94]
[Filed 6/28/94, Notice 4/13/94—published 7/20/94, effective 8/24/94]
[Filed 10/20/94, Notice 6/22/94—published 11/9/94, effective 12/14/94]
[Filed 9/4/97, Notice 3/12/97—published 9/24/97, effective 10/29/97]
[Filed 10/31/97, Notice 5/7/97—published 11/19/97, effective 12/24/97]
[Published 6/17/98 to update name and address of board]
[Filed 10/13/99, Notice 5/19/99—published 11/3/99, effective 12/8/99]
[Filed 12/8/99, Notice 4/21/99—published 12/29/99, effective 2/2/00]

***Effective date of 20.4(4) delayed until the adjournment of the 1994 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its meeting held September 15, 1993.

c. Upon request, assist the customer or proposed customers in selecting the most economic rate schedule available for the proposed type of service.

d. Upon request, inform its customers as to the method of reading meters and the method of computing the customer's bill.

e. Notify customers affected by a change in rates or rate classification as directed in the board rules of practice and procedures.

f. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-5979."

The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard form contained herein shall file its proposed form in its tariff for approval. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

21.4(2) *Customer deposits.*

a. Deposit required. Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

b. Amount of deposit. The total deposit shall not be less than $5 nor more in amount than the maximum estimated charge for service for 90 days or as may reasonably be required by the utility in cases involving service for short periods or special occasions.

c. New or additional deposit. A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than 12 days from the date of mailing to comply. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

d. Customer's deposit receipt. The utility shall issue a receipt of deposit to each customer from whom a deposit is received.

e. Interest on customer deposits. Interest shall be paid by the rate-regulated utility to each customer required to make a deposit. On or after April 21, 1994, rate-regulated utilities shall compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent is the most recent date the account is treated as uncollectible.

f. Deposit refund. The deposit shall be refunded after 12 consecutive months of prompt payment, unless the utility has evidence to indicate that the deposit is necessary to ensure payment of bills for service. In any event, the deposit shall be refunded upon termination of the customer's service.

g. Unclaimed deposits. The utility shall make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility shall maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest escheats to the state pursuant to Iowa Code section 556.4 at which time the record and deposit, together with accrued interest, less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section 556.11.

21.4(3) *Customer bill forms.* The utility shall bill each customer as promptly as possible following the reading of the customer's meter. Each bill, including the customer's receipt, shall show:

a. The date and the reading of the meter at the beginning and at the end of the period or the period for which the bill is rendered.

b. The number of units metered when applicable.

c. Identification of the applicable rate schedule.

d. The gross and net amount of the bill.

e. The delayed payment charge and the latest date on which the bill may be paid without incurring a penalty.

f. A distinct marking to identify an estimated bill.

21.4(4) *Bill payment terms.* The bill shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the bill shall be considered rendered when delivered to the last-known address of the party responsible for payment. There shall be not less than 20 days between the rendering of a bill and the date by which the account becomes delinquent.

A rate-regulated utility's late payment charge shall not exceed 1.5 percent per month of the past due amount.

Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules shall be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period.

The company rules shall state how the customer is notified the eligibility has been used.

21.4(5) *Customer records.* The utility shall retain customer billing records for the length of time necessary to permit the utility to comply with 21.4(6), but not less than three years.

21.4(6) *Adjustment of bills.* Bills which are incorrect due to meter or billing errors are to be adjusted as follows:

a. Fast meters. Whenever a meter in service is tested and found to have overregistered more than 2 percent, the utility shall adjust the customer's bill for the excess amount paid. The estimated amount of overcharge is to be based on the period the error first developed or occurred. If that period cannot be definitely determined, it will be assumed that the overregistration existed for a period equal to one-half the time since the meter was last tested, or one-half the time since the meter was installed unless otherwise ordered by the board. If the recalculated bill indicates that more than $5 is due an existing customer, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. If a refund is due a person no longer a customer of the utility, a notice shall be mailed to the last-known address.

b. Nonregistering meters. Whenever a meter in service is found not to register, the utility may render an estimated bill.

c. Slow meters. Whenever a meter is found to be more than 2 percent slow, the utility may bill the customer for the amount the test indicates the customer has been undercharged for the period of inaccuracy, or a period as estimated in 21.4(6)*"a"* unless otherwise ordered by the board.

d. Overcharges. When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation, or other similar reasons, the amount of the overcharge shall be adjusted, refunded or credited to the customer. The time period for which the utility is required to adjust, refund or credit the customer's bill shall not exceed five years unless otherwise ordered by the board.

e. Undercharges. When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation, or other similar reasons, the tariff may provide for billing the amount of the undercharge to the customer. The time period for which the utility may adjust for the undercharge need not exceed five years unless otherwise ordered by the board. The maximum bill shall not exceed the billing for like charges (e.g., usage-based, fixed or service charges) in the 12 months preceding discovery of the error unless otherwise ordered by the board.

21.4(7) *Refusal or disconnection of service.* Service may be refused or discontinued only for the reasons listed below. Unless otherwise stated, the customer shall be permitted at least 12 days, excluding Sundays and legal holidays, following mailing of notice of disconnect in which to take necessary action before service is discontinued.

a. Without notice in the event of an emergency.

b. Without notice in the event of tampering with the equipment furnished and owned by the utility or obtaining water by fraudulent means.

c. For violation of or noncompliance with the utility's rules on file with the board.

d. For failure of the customer to permit the utility reasonable access to its equipment.

e. For nonpayment of bill provided that the utility has: (1) Made a reasonable attempt to effect collection; (2) Given the customer written notice that the customer has at least 12 days, excluding Sundays and legal holidays, in which to make settlement of the account. In the event there is dispute concerning a bill for water service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid discontinuance of service for nonpayment of the disputed bill for up to 45 days after the rendering of the bill. The 45 days shall be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board.

f. When a prospective customer is refused service, the utility shall notify the prospective customer promptly of the reason for the refusal to serve and of the applicant's right to appeal the utility's decision to the board.

21.4(8) *Reconnection and charges.* In all cases of discontinuance of service where the cause of discontinuance has been corrected, the utility shall promptly restore service to the customer. The utility may make a reasonable charge applied uniformly for reconnection of service.

21.4(9) *Insufficient reasons for denying service.* The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

a. Nonpayment for service by someone who is no longer an occupant of the premises to be served, except in cases of immediate family occupation or cohabitation of adults at the premises.

b. Failure to pay the bill of another customer as guarantor thereof.

c. Failure to pay for a different type or class of public utility service.

21.4(10) *Customer complaints.* A "complaint" shall mean any objection to the charge, facilities, or quality of service of a utility.

a. Each utility shall investigate promptly and thoroughly and keep a record of all complaints received from its customers that will enable it to review its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date resolved.

b. All complaints caused by a major service interruption shall be summarized in a single report.

c. A record of the original complaint shall be kept for a period of three years after final settlement of the complaint.

199—21.5(476) Engineering practice.

21.5(1) *Requirement of good engineering practice.* The design and construction of the utility's water plant shall conform to good standard engineering practice.

21.5(2) *Inspection of water plant.* Each utility shall adopt and follow a program of inspection of its water 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.

199—21.6(476) Meter testing.

21.6(1) *Periodic and routine tests.* Each utility shall adopt schedules approved by the board for periodic and routine tests and repair of its meters.

21.6(2) *Meter test facilities and equipment.* Each utility furnishing metered water service shall provide the necessary standard facilities, instruments and other equipment for testing its meters, or mail for test of its meters by another utility or agency equipped to test meters subject to approval by the board.

21.6(3) *Accuracy requirements.* All meters used for measuring quantity of water delivered to a customer shall be in good mechanical condition. All meters shall be accurate to the following standards:

a. Test flow limits. For determination of minimum test flow and normal test flow limits, the company will use as a guide the appropriate standard specifications of the American Water Works Association for the various types of meters.

b. Accuracy limits. A meter shall not be placed in service if it registers less than 95 percent of the water passed through it at the minimum test flow, or overregisters or underregisters more than 1.5 percent at the intermediate or maximum limit.

21.6(4) *Initial test and storage of meters.* Every water meter shall be tested prior to its installation either by the manufacturer, the utility, or an organization equipped for meter testing.

If a meter is not stored as recommended by the manufacturer, the meter shall be tested immediately before installation.

21.6(5) *As found tests.* To determine the average meter error in accordance with these rules for periodic or complaint tests, meters shall be tested in the condition as found in the customer's service. Tests shall be made at intermediate and maximum rates of flow and the meter error shall be the algebraic average of the errors of the two tests.

21.6(6) *Request tests.* A utility shall test any water meter upon written request of a customer provided a request is not made more than once each 18 months. The customer shall be given the opportunity to be present at the request tests.

21.6(7) *Board-ordered tests.* The board shall order tests of meters as follows:

a. Application. Upon written application to the board by a customer or a utility, a test shall be made of the customer's meter as soon as practicable.

b. Guarantee. The application shall be sent by certified or registered mail and accompanied by a certified check or money order made payable to the utility in the amount indicated below:

(1)	Capacity of 80 gallons per minute or less	$24
(2)	Capacity over 80 gallons, up to 120 gallons per minute	$26
(3)	Capacity of over 120 gallons per minute	$30

c. Conduct of test. On receipt of a request from a customer, the board shall forward the deposit to the utility and notify the utility of the requirement for the test. The utility shall not knowingly remove or adjust the meter until tested. The utility shall furnish all instruments, load devices and other facilities necessary for the test and shall perform the test and shall furnish verification of the accuracy of test instruments used.

d. Test results. If the tested meter is found to overregister to an extent requiring a refund under the provisions of 21.4(6)*"a,"* the amount paid to the utility shall be returned to the customer by the utility.

e. Notification. The utility shall notify the customer in advance of the date and time of the board-ordered test.

f. Utility report. The utility shall make a written report of the results of test which shall be sent to the customer and to the board.

21.6(8) *Sealing of meters.* Upon completion of adjustment and test of any water meter the utility shall place a suitable register seal on the meter in a manner that adjustment or registration of the meter cannot be changed without breaking the seal.

21.6(9) *Record of meter tests.* Meter test records shall include:

a. The date and reason for the test.

b. The meter reading prior to any test.

c. The accuracy as found at each of the flow rates required by 21.6(3)*"a."*

d. The accuracy as left at each of the flow rates required by 21.6(3)*"a."*

e. Statement of any repairs.

f. If the meter test is made using a standard meter, the utility shall retain all data taken at the time of the test sufficient to permit the convenient checking of the test method, calculations, and traceability to the National Bureau of Standards' volumetric standardization.

The test records of each meter shall be retained for two consecutive periodic tests or at least for two years. A record of the test made at the time of the meter's retirement, if any, shall be retained for a minimum of three years.

[Filed 6/11/68; amended 6/27/75]
[Filed 9/30/77, Notice 6/9/77—published 10/19/77, effective 11/23/77]
[Filed emergency 6/28/82—published 7/21/82, effective 6/28/82]
[Filed 9/24/82, Notice 4/28/82—published 10/13/82, effective 11/17/82]
[Filed 10/21/82, Notice 8/18/82—published 11/10/82, effective 12/15/82]
[Filed 2/25/83, Notice 12/22/82—published 3/16/83, effective 4/20/83]
[Filed 1/27/84, Notice 11/23/83—published 2/15/84, effective 3/21/84]*
[Filed 4/9/84, Notice 1/18/84—published 4/25/84, effective 5/30/84]
[Filed 9/21/84, Notice 5/23/84—published 10/10/84, effective 11/14/84]
[Filed 9/21/84, Notice 7/18/84—published 10/10/84, effective 11/14/84]
[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]
[Filed 2/28/90, Notice 11/1/89—published 3/21/90, effective 4/25/90]
[Filed 8/31/90, Notice 4/4/90—published 9/19/90, effective 10/24/90]
[Filed 9/14/90, Notice 11/29/89—published 10/3/90, effective 11/7/90]
[Filed 3/28/91, Notice 10/3/90—published 4/17/91, effective 5/22/91]
[Filed 8/11/93, Notice 5/12/93—published 9/1/93, effective 10/6/93]**
[Filed emergency 4/21/94—published 5/11/94, effective 4/21/94]
[Published 6/17/98 to update name and address of board]
[Filed 12/8/99, Notice 4/21/99—published 12/29/99, effective 2/2/00]

*Effective date of 21.3(12)"*a*," "*b*"(1) and (3), and "*e*" delayed 70 days by the Administrative Rules Review Committee.
**Effective date of 21.4(2)"e" delayed until the adjournment of the 1994 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its meeting held September 15, 1993.

i. Maximum payments required by an active account or inactive account, for restoration of service of the same class and location as existed prior to disconnection, shall be the total of charges derived for reconnection and must comply with 22.4(2), 22.4(5) and 22.4(7). Only charges specified in the filed tariff shall be applied.

j. The utility may initiate collection efforts with the issuance of a final bill when the termination of service is at the customer's request. For all other bills no collection effort other than rendering of the bill shall be undertaken until the delinquency date.

k. Undercharges. The time period for which a utility may back bill a customer for undercharges shall not exceed five years unless otherwise ordered by the board.

l. Overcharges. The time period for which the utility is required to refund or credit the customer's bill shall not exceed five years unless otherwise ordered by the board. Refunds of $25 or more shall be in the form of checks to current customers. Checks are to be issued to former customers where the refund exceeds $10. Refunds to current customers less than $25 may be in the form of a bill credit. Refunds for regulated services may not be applied to unpaid amounts for unregulated services.

22.4(4) *Customer complaints.*

a. Complaints concerning the charges, practices, facilities, or service of the utility shall be investigated promptly and thoroughly. The utility shall keep a record of such complaint showing the name and address of the complainant, the date and nature of the complaint, its disposition, and all other pertinent facts dealing with the complaint, which will enable the utility to review and analyze its procedure and actions. The records maintained by the utility under this rule shall be available for inspection by the board or its staff upon request.

b. Each utility shall provide in its filed tariff a concise, fully informative procedure for the resolution of all customer complaints.

c. The utility shall take reasonable steps to ensure that customers unable to travel shall not be denied the right to be heard.

d. The final step in a complaint hearing and review procedure shall be a filing for board resolution of the issues.

22.4(5) *Refusal or disconnection of service.* Notice of a pending disconnection shall be rendered and transmission service refused or disconnected as set forth in the tariff.

The notice of pending disconnection required by these rules shall be a written notice setting forth the reason for the notice, and the final date by which the account is to be settled or specific action taken. The notice shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the notice shall be considered rendered when delivered to the last-known address of the person responsible for payment for the service. The final date shall be not less than five days after the notice is rendered.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for refusal or disconnection of service. This notice shall include a toll-free or collect number where a utility representative qualified to provide additional information about the disconnection can be reached. The notice shall also state the final date by which the account is to be settled or other specific action taken. In determining the final date, the days of notice for the causes shall be concurrent.

Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in 22.4(5)*"a," "b," "c," "d,"* and *"e,"* no service shall be disconnected on the day preceding or day on which the utility's local business office or local authorized agent is closed. Service may be refused or disconnected:

a. Without notice in the event of a condition on the customer's premises determined by the utility to be hazardous.

b. Without notice in the event of customer's use in such a manner as to adversely affect the utility's equipment or the utility's service to others.

c. Without notice in the event of tampering with equipment furnished and owned by the utility.

d. Without notice in the event of unauthorized use.

e. For violation of or noncompliance with the utility's rules on file with the board, the requirements of municipal ordinances or law pertaining to the service.

f. For failure of the customer or prospective customer to furnish service equipment, permits, certificates or rights-of-way specified to be furnished in the utility's rules filed with the board as conditions for obtaining service, or for the withdrawal of that same equipment or the termination of those permissions or rights, or for the failure of the customer or prospective customer to fulfill the contractual obligations imposed upon the customer as conditions of obtaining service by a contract filed with and subject to the regulatory authority of the board.

g. For failure of the customer to permit the utility reasonable access to its equipment.

h. For nonpayment of bill or deposit, except as restricted by 22.4(7), provided that the utility has made a reasonable attempt to effect collection and:

(1) Has provided the customer with 5 days' prior written notice with respect to an unpaid bill and 12 days' prior written notice with respect to an unpaid deposit, as required by this rule; disconnection may take place prior to the expiration of the 5-day unpaid bill notice period if the utility determines, from verifiable data, that usage during the 5-day notice period is so abnormally high that a risk of irreparable revenue loss is created.

(2) Is prepared to reconnect the same day if disconnection is scheduled for a weekend, holiday or after 2 p.m.

(3) In the event of a dispute concerning the bill, the telephone company may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill. Following payment of the undisputed amount, efforts to resolve the complaint, using complaint procedures in the company's tariff, shall continue and for not less than 45 days after the rendering of the disputed bill, the service shall not be disconnected for nonpayment of the disputed amount. The 45 days may be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board.

22.4(6) *Medical emergency.* Notwithstanding any other provision of these rules, a telephone utility shall postpone the disconnection of service to a residential customer for a reasonable time, not in excess of 30 days, if the customer produces verification from a physician, or a public health or social services official, which states that telephone service is essential due to an existing medical emergency of the customer, a member of the customer's family or any permanent resident of the premises where service is rendered. This written verification shall identify the medical emergency and specify the circumstances. Initial verification may be by telephone if written verification is forwarded to the utility within five days.

22.4(7) *Insufficient reasons for refusal, suspension or discontinuance of service.* The following shall not constitute sufficient cause for refusal, suspension or discontinuance of service to a present or prospective customer:

a. Delinquency in payment for service by a previous occupant of the premises to be served.

b. Failure to pay for terminal equipment, new inside station wiring or other merchandise purchased from the utility.

c. Failure to pay for a different type or class of public utility service.

d. Failure to pay the bill of another customer as guarantor thereof.

e. Permitting another occupant of the premises access to the telephone utility service when that other occupant owed an uncollectible bill for service rendered at a different location.

f. Failure to pay for yellow page advertising.

g. Use of an auxiliary directory cover.

h. Failure to pay for information service not regulated by the board.

i. Failure to pay deregulated toll charges.

[Filed 2/28/90, Notice 11/1/89—published 3/21/90, effective 4/25/90]◊
[Filed 3/16/90, Notice 12/13/89—published 4/4/90, effective 5/9/90]
[Filed 7/6/90, Notice 3/21/90—published 7/25/90, effective 8/29/90]
[Filed 7/20/90, Notices 12/13/89, 2/21/90—published 8/8/90, effective 9/12/90]
[Filed 9/14/90, Notice 11/29/89—published 10/3/90, effective 11/7/90]
[Filed 10/12/90, Notice 3/7/90—published 10/31/90, effective 12/5/90**]
[Filed 1/18/91, Notice 8/8/90—published 2/6/91, effective 3/13/91]
[Filed 3/28/91, Notice 10/3/90—published 4/17/91, effective 5/22/91]
[Filed emergency 4/25/91 after Notice 1/23/91—published 5/15/91, effective 4/25/91]
[Filed 1/3/92, Notice 5/29/91—published 1/22/92, effective 2/26/92]
[Filed without Notice 7/2/92—published 7/22/92, effective 8/26/92]
[Filed 12/4/92, Notice 7/22/92—published 12/23/92, effective 1/27/93]◊
[Filed 12/4/92, Notice 8/5/92—published 12/23/92, effective 1/27/93]
[Filed 1/15/93, Notice 7/8/92—published 2/3/93, effective 3/10/93]
[Filed 7/14/93, Notice 4/28/93—published 8/4/93, effective 9/8/93]
[Filed 8/11/93, Notice 5/12/93—published 9/1/93, effective 10/6/93***]
[Filed emergency 4/21/94—published 5/11/94, effective 4/21/94]
[Filed 4/7/95, Notice 2/1/95—published 4/26/95, effective 5/31/95]
[Filed 2/9/96, Notice 7/5/95—published 2/28/96, effective 4/3/96]
[Filed emergency 4/19/96—published 5/8/96, effective 4/19/96]
[Filed emergency 8/2/96—published 8/28/96, effective 8/2/96]
[Filed emergency 12/11/97 after Notice 10/8/97—published 12/31/97, effective 1/1/98]
[Filed 1/23/98, Notice 5/7/97—published 2/11/98, effective 3/18/98]
[Published 6/17/98 to update name and address of board]
[Filed emergency 7/23/99—published 8/11/99, effective 8/2/99]
[Filed 12/8/99, Notice 4/21/99—published 12/29/99, effective 2/2/00]

◊Two ARCs.
**Effective date of 22.10(1)"*c*" delayed 70 days by the Administrative Rules Review Committee on 11/14/90; delay lifted 12/11/90, effective 12/12/90.
***Effective date of 22.4(2)"*b*" delayed until the adjournment of the 1994 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its meeting held September 15, 1993.

CHAPTERS 34 and 35
Reserved

TITLE VI
INTERSCHOLASTIC COMPETITION

CHAPTER 36
EXTRACURRICULAR
INTERSCHOLASTIC COMPETITION

36.1(280) Definitions
36.2(280) Registered organizations
36.3(280) Filings by organizations
36.4(280) Executive board
36.5(280) Federation membership
36.6(280) Salaries
36.7(280) Expenses
36.8(280) Financial report
36.9(280) Bond
36.10(280) Audit
36.11(280) Examinations by auditors
36.12(280) Access to records
36.13(280) Appearance before state board
36.14(280) Interscholastic athletics
36.15(280) Eligibility requirements
36.16(280) Executive board review
36.17(280) Appeals to director
36.18(280) Organization policies
36.19(280) Eligibility in situations of district organization change
36.20(280) Cooperative student participation

CHAPTER 37
EXTRACURRICULAR ATHLETIC
ACTIVITY CONFERENCES FOR
PUBLIC SCHOOL DISTRICTS AND
ACCREDITED NONPUBLIC SCHOOLS

37.1(280) Policy and purpose
37.2(280) Initial responsibility
37.3(280) Complaint to the director, department of education
37.4(280) Mediation
37.5(280) Resolution or recommendation of the mediation team
37.6(280) Decision
37.7(280) Effective date of the decision

CHAPTERS 38 to 40
Reserved

TITLE VII
SPECIAL EDUCATION

CHAPTER 41
SPECIAL EDUCATION

DIVISION I
SCOPE AND GENERAL PRINCIPLES

41.1(256B,34CFR300,303) Scope
41.2 Reserved
41.3(256B) General principles
41.4(34CFR300) Exceptions for certain individuals

DIVISION II
DEFINITIONS

41.5(256B,34CFR300) Definitions
41.6(256B,34CFR300) Acronyms
41.7 Reserved

DIVISION III
PERSONNEL

41.8(256B,34CFR300) Licensure (certification)
41.9(256B,273,34CFR300) Authorized personnel
41.10(256B) Paraprofessionals
41.11 Reserved

DIVISION IV
RESPONSIBILITIES OF AGENCIES

41.12(256B,273,34CFR300) Responsibilities of all agencies
41.13 and 41.14 Reserved
41.15(256B,34CFR300) LEA responsibilities
41.16 and 41.17 Reserved
41.18(256B,273,34CFR300) AEA responsibilities
41.19 Reserved
41.20(256B,34CFR300) Personnel development
41.21 Reserved
41.22(256B,273,34CFR300) AEA eligibility for federal funds
41.23(256B) Special school provisions
41.24(256B,34CFR300) Length of school day
41.25(256B,34CFR76,104,300) Facilities

DIVISION IX
SERVICES

41.82(256B,34CFR300) General
41.83(256B,34CFR300) Continuum of services
41.84(256B,273,34CFR300) Instructional services
41.85 Reserved
41.86(256B,34CFR300) Support services
41.87 Reserved
41.88(256B,34CFR300) Itinerant services
41.89 Reserved
41.90(256B,34CFR300) Supplementary aids and services
41.91 Reserved
41.92(256B,34CFR300) Assistive technology services
41.93 Reserved
41.94(256B,34CFR300) Related services
41.95(256B,34CFR300) Orientation and mobility services
41.96(256B) Special health services
41.97 Reserved
41.98(256B,34CFR300) Transportation
41.99 to 41.101 Reserved

DIVISION X
PARENT PARTICIPATION

41.102(256B,34CFR300) Parent opportunity to examine records and participate in meetings
41.103(256B,34CFR300) Consent
41.104(256B,34CFR300) Prior notice by the public agency and content of notice
41.105(256B,34CFR300) Complaints to the department
41.106(256B,34CFR300) Special education preappeal conference
41.107(256B,34CFR300) Right to a due process hearing
41.108(34CFR300) Attorney fees
41.109(256B,34CFR300) Independent educational evaluation
41.110(256B,34CFR300) Surrogate parent procedures
41.111(34CFR300) Transfer of parental rights at age of majority

DIVISION XI
SPECIAL EDUCATION APPEALS

41.112(17A,256B,290) Definitions
41.113(17A,256B) Manner of appeal
41.114(17A,256B) Participants in the hearing
41.115(17A,256B) Convening the hearing
41.116(17A,256B) Stipulated record hearing
41.117(17A,256B) Evidentiary hearing
41.118(17A,256B) Mixed evidentiary and stipulated record hearing
41.119(17A,256B) Witnesses
41.120(17A,256B) Rules of evidence
41.121(17A,256B) Communications
41.122(17A,256B) Record
41.123(17A,256B) Decision and review
41.124(17A,256B) Finality of decision
41.125(17A,256B) Individual's status during proceedings
41.126 and 41.127 Reserved

DIVISION XII
FINANCE

41.128(256B,282) Contractual agreements
41.129(256B) Research and demonstration projects and models for special education program development
41.130(256B,273) Additional special education
41.131(256B,273,282) Extended school year services
41.132(256B,282,34CFR300,303) Program costs
41.133(256B,282) Audit
41.134(256B,282,34CFR300) Evaluations
41.135(256B,273,282) Sanctions
41.136 and 41.137 Reserved

TITLE VII
SPECIAL EDUCATION

CHAPTER 41
SPECIAL EDUCATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 12]

DIVISION I
SCOPE AND GENERAL PRINCIPLES

281—41.1(256B,34CFR300,303) Scope. These rules apply to the provision of education to children requiring special education between birth and the age of 21, and to a maximum allowable age in accord with Iowa Code section 256B.8, who are enrolled or are to be enrolled in the public or nonpublic schools of this state or in state-operated education programs. In addition, they apply to children requiring special education and who are receiving early childhood special education home instruction or are receiving special education home service as described in subrule 41.88(2), in hospitals or in facilities other than schools. The requirement to provide special education is mandated under 20 U.S.C. Chapter 33, Individuals with Disabilities Education Act; 34 CFR Part 300, Assistance to States for the Education of Children with Disabilities, July 1, 1999; and Iowa Code chapter 256B, "Special Education." Under the provisions of 34 CFR §§300.2, 300.141 and 300.600, July 1, 1999, all agencies offering special education within this state shall comply with these rules.

281—41.2 Reserved.

281—41.3(256B) General principles.

41.3(1) *Availability.* Special education must be made available to all children requiring special education. For all persons referred to in rule 41.1(256B,34CFR300,303), required services include early identification; the development and implementation of an individualized education program (IEP), or an individualized family service plan (IFSP) for children under the age of three; assessment of student improvement resulting from the provision of special services; and instructional services, support services, supplemental services, special adaptations, related services, assistive technology, transportation and materials and equipment necessary to providing children requiring special education a free appropriate public education.

41.3(2) *Responsibility.* It is the responsibility of each eligible individual's resident local education agency (LEA) to provide or make provision for appropriate special education and related services to meet the requirements of state and federal statutes and rules. This responsibility may be met by one or more of the following: by each LEA acting for itself; by action of two or more LEAs through the establishment and maintenance of joint programs; by the area education agency (AEA); by contract for services from approved public or private agencies offering the appropriate special education and related services; or by any combination of these. The AEA shall support and assist LEAs in meeting their responsibilities in providing appropriate special education and related services. The requirements of 34 CFR Part 300, July 1, 1999, are binding on each public agency that has direct or delegated authority to provide special education and related services regardless of whether that agency is receiving funds under Part B.

41.3(3) *Free appropriate public education (FAPE).* LEAs and AEAs shall provide special education and related services at public expense, under public supervision and direction, and at no cost to the parents. The special education and related services provided shall meet the standards set forth in these rules and in 20 U.S.C. §§1401 et seq., applicable portions of 29 U.S.C. §794, and 42 U.S.C. §§2116 et seq.; includes early childhood, elementary, and secondary education; and is provided in conformity with an individualized education program (IEP) or individualized family service plan (IFSP) that meets the requirements of division VIII. The provision of a free appropriate public education also applies to children requiring special education who have been suspended or expelled from school in accordance with rules 41.71(256B.34CFR300) through 41.73(256B,34CFR300).

41.3(4) *Full educational opportunity.* Each LEA shall ensure the provision of full educational opportunity to children requiring special education. Full educational opportunity includes the variety of educational programs and services and nonacademic and extracurricular services and activities that are available to individuals who do not require special education.

a. Each public agency shall take steps to ensure that eligible individuals have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

b. Each public agency shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. Nonacademic and extracurricular activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

41.3(5) *Least restrictive environment (LRE).* Each agency shall ensure that, to the maximum extent appropriate, children requiring special education are educated with individuals who do not require special education and that special classes, separate schooling or removal of children requiring special education from the general education environment occurs only if the nature or severity of the individual's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily in accord with division VI.

41.3(6) *Appropriate program.* Each child requiring special education shall be provided a specially designed education program that is based on the individual's specific educational needs. The development and provision of an appropriate program shall be consistent with divisions VI and VIII.

a. An appropriate program shall include all special education and related services that are necessary to address the individual's educational needs.

b. An appropriate program shall be consistent with applicable research findings and appropriate educational practices. In the absence of empirical evidence on the efficacy of any one intervention strategy, the LEA and AEA personnel and parent responsible for developing the individual's IEP shall outline a program of education which meets the educational needs of the individual.

c. An appropriate program shall not include practices which are precluded by statute or these rules.

d. The responsible agency shall provide special education and related services in accord with the individual's IEP; but the agency, teacher, or other person is not held accountable if an individual does not achieve the growth projected in the annual goals and objectives of the IEP.

41.3(7) *Shared responsibility.* General education and special education personnel share responsibility in providing appropriate educational programs for eligible individuals and in providing intervention and prevention services to individuals who are experiencing learning or adjustment problems.

41.3(8) *Family involvement.* LEAs and AEAs share responsibility in promoting partnerships to increase family involvement and participation in the social, emotional, and academic development of students receiving special education.

41.3(9) *Maintenance of effort.* These rules implement Iowa Code chapters 256B and 273 and 34 CFR Part 300, July 1, 1999, and are designed to ensure the continued provision of appropriate special education and related services to students with disabilities consistent with the mandate described in Iowa Code chapter 256B and the scope defined in rule 41.1(256B,34CFR300,303). Consistent with this intent, no provision of these rules should be construed as reducing the commitment to individuals requiring special education.

281—41.4(34CFR300) Exceptions for certain individuals.

41.4(1) *Exception to FAPE.* The obligation to make FAPE available as described in subrule 41.3(3) does not apply to individuals aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility, were not identified as an eligible individual as defined in division II and did not have an IEP as described in division VIII.

41.4(2) *Requirements that do not apply.* The following requirements do not apply to eligible individuals who are convicted as adults and incarcerated in adult prisons:

a. The requirement relating to participation in districtwide assessment described in paragraph 41.67(1)*"e."*

b. The requirement relating to transition planning and transition services described in subrule 41.67(2) for individuals whose eligibility will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

41.4(3) *Modifications to IEP or services.* The IEP team of an eligible individual, who is convicted as an adult and incarcerated in an adult prison, may modify the individual's IEP or location of services if it has been demonstrated that a bona fide security or compelling penological interest cannot otherwise be accommodated. In such a circumstance, the IEP team can modify the requirements of subrules 41.67(1) relating to the contents of the IEP and 41.3(5) relating to LRE.

41.4(4) *Exceptions for students who have graduated.* Exceptions to FAPE apply to individuals with disabilities who have graduated from high school with a regular high school diploma. This exception does not apply to individuals who have graduated but have not been awarded a regular high school diploma.

DIVISION II
DEFINITIONS

281—41.5(256B,34CFR300) Definitions.

"Agency" is a public or nonpublic organization which offers special education and related services in one or more disability areas.

"Appropriate activities" means those activities that are consistent with age-relevant abilities or milestones that typically developing children of the same age would be performing or would have achieved.

"Area education agency" or *"AEA"* is an intermediate educational unit created by Iowa Code chapter 273.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of eligible individuals.

"Assistive technology service" means any service that directly assists an eligible individual in the selection, acquisition, or use of an assistive technology device.

"At no cost" means that all special education and related services are provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program. An AEA or LEA may ask, but not require, parents of children with disabilities to use public or private insurance proceeds to pay for services if they would not incur a financial cost as described in subrules 41.132(10) and 41.132(11).

"Autism" is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before the age of three, that adversely affects an eligible individual's educational performance. If a child manifests characteristics of the disability category "autism" after the age of three, that child still could be diagnosed as having "autism" if the criteria in this definition are satisfied. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if an eligible individual's educational performance is adversely affected primarily because the eligible individual has a serious emotional disturbance.

"Behaviorally disordered" is the inclusive term for patterns of situationally inappropriate behavior which deviate substantially from behavior appropriate to one's age and significantly interfere with the learning process, interpersonal relationships, or personal adjustment of the individual to such an extent as to constitute a behavioral disorder.

1. Clusters of behavior characteristic of eligible individuals who are behaviorally disordered include: Cluster I—Significantly deviant disruptive, aggressive or impulsive behaviors; Cluster II—Significantly deviant withdrawn or anxious behaviors; and Cluster III—Significantly deviant thought processes manifested with unusual communication or behavioral patterns or both. An eligible individual's behavior pattern may fall into more than one of the above clusters.

2. The determination of significantly deviant behavior is the conclusion that the individual's characteristic behavior is sufficiently distinct from that of the individual's peer group to qualify the individual as requiring special education on the basis of a behavioral disorder. The behavior of concern shall be observed in the school setting for school-aged individuals and in the home or center-based setting for preschool-aged individuals. It must be determined that the behavioral disorder is not maintained by primary intellectual, sensory, cultural or health factors.

3. In addition to those data required within the full and individual evaluation for each individual, data which describe the qualitative nature, frequency, intensity, and duration of the behavior of concern shall be gathered when identifying an individual as behaviorally disordered. If it is determined that any of the areas of data collection are not relevant in assessing the behaviors of concern, documentation must be provided explaining the rationale for such a decision. Such documentation will be reviewed and maintained by the director.

(a) "Setting analysis data" is information gathered through informal observations, anecdotal record review and interviews describing the setting from which an individual was referred; documented prior attempts to modify the individual's educational program so as to make behavioral and academic achievement possible in the current placement; and social functioning data that includes information, gathered from sources such as teacher interviews and sociometric measures, regarding the referred individual's interaction with peers.

(b) "Individual behavioral data" are measures of actual behavior that include the specific recording, through systematic formal observations, of an individual's behavior, including the frequency of behaviors of concern; and measures of reported behavior that include checklists or rating scales and interviews that document the perceptions of school personnel regarding the behavioral pattern of the referred individual and the perception of the individual's home and school behavior obtained from the parent or surrogate parent.

(c) "Individual trait data" is information about the unique personal attributes of the individual. This information, gathered through interviews with the referred individual and teachers and relevant personality assessments, describes any distinctive patterns of behavior which characterize the individual's personal feelings, attitudes, moods, perceptions, thought processes and significant personality traits.

"Board" means the Iowa state board of education.

"Children requiring special education" are those individuals handicapped in obtaining an education as specified in Iowa Code chapter 256B, as defined in these rules and referred to as an eligible individual.

"Children who are handicapped in obtaining an education" are those individuals with disabilities who are unable to receive educational benefit from the general education experience without the provision of special education and related services as defined in these rules. In these rules, they are referred to as an eligible individual.

"Communication disability" means a disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects an individual's educational performance.

"Day" means calendar day unless otherwise indicated as business day or school day:

1. "Business day" means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day, as in subparagraph 41.74(2)*"d"*(1)); and

2. "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

"Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education and related services solely for individuals with deafness or individuals with blindness.

"Deafness," a physical disability, means a hearing impairment that is so severe that the individual is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects an individual's educational performance.

"Department" means the state department of education.

"Director" means the director of special education of the AEA.

"Director of education" means the state director of the department of education.

"Early childhood special education" or *"ECSE"* means special education and related services for those individuals below the age of six.

"Eligible individual" means an individual with a disability who is handicapped in obtaining an education and who is entitled to receive special education and related services. The term includes an individual who is over 6 and under 16 years of age who, pursuant to the statutes of this state, is required to receive a public education; an individual under 6 or over 16 years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and an individual between the ages of 21 and 24 who, pursuant to the statutes of this state, is entitled to receive special education and related services. In federal usage, this refers to infants, toddlers, children and young adults.

"General curriculum" means the curriculum adopted by an LEA or schools within the LEA for all children from preschool through secondary school.

"General education interventions" means attempts to resolve presenting problems or behaviors of concern in the general education environment prior to conducting a full and individual evaluation as described in subrule 41.48(2).

"Head injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects an individual's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

"Hearing impairment," a physical disability, means an impairment in hearing, whether permanent or fluctuating, that adversely affects an individual's educational performance but that is not included under the definition of deafness in this division.

"IEP team" is the group of individuals specified in division VIII that is responsible for developing, reviewing or revising an IEP for an eligible individual.

"Include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

"Individualized education program" or *"IEP"* is the written record of an eligible individual's special education and related services developed in accord with division VIII. The IEP document records the decisions reached at the IEP meeting and sets forth in writing a commitment of resources necessary to enable an eligible individual to receive needed special education and related services appropriate to the individual's special learning needs. There is one IEP which specifies all the special education and related services for an eligible individual.

"Individualized family service plan" or *"IFSP"* means a written plan for providing early intervention services to an individual eligible for such services under 34 CFR 303, July 1, 1999, and the individual's family.

"Learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to individuals who have learning problems that are primarily the result of physical or mental disabilities, behavioral disorder, or environmental, cultural, or economic disadvantage.

"Local education agency" or *"LEA"* is the local school district.

"Mental disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects an individual's educational performance.

"Multicategorical" means special education in which the individuals receiving special education have different types of disabilities.

"Multiple disabilities" means concomitant impairments (such as mental disabilities-blindness, mental disabilities-orthopedic impairments), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

"Native language," when used with reference to an individual of limited English proficiency, means the language normally used by that individual or, in the case of a child, the language normally used by the parents of the child. In using the term, these rules do not prevent the following means of communication:

1. In all direct contact with a child, including evaluation of the child, communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.
2. For individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual, such as sign language, braille, or oral communication.

"Orthopedic impairment," a physical disability, means a severe orthopedic impairment that adversely affects an individual's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

"Other health impairment," a physical disability, means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder or attention deficit hyperactivity disorder, or diabetes, that adversely affects an individual's educational performance.

"Parent" means a natural or adoptive parent, a guardian, or a surrogate parent who has been appointed in accord with these rules. The term does not include the state if the child is a ward of the state. The term includes persons acting in the place of a parent, such as a grandparent or stepparent with whom an individual lives, as well as persons who are legally responsible for an individual's welfare. A foster parent may act as a parent under these rules if the natural parents' authority to make educational decisions on the individual's behalf has been extinguished under state law and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the educational decisions required of parents under these rules; and has no interest that would conflict with the interests of the individual.

"Physical disability" is the inclusive term used in denoting deafness, hearing impairments, orthopedic impairments, other health impairments, and vision impairments including blindness of eligible individuals.

"Related services" means transportation and such developmental, corrective and other services as are required to assist an individual with a disability to benefit from special education.

"School district of the child's residence" or *"district of residence of the child"* is that school district in which the parent of the individual resides, with the following statutory and legal interpretations:

1. When full and complete control of an eligible individual is transferred from a parent to others for the purpose of acquiring a home rather than to obtain a free education, the district of residence of the individual is the district in which the individual and those who have accepted full and complete control of the individual reside, and that district becomes responsible for providing and funding the special education and related services.

2. If full and complete control of an eligible individual is transferred by a parent to others who reside in another LEA for the purpose of obtaining an education, the district of residence remains with the parent; therefore, the parent must pay tuition to the receiving district. The district of residence cannot be held responsible for tuition payment.

3. "Children living in a foster care facility" are individuals requiring special education who are living in a licensed child foster care facility as defined in Iowa Code section 237.1 or in a facility providing residential treatment as defined in Iowa Code section 125.2. District of residence of an individual living in a foster care facility and financial responsibility for special education and related services is determined in accord with the provisions of subrule 41.132(5).

4. "Children placed by the district court" are pupils requiring special education for whom parental rights have been terminated and who have been placed in a facility or home by a district court. Financial responsibility for special education and related services of individuals placed by the district court is determined in accord with subrule 41.132(6).

"Severely disabled" are individuals with any severe disability including individuals who are profoundly multiply disabled.

"Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of an eligible individual. It includes the specially designed instruction conducted in schools, in the home, in hospitals and institutions, and in other settings; instruction in physical education; and includes vocational education if it consists of specially designed instruction. The term includes the services described in division IX if the services consist of specially designed instruction, at no cost to the parents, to meet the unique needs of an eligible individual, or are required to assist eligible individuals in taking advantage of, or responding to, educational programs and opportunities. Special education provides a continuum of services in order to provide the least restrictive intervention needed to meet the educational needs of each eligible individual regardless of the nature or severity of the educational needs.

"Specially designed instruction" means adapting content, methodology or delivery of instruction to address the unique needs of an eligible individual that result from the individual's disability and to ensure access of the eligible individual to the general curriculum, so that the educational standards of the LEA or schools within the LEA that apply to all children can be met.

"Systematic progress monitoring" means a systematic procedure for collecting and displaying an individual's performance over time for the purpose of making educational decisions.

"Transition services" means a coordinated set of activities for an eligible individual, designed in an outcome oriented process, that promotes movement from school to postschool education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation. The coordinated set of activities is based on the needs of the eligible individual, taking into account the individual's preferences and interests. The set of activities includes instruction, related services, community experiences, development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational education.

"Visual impairment including blindness," a physical disability, means an impairment in vision that, even with correction, adversely affects an individual's educational performance. The term includes both partial sight and blindness. Individuals who have a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

"Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

281—41.6(256B,34CFR300) Acronyms. Selected acronyms frequently used in these rules:
"AEA" is the area education agency.
"ECSE" means early childhood special education.
"FAPE" means free appropriate public education.
"IEP" means individualized education program.
"IFSP" means individualized family service plan.
"LEA" is the local education agency (school district).
"LRE" means least restrictive environment.

281—41.7 Reserved.

DIVISION III
PERSONNEL

281—41.8(256B,34CFR300) Licensure (certification). Special education personnel shall meet the board of educational examiners' licensure (certification) and endorsement or recognition requirements for the position for which they are employed. In addition, personnel providing special education and related services who do not hold board of educational examiners' licensure (certification) or other recognition required by its board, and who, by the nature of their work, are required to hold a professional or occupational license, certificate or permit in order to practice or perform the particular duties involved in this state shall be required to hold a license, certificate, or permit.

281—41.9(256B,273,34CFR300) Authorized personnel. An agency is authorized to employ the following types of special education personnel, as appropriate to the special education and related services provided:

41.9(1) *Director of special education.* The director, as required by Iowa Code section 273.5, shall function as an advocate for eligible individuals and assist the department in meeting the intent of the special education mandate and complying with statutes and rules. The director shall be responsible for the implementation of special education for eligible individuals pursuant to Iowa Code section 273.5 and these rules. The director shall be employed on a full-time basis and shall not be assigned the responsibility for any other administrative unit within the AEA. It shall be the responsibility of the director to report any violation of these rules to the department for appropriate action.

41.9(2) *Special education instructional personnel.* Special education instructional personnel serve as teachers or instructional assistants at the preschool, elementary or secondary levels for eligible individuals.

41.9(3) *Special education support personnel.* The following positions are those of special education support personnel who provide special education and related services as stated in each definition. These personnel work under the direction of the director and may provide identification, evaluation, remediation, consultation, systematic progress monitoring, continuing education and referral services in accord with appropriate licensure (certification) and endorsement or approval, or statement of professional recognition. They may also engage in data collection, applied research and program evaluation.

a. "Assistant director of special education" provides specific areawide administrative, supervisory and coordinating functions as delegated by the director.

b. "Audiologist" applies principles, methods and procedures for analysis of hearing functioning in order to plan, counsel, coordinate and provide intervention strategies and services for individuals with deafness or hearing impairments.

c. *"Consultant"* is the special education instructional specialist who provides ongoing support to special and general education instructional personnel delivering services to eligible individuals. The consultant participates in the identification process and program planning of eligible individuals as well as working to attain the least restrictive environment appropriate for each eligible individual. The consultant demonstrates instructional procedures, strategies, and techniques; assists in the development of curriculum and instructional materials; assists in transition planning; and provides assistance in classroom management and behavioral intervention.

d. *"Educational strategist"* provides assistance to general education classroom teachers in developing intervention strategies for individuals who are disabled in obtaining an education but can be accommodated in the general education classroom environment.

e. *"Itinerant teacher"* provides special education on an itinerant basis to eligible individuals.

f. *"Occupational therapist"* is a licensed health professional who applies principles, methods and procedures for analysis of, but not limited to, motor or sensorimotor functions to determine the educational significance of identified problem areas including fine motor manipulation, self-help, adaptive work skills, and play or leisure skills in order to provide planning, coordination, and implementation of intervention strategies and services for eligible individuals.

g. *"Physical therapist"* is a licensed health professional who applies principles, methods and procedures for analysis of motor or sensorimotor functioning to determine the educational significance of motor or sensorimotor problems within, but not limited to, areas such as mobility and positioning in order to provide planning, coordination, and the implementation of intervention strategies and services for eligible individuals.

h. *"School psychologist"* assists in the identification of needs regarding behavioral, social, emotional, educational and vocational functioning of individuals; analyzes and integrates information about behavior and conditions affecting learning; consults with school personnel and parents regarding planning, implementing and evaluating individual and group interventions; provides direct services through counseling with parents, individuals and families; and conducts applied research related to psychological and educational variables affecting learning.

i. *"School social worker"* enhances the educational programs of individuals by assisting in identification and assessment of individuals' educational needs including social, emotional, behavioral and adaptive needs; provides intervention services including individual, group, parent and family counseling; provides consultation and planning; and serves as liaison among home, school and community.

j. *"Special education coordinator"* facilitates the provision of special education within a specific geographic area.

k. *"Special education media specialist"* is a media specialist who facilitates the provision of media services to eligible individuals; provides consultation regarding media and materials used to support special education and related services for eligible individuals; and aids in the effective use of media by special education personnel.

l. *"Special education nurse"* is a professional registered nurse who assesses, identifies and evaluates the health needs of eligible individuals; interprets for the family and educational personnel how health needs relate to individuals' education; implements specific activities commensurate with the practice of professional nursing; and integrates health into the educational program.

m. *"Speech-language pathologist"* applies principles, methods and procedures for an analysis of speech and language comprehension and production to determine communicative competencies and provides intervention strategies and services related to speech and language development as well as disorders of language, voice, articulation and fluency.

n. *"Supervisor"* is the professional discipline specialist who provides for the development, maintenance, supervision, improvement and evaluation of professional practices and personnel within a specialty area.

o. *"Work experience coordinator"* plans and implements, with LEA personnel, sequential secondary programs which provide on- and off-campus work experience for individuals requiring specially designed career exploration and vocational preparation when they are not available through the general education curriculum.

p. *"Others (other special education support personnel)"* may be employed as approved by the department and board of educational examiners.

281—41.10(256B) Paraprofessionals.

41.10(1) *Responsibilities.* Special education personnel may be employed to assist in the provision of special education and related services to children with disabilities and shall:

a. Complete appropriate preservice and ongoing staff development specific to the functions to be performed. The agency shall make provisions for or require such completion prior to the beginning of service wherever practicable and within a reasonable time of the beginning of service where the preentry completion is not practicable.

b. Work under the supervision of professional personnel who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services.

c. Not serve as a substitute for appropriately authorized professional personnel.

41.10(2) *Authorized special education paraprofessionals.* Authorized special education paraprofessional roles include:

a. *"Audiometrist"* provides hearing screening and other specific hearing-related activities as assigned by the audiologist.

b. *"Educational interpreter"* interprets or translates spoken language into sign language commensurate with the receiver's language comprehension and interprets or translates sign language into spoken language.

c. *"Licensed practical nurse"* shall be permitted to provide supportive and restorative care to an eligible individual in the school setting in accordance with the student's health plan when under the supervision of and as delegated by the registered nurse employed by the school district.

d. *"Occupational therapy assistant"* is licensed to perform occupational therapy procedures and related tasks that have been selected and delegated by the supervising occupational therapist.

e. *"Para-educator"* is a licensed educational assistant as defined in Iowa Code section 272.12.

f. *"Physical therapist assistant"* is licensed to perform physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapist.

g. *"Psychology assistant"* collects screening data through records review, systematic behavior observations, standardized interviews, group and individual assessment techniques; implements psychological intervention plans; and maintains psychological records under supervision of the school psychologist.

h. *"Speech-language pathology assistant"* provides certain language, articulation, voice and fluency activities as assigned by the supervising speech-language pathologist.

i. *"Vision assistant"* provides materials in the appropriate medium for use by individuals with visual impairment including blindness and performs other duties as assigned by the supervising teacher of individuals with visual impairments.

j. *"Others"* as approved by the department, such as educational assistants described in Iowa Administrative Code 281—subrule 12.4(9).

281—41.11 Reserved.

DIVISION IV
RESPONSIBILITIES OF AGENCIES

281—41.12(256B,273,34CFR300) Responsibilities of all agencies. These provisions are applicable to each agency which provides special education and related services.

41.12(1) *Provision of special education.* It is the responsibility of each agency to provide each resident individual appropriate special education and related services except in those cases where it is expressly otherwise provided by state statute. This responsibility may be fulfilled by using the services described in division IX of these rules.

41.12(2) *Compliance with Federal Code.* Each agency shall adhere to the provisions of and implementing regulations to 20 U.S.C. §§1401 et seq., applicable portions of 29 U.S.C. §794 pertaining to eligible individuals and Title 42 U.S.C. §§2116 et seq.

41.12(3) *Evaluation and improvement.* Each agency, in conjunction with other agencies, the department, or both, shall implement activities designed to evaluate and improve special education. These activities shall document the individual performance resulting from the provision of special education.

41.12(4) *Research.* Each agency shall cooperate in research activities designed to evaluate and improve special education when such activities are sponsored by an LEA, AEA or the department, or another agency when approved by the department to assess and ensure the effectiveness of efforts to educate all children with disabilities.

41.12(5) *Records and reports.* Each agency shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum:

a. Licensure (certification) and endorsements or recognition requirements for all special education personnel as per requirements described in rule 41.8(256B,34CFR300).

b. All IEP and IFSP meetings and three-year reevaluations for each eligible individual.

c. Data required for federal and state reporting.

41.12(6) *Policies.* Policies related to the provision of special education and related services shall be developed by each agency and made available to the department upon request to include the following:

a. Policy to ensure the provision of a free appropriate public eduction as defined in subrule 41.3(3).

b. The provision of special education and related services pursuant to Iowa Code chapters 256B and 273 and these rules.

c. Policies to ensure the provision of special education and related services in the least restrictive environment in accord with rule 41.38(256B,34CFR300) and division IX of these rules.

d. All requirements for protecting the confidentiality of personally identifiable information.

e. The graduation requirements for eligible individuals.

f. Requirements for administration of medications including a written medication administration record.

g. Special health services.

h. Policy to ensure the establishment of performance goals and indicators for eligible individuals.

i. Policy to ensure the participation of eligible individuals in districtwide assessment programs.

j. Policy to ensure that the participation and performance results of eligible individuals in districtwide assessments are reported to the public.

41.12(7) *Procedures.* Each agency shall develop written procedures pertinent to the provision of special education and related services and shall make such procedures available to the department upon request and shall, at a minimum, include:

a. Procedures to ensure the provision of special education and related services pursuant to Iowa Code chapters 256B and 273 and these rules.

b. Procedures for protecting the confidentiality of personally identifiable information.

c. Procedures for the graduation of eligible individuals.

d. Procedures for administration of medications including a written medication administration record.

e. Procedures for providing special health services.

f. Procedures for providing continuing education opportunities.

g. Each agency shall establish a procedure for its continued participation in the development of the eligible individual's IEP in out-of-state placements and shall outline a program to prepare for the eligible individual's transition back to the LEA before the eligible individual is placed out of state.

h. Procedures for ensuring procedural safeguards for children with disabilities and their parents in accordance with divisions X and XI of these rules.

i. Procedures for the establishment of performance goals and indicators for eligible individuals.

j. Procedures to ensure the participation of eligible individuals in districtwide assessment programs.

k. Procedures to ensure that the participation and performance results of eligible individuals in districtwide assessments are reported to the public.

41.12(8) *Contracts.* Each agency contracting with other agencies to provide special education and related services for individuals or groups of individuals shall maintain responsibility for individuals receiving such special education and related services by:

a. Ensuring that all the requirements related to the development of each eligible individual's IEP are met.

b. Ensuring the adequacy and appropriateness of the special education and related services provided by requiring and reviewing periodic progress reports.

c. Conditioning payments on delivery of special education and related services in accord with the eligible individual's IEP and in compliance with these rules.

41.12(9) *Out-of-state placements.* When special education and related services appropriate to an eligible individual's needs are not available within the state, or when appropriate special education and related services in an adjoining state are nearer than the appropriate special education and related services in Iowa, the director may certify an eligible individual for appropriate special education and related services outside the state in accord with Iowa Code section 273.3 when it has been determined by the department that the special education and related services meet standards set forth in these rules.

41.12(10) *Department approval for out-of-state placement.* Contracts may be negotiated with out-of-state agencies, in accord with Iowa Code section 273.3(5), with department approval. The department will use the following procedures to determine if an out-of-state agency meets the rules of the board:

a. When requested to determine an agency's approval status, the department will contact the appropriate state education agency to determine if that state's rules are comparable to those of the board and whether the specified out-of-state agency meets those rules.

b. If the appropriate state education agency's rules are not comparable, the out-of-state agency will be contacted by the department to ascertain if its special education complies with the rules of the board.

41.12(11) *Medication administration.* Each agency shall establish medication administration policy and procedures which include the following:

a. A statement on administration of prescription and nonprescription medication.

b. A statement on an individual health plan, when administration requires ongoing professional health judgment.

c. A statement that persons administering medication shall include licensed registered nurses, physicians and persons who have successfully completed a medication administration course reviewed by the board of pharmacy examiners. Individuals who have demonstrated competency in administering their own medications may self-administer their medication.

d. Provision for a medication administration course and periodic update. A registered nurse or licensed pharmacist shall conduct the course. A record of course completion shall be maintained by the school.

e. A requirement that the individual's parent provide a signed and dated written statement requesting medication administration at school.

f. A statement that medication shall be in the original labeled container either as dispensed or in the manufacturer's container.

g. A written medication administration record shall be on file at school including:

(1) Date.

(2) Individual's name.

(3) Prescriber or person authorizing administration.

(4) Medication.
(5) Medication dosage.
(6) Administration time.
(7) Administration method.
(8) Signature and title of the person administering medication.
(9) Any unusual circumstances, actions or omissions.

h. A statement that medication shall be stored in a secured area unless an alternate provision is documented.

i. A requirement for a written statement by the individual's parent or guardian requesting individual coadministration of medication, when competency is demonstrated.

j. A requirement for emergency protocols for medication-related reactions.

k. A statement regarding confidentiality of information.

281—41.13 and **41.14** Reserved.

281—41.15(256B,34CFR300) LEA responsibilities. In addition to the requirements of rule 41.12(256B,273,34CFR300), the following provisions are applicable to each LEA which provides special education and related services.

41.15(1) *Policies.* Each LEA shall develop written policies pertinent to the provision of special education and related services, and shall make such policies available to the department upon request. At a minimum, such policies shall include those identified in subrule 41.12(6).

41.15(2) *Procedures.* Each LEA shall develop written procedures pertinent to the provision of special education and related services, and shall make such procedures available to the department upon request. At a minimum, such procedures shall include those identified in subrule 41.12(7).

41.15(3) *Plans.* Districtwide plans required by the department or federal programs and regulations shall address eligible individuals and describe the relationship to or involvement of special education services.

41.15(4) *Nonpublic schools.* Each LEA shall provide special education and related services designed to meet the needs of nonpublic school students with disabilities residing in the jurisdiction of the agency in accord with Iowa Code sections 256.12(2) and 273.2.

41.15(5) *Comprehensive system of personnel development (CSPD).* The LEA, in conjunction with the AEA, the department, or both, shall assist with the procedures and activities described in rule 41.20(256B,34CFR300) to ensure an adequate supply of qualified personnel as defined in board of educational examiners 282—Chapters 14 and 15, including special education and related services personnel and leadership personnel.

281—41.16 and **41.17** Reserved.

281—41.18(256B,273,34CFR300) AEA responsibilities. In addition to the requirements of rule 41.12(256B,273,34CFR300), the following provisions are applicable to each AEA which provides special education and related services.

41.18(1) *Policies.* Each AEA shall develop written policies pertinent to the provision of special education and related services and shall make such policies available to the department upon request. At a minimum, such policies shall include those identified in 41.12(6)*"a"* to *"g"* and the following:

a. Appointment of surrogate parents, rule 41.110 (256B,34CFR300).

b. Provision of and payment for independent educational evaluation, rule 41.109(256B,34CFR300).

c. Policy to ensure the provision of a free appropriate public education as defined in subrule 41.3(3).

d. Policy to ensure the goal of providing a full educational opportunity to all eligible individuals as defined in subrule 41.3(4).

e. Policy addressing the methods of ensuring services to eligible individuals.

f. Child find policy that ensures that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.

g. Evaluation and determination of eligibility policy for identifying students who require special education that meet the requirements of division VII of these rules, including a description of the extent to which the AEA system uses categorical designations. While AEAs may identify students as eligible for special education without designating a specific disability category, it is recognized that in certain circumstances the educational diagnosis of a specific disability, such as autism or sensory impairment, may enhance the development and ongoing provision of an appropriate educational program.

h. Policy for the development, review and revision of IEPs.

i. Policy for transition from Part C to Part B as specified in rule 41.75(256B,34CFR300,303).

j. Policy for provision of special education and related services to students in nonpublic schools.

41.18(2) *Procedures.* Each AEA shall develop written procedures pertinent to the provision of special education and related services and shall make such procedures available to the department upon request. At a minimum, such procedures shall include those identified in subrule 41.12(7) and the following:

a. Appointment of surrogate parents, rule 41.110 (256B,34CFR300).

b. Provision of and payment for independent educational evaluation, rule 41.109(256B,34CFR300).

c. Procedures for monitoring the caseloads of LEA and AEA special education personnel to ensure that the IEPs of eligible individuals are able to be fully implemented. The description shall include the procedures for timely and effective resolution of concerns about caseloads and paraprofessional assistance which have not been resolved satisfactorily pursuant to subparagraph 41.84(2)*"b"*(3).

d. Procedures for evaluating the effectiveness of services in meeting the needs of eligible individuals in order to receive federal assistance under 34 CFR §300.240, July 1, 1999.

e. Child find procedures that ensure that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.

f. Evaluation and determination of eligibility procedures for identifying students who require special education that meet the requirements of division VII of these rules, including a description of the extent to which the AEA system uses categorical designations.

g. Procedures for the development, review and revision of IEPs.

h. Procedures to ensure the provision of special education and related services in the least restrictive environment in accord with rule 41.38(256B,34CFR300) and division IX of these rules.

i. Procedures for transition from Part C to Part B as specified in rule 41.75(256B,34CFR300,303).

j. Procedures for provision of special education and related services to students in nonpublic schools.

k. Procedures describing the methods of ensuring services to eligible individuals.

41.18(3) *Responsibility for provision of special education.* AEAs contracting with LEAs or other agencies to provide special education and related services for eligible individuals or groups of eligible individuals shall maintain responsibility for the provision of such special education and related services by:

a. Ensuring that all the requirements of special education related to the development of each eligible individual's IEP or IFSP are met.

b. Ensuring the adequacy and appropriateness of the special education and related services provided by requiring and reviewing periodic progress reports.

c. Conditioning payments on the delivery of special education and related services in accord with each eligible individual's IEP or IFSP and in compliance with these rules.

41.18(4) *Responsibility for monitoring of compliance.* The AEA shall conduct activities in each constituent LEA at least once every five years to monitor compliance with the provisions of all applicable federal and state statutes and regulations and rules applicable to the education of eligible individuals. A written report describing the monitoring activities, findings, corrective action plans, follow-up activities, and timelines shall be developed and made available for review by the department upon request. Monitoring of compliance activities shall meet all requirements of division XIV in these rules.

41.18(5) *AEA reports.* Each AEA shall provide the department with such data as are necessary to fulfill federal and state reporting requirements under the provisions of 20 U.S.C. §§1400 et seq. Data shall be provided in the format specified or on forms provided by the department and within timelines established by the department.

41.18(6) *Educate and inform.* The AEA shall provide the department with a description of proactive steps to inform and educate parents, AEA and LEA staff regarding eligibility, identification criteria and process, and due process steps to be followed when parents disagree regarding eligibility.

41.18(7) *Coordination of services.* The AEA shall provide the department with a description of how the AEA identification process and LEA delivery systems for instructional services will be coordinated.

281—41.19 Reserved.

281—41.20(256B,34CFR300) Personnel development. The AEA shall ensure that personnel necessary to carry out the requirements of these rules are appropriately and adequately prepared and trained consistent with the state's comprehensive system of personnel development, and to the extent the AEA determines appropriate, shall contribute to and use the comprehensive system of personnel development of the state.

281—41.21 Reserved.

281—41.22(256B,273,34CFR300) AEA eligibility for federal funds.

41.22(1) *Required descriptions, policies and procedures.* Each AEA shall submit to the department the policies and procedures identified in subrules 41.18(1) and 41.18(2) and other descriptions that may be required by the department for approval. These descriptions, policies and procedures shall remain in effect until modifications are made in response to changes in federal code or regulations, changes in state code, a new interpretation of federal code or regulation or state code or administrative rule by a federal court or the state's highest court. Any modifications to an AEA's descriptions, policies or procedures shall be submitted to the department for approval.

41.22(2) *AEA application.* Each AEA shall submit to the department, 45 calendar days prior to the start of the project year, an application for federal funds under 20 U.S.C. Chapter 33, and 34 CFR Part 300, July 1, 1999. An AEA application shall only receive department approval when there is an approved AEA comprehensive plan as described in rule 281—72.9(273) on file at the department and the requirements of subrule 41.22(1) have been met.

The application, on forms provided by the department, shall include the following:

a. General information.

b. Utilization of funds.

c. Assurances.

281—41.23(256B) Special school provisions.

41.23(1) *Providers.* Special schools for eligible individuals who require special education outside the general education environment may be maintained by individual LEAs; jointly by two or more LEAs; by the AEA; jointly by two or more AEAs; by the state directly; or by approved private providers.

41.23(2) *Department recognition.* Department recognition of agencies providing special education and related services shall be of two types:

a. Recognition of nonpublic agencies and state-operated programs providing special education and related services in compliance with these rules.

b. Approval for the nonpublic agency to provide special education and related services, and to receive special education funds for the special education and related services contracted for by an LEA or an AEA.

281—41.24(256B,34CFR300) Length of school day. The length of the school day for eligible individuals shall be the same as that determined by the LEA board for all other individuals unless a shorter day is prescribed in the eligible individual's IEP.

281—41.25(256B,34CFR76,104,300) Facilities.

41.25(1) *Equivalent to general education.* Each agency providing special education and related services shall supply facilities which shall be at least equivalent in quality to general education classrooms in the system, located in buildings housing regularly enrolled individuals of comparable ages, and readily accessible to individuals with disabilities pursuant to 34 CFR §104.21. No eligible individual shall be denied the benefits of, or be excluded from participation in, or otherwise be subjected to discrimination under any program activity because an agency's facilities are inaccessible.

41.25(2) *Personnel space and assistance.* Each agency providing special education shall ensure that special education personnel are provided adequate access to telephone service and clerical assistance, and sufficient and appropriate work space regularly available for their use which is readily accessible to individuals with disabilities pursuant to 34 CFR Part 104.

281—41.26(256B) Materials, equipment and assistive technology.

41.26(1) *Provision for materials, equipment, and assistive technology.* Each LEA shall make provision for special education and related services, facility modifications, assistive technology, necessary equipment and materials, including both durable items and expendable supplies; provided that, where an AEA, pursuant to appropriate arrangements authorized by the Iowa Code, furnishes special education and related services, performance by the AEA shall be accepted in lieu of performance by the LEA.

41.26(2) *Acquire and maintain equipment.* Each agency providing special education and related services shall have a comprehensive program in operation under which equipment for special education is acquired, inventoried, maintained, calibrated and replaced on a planned and regular basis.

41.26(3) *Provide special equipment.* The agency responsible for the provision of special education and related services shall provide assistive technology, special aids, equipment, materials or supplies as necessary.

41.26(4) *Functioning of hearing aids.* Each agency shall develop and implement a plan to ensure that the hearing aids worn by individuals with hearing impairments (including deafness) in school are functioning properly.

281—41.27(256B) Rules exceptions.

41.27(1) *Department approval.* In unique circumstances, the director or, in a state-operated program, the superintendent or designee may request a rule exception from the department.

a. Requests must be filed with the department, on forms provided, and approval granted prior to the intended action. Department action on a request for a rule exception shall be communicated in writing to the director or, in a state-operated program, the superintendent and, if granted, such an exception shall be valid for that academic year.

b. The department will use the following criteria in the review and approval of all requests for a rule exception. The request:

(1) Does not ask for a waiver of any of the requirements of 20 U.S.C. Chapter 33, 34 CFR Part 300, July 1, 1999, or divisions I, V, VI, VIII, X, and XI of these rules.

(2) Is necessary to provide an appropriate education to an eligible individual or group of eligible individuals, or is designed to improve the requesting agency's delivery of services.

(3) Is supported by substantive evidence indicating the need and rationale for the request.

41.27(2) *Adjusted program reports.* The director or, in a state-operated program, the superintendent or designee, may grant an adjusted program status when an LEA or state-operated program uses the program models described in subrule 41.84(1). An adjusted program report shall document such action and shall be maintained by the director or superintendent. The adjusted program status shall be approved by the director or superintendent within 30 calendar days of the action, shall be valid for that academic year, and shall be used for the following circumstances:

a. Program model: An individual is appropriately served in a program other than that typically provided for individuals with similar educational needs.

b. Disability: An individual is appropriately served in a categorical program that does not typically serve the individual's disability.

c. Age span: The chronological age span of the individuals within the program exceeds six years in a self-contained special class or four years in a multicategorical special class with integration.

d. Maximum class size: When class size, including the size of a class served by a teacher employed less than full-time, exceeds those limits specified in subrules 41.84(1) and 41.84(2).

281—41.28 Reserved.

DIVISION V
CONFIDENTIALITY OF INFORMATION

281—41.29(256B,34CFR99,300) Definitions. As used in this division:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of education records in 34 CFR Part 99, July 1, 1999.

"Personally identifiable information" means that information includes:

1. The name of the child, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

281—41.30(256B,34CFR99,300) Information recorded and confidentiality maintained. For each individual all screening, assessment and evaluation results shall be recorded. Educational records shall be confidential and shall not be disclosed except pursuant to 34 CFR Parts 99 and 300, July 1, 1999. Each agency shall maintain records and reports in a current status. The parents of an eligible individual and the eligible individual shall be afforded, in accordance with rules 41.31(256B,34CFR99,300) and 41.33(256B,34CFR99,300), an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the individual; and the provision of FAPE to the individual.

281—41.31(256B,34CFR99,300) Access to educational records.

41.31(1) *Reviewing records.* Each agency shall permit the parents of an eligible individual and the eligible individual to inspect and review any education records relating to the individual that are collected, maintained, or used by the agency under these rules. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the individual or the provision of FAPE to the individual and in no case more than 45 calendar days. An agency may presume that the parent of an eligible individual has authority to inspect and review records relating to the individual unless the agency has been advised that the parent does not have the authority under Iowa Code chapters 597, 598, and 598A governing such matters as guardianship, separation, and divorce. When parental rights are transferred to an eligible individual as specified in rule 41.111(34CFR300) educational records shall be made available to parents if the eligible individual is determined to be a dependent student as defined in Section 152 of Title 26, the Internal Revenue Code of 1954. The right to inspect and review education records under these rules includes:

a. The right to a response from the agency to reasonable requests for explanations and interpretations of the records.

b. The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

c. The right to have a representative of the parent inspect and review the records.

41.31(2) *Record of access.* Each agency shall keep a record of parties obtaining access to education records collected, maintained, or used under these rules (except access by parents and authorized employees, officers, and agents of the agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

41.31(3) *Records on more than one individual.* If any education record includes information on more than one individual, the parents of those individuals shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

41.31(4) *List of types and locations of information.* Each agency shall provide to parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

41.31(5) *Fees.* Each agency may charge a fee for copies of records that are made for parents under these rules if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. An agency may not charge a fee to search for or to retrieve information under these rules.

41.31(6) *Consent.*

a. Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of agencies collecting or using the information under these rules, subject to paragraph *"b"* of this subrule, or used for any purpose other than meeting a requirement of these rules.

b. An educational agency or institution subject to 34 CFR Part 99, July 1, 1999, may not release information from education records to agencies without parental consent unless authorized to do so under 34 CFR Part 99, July 1, 1999.

41.31(7) *Safeguards.*

a. Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. One official at each agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

c. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under these rules and 34 CFR Part 99, July 1, 1999.

d. Each agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

281—41.32 Reserved.

281—41.33(256B,34CFR99,300) Amendment of educational records. A parent who believes that information in the education records collected, maintained or used under these rules is inaccurate or misleading or violates the privacy rights of the individual may request the agency that maintains the information to amend the information. The agency shall decide whether to amend the information in accord with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accord with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under 41.33(1).

41.33(1) *Opportunity for a hearing.* The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy rights of the individual.

41.33(2) *Hearing procedure.* A hearing held under 41.33(1) must be conducted according to the procedures under 34 CFR §99.22, July 1, 1999.

41.33(3) *Result of hearing.* If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual, it shall amend the information accordingly and so inform the parent in writing. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights of the individual, it shall inform the parent of the right to place in the records it maintains on the individual a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the records of the individual under this rule must:

a. Be maintained by the agency as part of the records of the individual as long as the record or contested portion is maintained by the agency; and

b. If the records of the individual or the contested portion is disclosed by the agency to any party, the explanation must be disclosed to the party.

281—41.34 Reserved.

281—41.35(256B,34CFR76,99,300) Destruction of information. The agency shall inform parents when personally identifiable information collected, maintained or used under these rules is no longer needed to provide educational services to the eligible individual. The information must be destroyed at the request of the parents. Agencies are required to retain records for three years after an individual is determined to be no longer eligible for special education. Personally identifiable information can be removed from those records less than three years old when the parents request destruction of records. A permanent record of the individual's name, address, and telephone number, the individual's grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation. When parents request destruction of information the agency shall inform parents that the records may be needed by the individual or the parents for social security benefits or other purposes.

281—41.36 Reserved.

DIVISION VI
LEAST RESTRICTIVE ENVIRONMENT

281—41.37(256B,34CFR300) General.

41.37(1) *General education environment.* The general education environment includes, but is not limited to, the classes, classrooms, services, and nonacademic and extracurricular services and activities made available by an agency to all students. For preschool children who require special education, the general education environment is the environment where appropriate activities, occur for children of similar age without disabilities.

41.37(2) *Documentation.* Each agency shall ensure and maintain adequate documentation:

a. That to the maximum extent appropriate, eligible individuals, including eligible individuals in public or private institutions or other care facilities, are educated with individuals who are nondisabled.

b. That special classes, separate schooling or other removal of eligible individuals from the general education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever possible, hindrances to learning and to the normal functioning of eligible individuals within the general school environment shall be overcome by the provision of special aids and services rather than by separate programs for those in need of special education.

281—41.38(256B,34CFR300) Continuum of services. Each agency shall ensure that a continuum of services is available to meet the needs of eligible individuals for special education and related services. The continuum of services shall include services listed in division IX of these rules.

281—41.39(256B,34CFR300) Services. Each agency shall ensure that:

41.39(1) *Annual determination.* The services for each eligible individual are determined at least annually; are based on the individual's IEP; and are provided as close as possible to the individual's home.

41.39(2) *Alternative placements.* The various services included in division IX are available to the extent necessary to implement the IEP for each eligible individual.

41.39(3) *Location.* Unless the IEP of an eligible individual requires some other arrangement, the individual is educated in the school that the individual would attend if nondisabled. IEP teams are required to consider the questions on LRE presented in subrule 41.67(6).

41.39(4) *Harmful effect.* In selecting the LRE, consideration is given to any potential harmful effect on the eligible individual or on the quality of services that the individual needs.

41.39(5) *Removal from general education environment.* An eligible individual is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

281—41.40(256B,34CFR300) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities, each agency shall ensure that each eligible individual participates with nondisabled individuals in those services and activities to the maximum extent appropriate to the needs of that individual. Those services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the agency, referrals to agencies which provide assistance to persons with disabilities, and employment of students, including both employment by the agency and assistance in making outside employment available.

281—41.41(256B,34CFR300) Individuals in public or private institutions. The department, on behalf of LEAs and AEAs, shall make arrangements with public and private institutions as may be necessary to ensure that this division is effectively implemented.

281—41.42(256B) Special schools. When an eligible individual's special education is provided in a special school, the individual's IEP shall include specific answers to the following questions:

41.42(1) *Reasons.* What are the reasons that the eligible individual cannot be provided an educational program in an integrated school setting?

41.42(2) *Support needed.* What supplementary aids and services are needed to support the eligible individual in the special education program?

41.42(3) *Integrated setting.* Why can't these aids and services be provided in an integrated setting?

41.42(4) *Continuum of services available.* What is the continuum of services available for the eligible individual?

281—41.43(256B,34CFR300) Technical assistance and training activities. The department shall carry out activities to ensure that teachers and administrators in all agencies are fully informed about their responsibilities for implementing rule 41.37(256B,34CFR300) and are provided with technical assistance and training necessary to assist them in this effort.

281—41.44(256B,34CFR300) Monitoring activities. The department shall carry out activities to ensure that rule 41.37(256B,34CFR300) is implemented by each public agency (state-operated program, AEA, and LEA). If there is evidence that an agency makes placements that are inconsistent with rule 41.37(256B,34CFR300), the department shall review the agency's justification for its actions and assist the agency in planning and implementing any necessary corrective action. The department shall take action consistent with rule 41.135(256B,273,282) if an agency fails to implement corrective actions.

281—41.45 and **41.46** Reserved.

DIVISION VII
IDENTIFICATION

281—41.47(256B,34CFR300) Identification of eligible individuals.

41.47(1) *Definition.* As used in this division, identification has two purposes: (1) to identify those individuals who require special education and (2) to identify individuals who need general education interventions as described in subrule 41.48(2).

41.47(2) *Procedures.* Each AEA, in conjunction with each constituent LEA, shall establish and implement ongoing identification and evaluation procedures to ensure early identification of and appropriate special education for eligible individuals of all ages, including individuals in all public and private agencies and institutions within that jurisdiction, as specified in rule 41.1(256B,34CFR300,303) of these rules. Each AEA shall have written procedures for the identification process.

41.47(3) *Systematic problem solving process.* When used by an AEA in its identification process, systematic problem solving means a set of procedures that is used to examine the nature and severity of an educationally related problem. These procedures primarily focus on variables related to developing effective educationally related interventions. Active parent participation is an integral aspect of the process and is solicited throughout. At a minimum, the process includes:

a. Description of problem. The presenting problem or behavior of concern is described in objective, measurable terms that focus on alterable characteristics of the individual and the environment. The individual and environment are examined through systematic data collection. The presenting problem or behaviors of concern are defined in a problem statement that describes the degree of discrepancy between the demands of the educational setting and the individual's performance.

b. Data collection and problem analysis. A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern is used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern are used to plan and monitor interventions. Data collected are relevant to the presenting problem or behaviors of concern and are collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures are individually tailored, valid, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.

c. Intervention design and implementation. Interventions are designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions are described in an intervention plan that includes goals and strategies, a progress monitoring plan, a decision-making plan for summarizing and analyzing progress monitoring data, and responsible parties. Interventions are implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.

d. Progress monitoring. Systematic progress monitoring is conducted which includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.

e. Evaluation of intervention effects. The effectiveness of interventions is evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized. Decisions regarding the effectiveness of interventions focus on comparisons with initial levels of performance.

281—41.48(256B,34CFR300) Identification process. Each AEA shall develop and use an identification process that, at a minimum, includes the following activities and procedures. The AEA shall maintain adequate records of the results of the identification process.

41.48(1) *Interactions.* The identification process shall include interactions with the individual, the individual's parents, school personnel, and others having specific responsibilities for or knowledge of the individual. Active parent participation is solicited throughout the process. Parents are communicated with directly and are encouraged to participate at all decision points.

41.48(2) *General education interventions.* Each LEA, in conjunction with the AEA, shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. In circumstances when the development and implementation of general education interventions are not appropriate to the needs of the individual, the IEP team as described in subrule 41.62(1) and, as appropriate, other qualified professionals, may determine that a full and individual initial evaluation shall be conducted. Documentation of the rationale for such action shall be included in the individual's educational record. The parent of a child receiving general education interventions may request that the agency conduct a full and individual initial evaluation at any time during the implementation of such interventions.

a. Each LEA shall provide general notice to parents on an annual basis about the provision of general education interventions that occur as a part of the agency's general program and that may occur at any time throughout the school year.

b. General education interventions shall include teacher consultation with special education support and instructional personnel working collaboratively to improve an individual's educational performance. The activities shall be documented and shall include measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern, communication with parents, collection of data related to the presenting problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions.

c. If the referring problem or behaviors of concern are shown to be resistant to general education interventions or if interventions are demonstrated to be effective but require continued and substantial effort that may include the provision of special education and related services, the agency shall then conduct a full and individual initial evaluation.

41.48(3) *Full and individual initial evaluation.* An initial evaluation of the individual's educational needs shall be completed before any action is taken with respect to the initial provision of special education and related services. Written parental consent as required in these rules shall be obtained prior to conducting the evaluation. The purpose of the evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of concern, or suspected disability, including whether the educational interventions are special education. An evaluation shall include:

a. An objective definition of the presenting problem, behaviors of concern, or suspected disability.

b. Analysis of existing information about the individual, as described in paragraph 41.48(4)*"a."*

c. Identification of the individual's strengths or areas of competence relevant to the presenting problem, behaviors of concern, or suspected disability.

d Collection of additional information needed to design interventions intended to resolve the presenting problem, behaviors of concern, or suspected disability, including, if appropriate, assessment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, adaptive behavior and motor abilities.

41.48(4) *Determination of needed evaluation data.* As part of a full and individual initial evaluation and as part of any reevaluation described in rule 41.77(256B, 34CFR300), the IEP team as described in subrule 41.62(1) and, as appropriate, other qualified professionals, shall:

a. Review existing evaluation data on the individual including evaluations and information provided by the parents of the individual, current classroom-based assessments and observations, observations by teachers and related services providers and the results of general education interventions.

b. On the basis of the review and input from the individual's parents, identify what additional data, if any, are needed to determine:

(1) Whether the individual has a disability or, in case of a reevaluation, whether the individual continues to have a disability.

(2) The present levels of performance and educational needs of the individual.

(3) Whether the individual needs special education and related services or, in the case of a reevaluation, whether the individual continues to need special education and related services.

(4) Whether any additions or modifications to the special education and related services are needed to enable the individual to meet the measurable annual goals set out in the IEP of the individual and to participate, as appropriate, in the general curriculum or, in the case of preschool children, appropriate activities.

41.48(5) *Conduct of review.* The group of individuals described in subrule 41.48(4) may conduct its review without a meeting.

41.48(6) *Need for additional data.* The group as described in subrule 41.62(1) shall administer the tests and other evaluation materials, and use assessment tools and strategies as may be needed to produce the data identified under subrules 41.48(3) and 41.48(4).

41.48(7) *Additional data not needed.* If the group as described in subrule 41.62(1) determines that no additional data are needed to determine whether the individual continues to have a disability, the agency shall notify the individual's parents of the team's determination and the reasons for it, and of the right of the parents to request an assessment to determine whether, for purposes of services described in these rules the individual continues to have a disability. The agency is not required to conduct this assessment unless requested to do so by the individual's parents.

281—41.49(256B,34CFR300) Assessment procedures, tests, and other evaluation materials. The assessment procedures, tests and other evaluation materials used in the identification process shall be consistent with the following:

41.49(1) *Materials.* The tests and other evaluation materials:

a. Are provided and administered in the individual's native language or other mode of communication, unless it is clearly not feasible to do so. Materials and procedures used to assess an individual with limited English proficiency are selected and administered to ensure that they measure the extent to which the individual has a disability and needs special education, rather than measuring the individual's English language skills.

b. Have been validated for the specific purpose for which they are used.

c. Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

d. Are technically sound and assess the relative contribution of cognitive and behavorial factors, in addition to physical or developmental factors.

41.49(2) *Tailored tests and materials.* The tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

41.49(3) *Impaired sensory, manual or speaking skills.* The tests and other evaluation materials are selected and administered so as best to ensure that if a procedure or test is administered to an individual with impaired sensory, manual, or speaking skills, the test results accurately reflect the individual's aptitude or achievement level or whatever other factors the procedure or test purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (unless those skills are the factors that the procedure or test purports to measure).

41.49(4) *Nondiscriminatory.* The tests and other evaluation materials are selected and administered so as not to be racially or culturally discriminatory.

41.49(5) *Tools and strategies.* The assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the individual. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the individual, including information provided by the parent, and information related to enabling the individual to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the individual is an eligible individual and in determining the content of the IEP.

41.49(6) *No single procedure.* No single procedure is used as the sole criterion for determining whether the individual is an eligible individual and for determining an appropriate educational program for the individual.

281—41.50(256B,34CFR300) Determining eligibility and need for service. Upon completing the full and individual initial evaluation, the IEP team and other qualified professionals as appropriate shall determine whether the individual is an individual with a disability as defined in division II and whether the educational interventions that the individual requires constitute the provision of special education and related services as defined in division II and described in division IX.

41.50(1) *Considerations.* In making this determination, the IEP team shall:

a. Draw upon information from a variety of sources including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

b. Ensure that information obtained from all evaluation procedures and sources is documented and carefully considered.

c. Ensure that the decision considers least restrictive environment and is made in conformity with division VI.

41.50(2) *Factors.* An individual shall not be determined to be an eligible individual if the determinant factor for the decision is a lack of instruction in reading or math, or limited English proficiency.

41.50(3) *Reports and documentation.* A copy of the evaluation report and the documentation of determination of eligibility shall be provided to the parent.

41.50(4) *IEP requirement.* If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with division VIII.

41.50(5) *Placement decision.* In determining the educational placement of an eligible individual, each public agency shall ensure that the placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The placement decision shall be made in conformity with least restrictive environment provisions described in division VI.

281—41.51(256B) Dissenting opinions. Each AEA shall have written procedures for the filing of dissenting opinions by educational personnel who do not agree with the team's conclusions or with the recommended special education and related services for an individual. Such procedures shall include the receipt and review of the dissenting opinion by the director and a response from the director within ten calendar days of the filing date of the dissenting opinion. No disciplinary sanctions may be imposed against authors of dissenting opinions for comments made in good faith. Parents who do not agree with the team's conclusions or with the recommended special education and related services for an individual may file concerns through the procedures described in rules 41.105(256B,34CFR300), 41.106(256B,34CFR300), 41.107(256B,34CFR300), and division XI.

281—41.52(256B) Director's certification. Based upon the decision of the IEP team, the director shall certify the individual's entitlement for special education. Individuals determined to have entitlement for special education shall have an IEP developed prior to the provision of special education and related services. A confidential record, subject to audit by the department, registering the name and required special education and related service of each individual requiring special education, shall be maintained by the AEA and provision made for its periodic revision.

281—41.53(256B) Eligibility beyond the age of 21. An agency may continue the special education and related services of an eligible individual beyond the individual's twenty-first birthday if the person had an accident or prolonged illness that resulted in delays in the initiation of or interruption in that individual's special education. The agency must request approval from the department in accord with Iowa Code section 256B.8.

281—41.54(256B,34CFR300) Independent educational evaluation. A parent has a right to an independent educational evaluation as described in rule 41.109(256B,34CFR300). If a parent obtains an independent educational evaluation at public or private expense and the evaluation meets agency criteria, the results of the evaluation must be considered by the agency in any decision made with respect to the provision of FAPE to the individual and may be presented as evidence at a hearing regarding the individual.

281—41.55 Reserved.

281—41.56(256B,34CFR300) Evaluating individuals with learning disabilities.

41.56(1) *Additional team members.* The determination of whether an individual suspected of having a learning disability is eligible for special education shall be made by the individual's parents and a team of qualified professionals which shall include:

a. The individual's general education teacher or, if the individual does not have a regular teacher, a general education teacher qualified to teach an individual of that age; or, for an individual of less than school age, an individual qualified to teach a child of that age.

b. At least one person qualified to conduct individual diagnostic evaluations of individuals, such as a school psychologist, a special education consultant, a special education teacher licensed in learning disabilities, or a speech-language pathologist.

41.56(2) *Criteria for determining the existence of a learning disability.*

a. A team may determine that an individual has a learning disability if:

(1) The individual does not achieve commensurate with the individual's age and ability levels in one or more of the ability areas listed in 41.56(2)*"a"*(2) when provided with learning experiences appropriate for the individual's age and ability levels.

(2) The team finds that the individual has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression; listening comprehension; written expression; basic reading skill; reading comprehension; mathematics calculation; or mathematics reasoning.

b. The team may not identify an individual as having a learning disability if the discrepancy between ability and achievement is primarily the result of a visual, hearing or motor impairment; a mental disability; a behavior disorder; or environmental, cultural or economic disadvantage.

41.56(3) *Observation.* At least one team member other than the individual's general education teacher shall observe the individual's academic performance in the general classroom setting. In the case of an individual of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

41.56(4) *Written report.* The team shall prepare a written report of the results of the evaluation. Each team member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member must submit a separate statement presenting the member's conclusions. The written report shall include a statement of:

a. Whether the individual has a learning disability.

b. The basis for making the determination.

c. The relevant behavior noted during the observation of the individual.

d. The relationship of that behavior to the individual's academic functioning.

e. The educationally relevant medical findings, if any.

f. Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services.

g. The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

281—41.57 and **41.58** Reserved.

DIVISION VIII
IEP

281—41.59(256B,34CFR300) Definitions. As used in this division:

"IEP team" includes members specified in rule 41.62(256B,34CFR300).

"Participating agency" means a state or local agency, other than the public agency responsible for an individual's education, that is financially and legally responsible for providing transition services to the individual.

281—41.60(256B,34CFR300) Effective date. At the beginning of each school year, each agency shall have in effect an IEP for every eligible individual from that agency. An IEP must be in effect before special education and related services are provided to an eligible individual and be implemented as soon as possible following the meetings under rule 41.61(256B,34CFR300). It is expected that the IEP of an eligible individual will be implemented immediately following the meetings under rule 41.61(256B, 34CFR300). Each public agency shall ensure that the eligible individual's IEP is accessible to each general education teacher, special education teacher, support service provider, and other service provider who is responsible for its implementation; and each teacher and provider is informed of the teacher or provider's specific responsibilities related to implementing the eligible individual's IEP and the specific accommodations, modifications, and supports that must be provided for the eligible individual in accordance with the IEP. Exceptions to this would be when the meetings occur during the summer or a vacation period, unless the child requires services during that period, or where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the eligible individual.

281—41.61(256B,34CFR300) Meetings.

41.61(1) *General.* Each agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of an eligible individual.

41.61(2) *Timeline.* Each agency shall ensure that within a reasonable period of time following the agency's receipt of parent consent to an initial evaluation of an eligible individual, the eligible individual is evaluated and, if determined eligible under these rules, special education and support services are made available to the eligible individual in accordance with an IEP. A meeting to develop an IEP for an eligible individual must be held within 30 calendar days of a determination that the individual needs special education and related services.

41.61(3) *Review and revision of IEP.* Each agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revises the IEP as appropriate to address:

a. Any lack of expected progress toward the annual goals described in rule 41.67(256B,34CFR300), and in the general curriculum, if appropriate;

b. The results of any reevaluation conducted;

c. Information about the child provided to, or by, the parents;

d. The child's anticipated needs; or

e. Other matters.

281—41.62(256B,34CFR300) Participants in meetings.

41.62(1) *General.* The agency shall ensure that each IEP meeting includes the following participants:

a. The parents of the eligible individual.

b. At least one general education teacher of the eligible individual (if the eligible individual is, or may be, participating in the general education environment). As a member of the IEP team, the general education teacher of an eligible individual shall, to the extent appropriate, participate in the development, review, and revision of the eligible individual's IEP, including assisting in the determination of appropriate positive behavioral interventions and strategies for the eligible individual and determination of supplementary aids and services, program modifications, or supports for school personnel that will be provided for the eligible individual consistent with paragraph 41.67(1)"*c.*"

c. At least one special education teacher or, if appropriate, at least one special education provider of the eligible individual.

d. A representative of the LEA who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of an eligible individual and is knowledgable about the general curriculum and the availability of resources of the LEA. The LEA may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in this paragraph are satisfied.

e. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs *"a"* through *"f"* of this subrule.

f. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the eligible individual, including related services personnel as appropriate. The determination of the knowledge or special expertise of any individual described in this paragraph shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

g. If appropriate, the eligible individual.

41.62(2) *Transition services participants.*

a. If a purpose of the IEP meeting is the consideration of transition services for an eligible individual, the agency shall invite the individual and a representative of any other agency that is likely to be responsible for providing or paying for transition services.

b. If the individual does not attend, the agency shall take other steps to ensure that the individual's preferences and interests are considered.

c. If an agency invited to send a representative to a meeting does not do so, the agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

281—41.63 Reserved.

281—41.64(256B,34CFR300) Parent participation.

41.64(1) *Parent participation in IEP meetings.* Each agency shall take steps to ensure that one or both of the parents of the eligible individual are present at each IEP meeting or are afforded the opportunity to participate, including:

a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend.

b. Scheduling the meeting at a mutually agreed-on time and place.

c. Notifying the parents of the purpose, time, and location of the meeting and who (name and position) will be in attendance and informing the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the eligible individual.

d. For an eligible individual beginning at the age of 14, or younger if appropriate, the notice shall indicate that a purpose of the meeting is the development of a statement of the transition service needs of the eligible individual required in subparagraph 41.67(2)*"a"*(1) and indicate that the agency will invite the eligible individual.

e. For an eligible individual beginning at the age of 16, or younger if appropriate, the notice must indicate:

(1) A purpose of the meeting is the consideration of needed transition services.

(2) That the agency will invite the eligible individual.

(3) Any other agency that will be invited to send a representative.

41.64(2) *Documentation.* If neither parent can attend, the agency shall use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance if the agency is unable to convince the parents that they should attend. In this case the agency must have a record of its attempts to arrange a mutually agreed-on time and place such as:

a. Detailed records of telephone calls made or attempted and the results of those calls.

b. Copies of correspondence sent to the parents and any responses received.

c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

d. The procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency shall keep a record of its efforts to contact parents.

41.64(3) *Interpreters for parents.* The agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

41.64(4) *Copy of IEP to parents.* The public agency shall give the parent a copy of the child's IEP at no cost to the parent.

281—41.65 and **41.66** Reserved.

281—41.67(256B,34CFR300) Content of IEP.

41.67(1) *General.* The IEP for each eligible individual shall include:

a. A statement of the eligible individual's present levels of educational performance, including:

(1) How the eligible individual's disability affects the individual's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled individuals) or

(2) For preschool children, as appropriate, how the disability affects the eligible individual's participation in appropriate activities;

b. A statement of measurable annual goals, including milestones or short-term objectives, related to:

(1) Meeting the eligible individual's needs that result from the individual's disability to enable the individual to be involved in and progress in the general curriculum; and

(2) Meeting each of the eligible individual's other educational needs that result from the individual's disability;

c. A statement of the special education and related services and supplementary aids and services to be provided to the eligible individual, or on behalf of the eligible individual, and a statement of the program modifications or supports for school personnel that will be provided for the individual:

(1) To advance appropriately toward attaining the annual goals;

(2) To be involved and progress in the general curriculum in accordance with paragraph *"a"* of this subrule and to participate in extracurricular and other nonacademic activities; and

(3) To be educated and participate with other individuals with disabilities and nondisabled individuals in the activities described in this paragraph;

d. An explanation of the extent, if any, to which the eligible individual will not participate with nondisabled individuals in the general class and in the activities described in paragraph *"c"* of this subrule;

e. A statement of any individual modifications in the administration of districtwide assessments of student achievement that are needed in order for the eligible individual to participate in the assessment. If the IEP team determines that the eligible individual will not participate in a particular districtwide assessment of student achievement (or part of an assessment), a statement of:

(1) Why that assessment is not appropriate for the eligible individual; and

(2) How the eligible individual will be assessed;

f. The projected date for the beginning of the services and modifications described in paragraph *"c"* of this subrule, and the anticipated frequency, location, and duration of those services and modifications; and

g. A statement of:

(1) How the eligible individual's progress toward the annual goals described in paragraph *"b"* of this subrule will be measured; and

(2) How the eligible individual's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of

1. Their child's progress toward the annual goals; and

2. The extent to which that progress is sufficient to enable the eligible individual to achieve the goals by the end of the year.

41.67(2) *Transition services.*

a. The IEP shall include:

(1) For each eligible individual beginning at the age of 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the eligible individual under the applicable components of the individual's IEP that focuses on the eligible individual's course of study (such as participation in advanced-placement courses or a vocational education program); and

(2) For each eligible individual beginning at the age of 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the eligible individual, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

b. If the IEP team determines that services are not needed in one or more of the areas specified in the definition of transition in rule 41.5(256B,34CFR300), the IEP shall include a statement to that effect and the basis upon which the determination was made.

41.67(3) *Transfer of rights.* Beginning at least one year before an eligible individual reaches the age of 18, or upon marriage, the eligible individual's IEP shall include a statement that the eligible individual has been informed of the individual's rights under these rules, if any, that will transfer to the eligible individual on reaching the age of majority consistent with rule 41.111(34CFR300).

41.67(4) *Eligible individuals with disabilities convicted as adults and incarcerated in adult prisons.* Special rules concerning the content of IEPs for individuals with disabilities convicted as adults and incarcerated in adult prisons are contained in rule 41.4(34CFR300).

41.67(5) *Considerations in development of IEP.*

a. General. In developing each eligible individual's IEP, the IEP team shall consider:

(1) The strengths of the eligible individual and the concerns of the parents for enhancing the education of their child;

(2) The results of the initial or most recent evaluation of the eligible individual; and

(3) As appropriate, the results of the eligible individual's performance on any general districtwide assessment programs.

b. Consideration of special factors. The IEP team also shall:

(1) In the case of an eligible individual whose behavior impedes the individual's learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(2) In the case of an eligible individual with limited English proficiency, consider the language needs of the eligible individual as those needs relate to the individual's IEP;

(3) In the case of an eligible individual who is blind or visually impaired, include in the initial IEP and each annual review of the IEP discussion of instruction in braille reading and writing and a written explanation of the reasons why the individual is using a given reading and writing medium or media. If the reasons have not changed since the previous year, the written explanation for the current year may refer to the fuller explanation from the previous year.

1. An eligible individual for whom braille services are appropriate, as defined in rule 41.5(256B,34CFR300), is entitled to instruction in braille reading and writing that is sufficient to enable the eligible individual to communicate with the same level of proficiency as an individual of otherwise comparable ability at the same grade level.

2. An eligible individual, with a visual impairment including blindness, as defined in rule 41.5(256B,34CFR300), whose primary learning medium is expected to change may begin instruction in the new medium before it is the only medium the eligible individual can effectively use.

3. Braille reading and writing instruction may only be provided by a teacher licensed at the appropriate grade level to teach individuals with visual impairments.

(4) Consider the communication needs of the eligible individual and, in the case of an eligible individual who is deaf or hard of hearing, consider the individual's language and communication needs, opportunities for direct communications with peers and professional personnel in the individual's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the individual's language and communication mode.

(5) Consider whether the eligible individual requires assistive technology devices and services.

c. Statement in IEP. If, in considering the special factors described in paragraph *"b"* of this subrule, the IEP team determines that an eligible individual needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the individual to receive FAPE, the IEP team shall include a statement to that effect in the individual's IEP.

41.67(6) *LRE considerations.* When developing an eligible individual's IEP, the IEP team shall consider the following questions regarding the provision of special education and related services:

a. What accommodations, modifications and adaptations does the individual require to be successful in a general education environment?

b. Why can't these accommodations, modifications and adaptations be provided within the general education environment?

c. What supports are needed to assist the teacher and other personnel in providing these accommodations, modifications and adaptations?

d. How will providing special education services and activities in the general education environment impact this individual?

e. How will providing special education services and activities in the general education environment impact other students?

281—41.68(256B,34CFR300) Support services only. An IEP that satisfies the requirements of rule 41.60(256B,34CFR300) to rule 41.67(256B,34CFR300) shall be developed for eligible individuals who require only special education support services. The special education support service specialist with knowledge in the area of need shall have primary responsibility for recommending the need for support service, the type or model of service to be provided, and the amount of service to be provided. However, the determination that an individual is eligible for special education shall meet the requirements of division VII. The special education support service provider shall attend the IEP meetings for the eligible individual being served.

281—41.69(34CFR303) Children birth to the age of three. A fully developed IFSP shall be considered to have met the requirements of an IEP for an eligible individual younger than the age of three.

281—41.70(256B,34CFR300) Related IEP requirements.

41.70(1) *Completed IEP.* It is not permissible for an agency to present a completed and finalized IEP to parents for their approval before there has been a full discussion with the parents regarding the eligible individual's need for special education and related services and the services the agency will provide to the individual. It would be appropriate for individual agency personnel to come prepared with evaluation findings, proposed statements of present levels of educational performance, and a recommendation regarding annual goals, milestones or short-term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the individual are only recommendations for review and discussion with the parents.

41.70(2) *Consolidated IEP.* In instances in which an eligible individual must have both an IEP and an individualized service plan under another federal program, it is possible to develop a single, consolidated document if it contains all of the information required in an IEP and if all of the necessary parties participate in its development.

41.70(3) *Accountability.* Each agency shall provide special education and related services to an eligible individual in accordance with an IEP and make a good-faith effort to assist the eligible individual to achieve the goals and objectives or milestones listed in the IEP. These rules do not require that any agency, teacher, or other person be held accountable if an individual does not achieve the growth projected in the annual goals and milestones or objectives.

41.70(4) *Interim IEP.* An IEP must be in effect before special education and related services are provided to an eligible individual. This does not preclude the development of an interim IEP which meets all the requirements of rule 41.67(256B,34CFR300) when the IEP team determines that it is necessary to temporarily provide special education and related services to an eligible individual as part of the evaluation process, before the IEP is finalized, to aid in determining the appropriate services for the individual. An interim IEP may also be developed when an eligible individual moves from one LEA to another and a copy of the current IEP is not available, or either the LEA or the parent believes that the current IEP is not appropriate or that additional information is needed before a final decision can be made regarding the specific special education and related services that are needed. IEP teams cannot use interim IEPs to circumvent the requirements of this division or of division VII. It is essential that the temporary provision of service not become the final special education for the individual before the IEP is finalized. In order to ensure that this does not happen, IEP teams shall take the following actions:

a. Specific conditions and timelines. Develop an interim IEP for the individual that sets out the specific conditions and timelines for the temporary service. An interim IEP shall not be in place for more than 30 school days.

b. Parent agreement and involvement. Ensure that the parents agree to the interim service before it is carried out and that they are involved throughout the process of developing, reviewing, and revising the individual's IEP.

c. Completing evaluation and making judgments. Set a specific timeline for completing the evaluation and making judgments about the appropriate services for the individual.

d. Conducting meeting. Conduct an IEP meeting at the end of the trial period in order to finalize the individual's IEP.

41.70(5) *Agency responsible for transition services.*

a. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP in accordance with subparagraph 41.67(2)*"a"*(2), the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the eligible individual set out in the IEP.

b. Nothing in these rules relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to eligible individuals who meet the eligibility criteria of that agency.

41.70(6) *Construction.* Nothing in these rules shall be construed to require the IEP team to include information under one component of an eligible individual's IEP that is already contained under another component of the individual's IEP.

281—41.71(256B,34CFR300) Discipline procedures.

41.71(1) *Change of placement for disciplinary removals.* For purposes of removals of an eligible individual from the eligible individual's current educational placement under subrules 41.71(2) to 41.73(5), a change of placement occurs if:

a. The removal is for more than ten consecutive school days, or

b. The eligible individual is subjected to a series of removals that constitute a pattern because they accumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the eligible individual is removed, and the proximity of the removals to one another.

41.71(2) *Authority of school personnel.*

a. School personnel may order:

(1) To the extent removal would be applied to individuals without disabilities, the removal of an eligible individual from the eligible individual's current placement for not more than ten consecutive school days for any violation of school rules, and additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under subrule 41.71(1)). After an eligible individual has been removed from the individual's current placement for more than ten school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under subrule 41.3(3).

(2) A change in placement of an eligible individual to an appropriate interim alternative educational setting for the same amount of time that an individual without a disability would be subject to discipline, but for not more than 45 calendar days, if:

1. The eligible individual carries a weapon to school or to a school function under the jurisdiction of a state or local educational agency; or

2. The eligible individual knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a state or local educational agency.

b. Either before or not later than ten business days after either first removing the eligible individual for more than ten school days in a school year or commencing a removal that constitutes a change of placement under subrule 41.71(1), including the action described in subparagraph 41.71(2)*"a"*(2).

(1) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the eligible individual before the behavior that resulted in the removal described in paragraph *"a"* of this subrule, the agency shall convene an IEP meeting to develop an assessment plan; or

(2) If the eligible individual already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation and modify the plan and its implementation as necessary to address the behavior.

c. As soon as practicable after developing the plan described in subparagraph 41.71(2)*"b"*(1) and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

d. If subsequently, an eligible individual who has a behavioral intervention plan and who has been removed from the eligible individual's current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement under subrule 41.71(1), the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

e. For purposes of this subrule the following definitions apply:

"Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

"Illegal drug" means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of federal law.

"Weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of Section 930 of Title 18, United States Code.

41.71(3) *Authority of administrative law judge.* An administrative law judge may order a change in the placement of an eligible individual to an appropriate interim alternative educational setting for not more than 45 calendar days if the administrative law judge, in an expedited due process hearing:

a. Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the eligible individual is substantially likely to result in injury to the individual or to others;

b. Considers the appropriateness of the eligible individual's current placement;

c. Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the eligible individual's current placement, including the use of supplementary aids and services; and

d. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the eligible individual's special education teacher meets the requirement of subrule 41.71(4).

e. As used in this subrule the term "substantial evidence" means beyond a preponderance of the evidence.

41.71(4) *Determination of setting.*

a. General. The interim alternative educational setting referred to in subrules 41.71(2) and 41.71(3) shall be determined by the IEP team.

b. Additional requirements. Any interim alternative educational setting in which an eligible individual is placed under subparagraph 41.71(2)*"a"*(2) and subrule 41.71(3) shall:

(1) Be selected so as to enable the eligible individual to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the individual's current IEP, that will enable the individual to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior described in subparagraph 41.71(2)*"a"*(2) and subrule 41.71(3), that are designed to prevent the behavior from recurring.

281—41.72(256B,34CFR300) Manifestation determination.

41.72(1) *Review process.*

a. General. If an action is contemplated regarding behavior described in subparagraph 41.71(2)*"a"*(2) or subrule 41.71(3), or involving a removal that constitutes a change of placement under subrule 41.71(1) for an eligible individual who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all individuals:

(1) Not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and provided the procedural safeguards notice described in rule 41.104(256B,34CFR300); and

(2) Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the eligible individual's disability and the behavior subject to the disciplinary action.

b. Individuals to carry out review. A review described in paragraph *"a"* of this subrule shall be conducted by the IEP team and other qualified personnel in a meeting.

c. Conduct of review. In carrying out a review described in paragraph *"a"* of this subrule, the IEP team and other qualified personnel may determine that the behavior of the eligible individual was not a manifestation of the individual's disability only if the IEP team and other qualified personnel:

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:

1. Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the eligible individual;
2. Observations of the eligible individual; and
3. The eligible individual's IEP and placement; and

(2) Then determines that:

1. In relationship to the behavior subject to disciplinary action, the eligible individual's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the eligible individual's IEP and placement;
2. The eligible individual's disability did not impair the ability of the individual to understand the impact and consequences of the behavior subject to disciplinary action; and
3. The eligible individual's disability did not impair the ability of the individual to control the behavior subject to disciplinary action.

d. Decision. If the IEP team and other qualified personnel determine that any of the standards in subparagraph *"c"*(2) of this subrule were not met, the behavior shall be considered a manifestation of the eligible individual's disability.

e. Meeting. The review described in paragraph *"a"* of this subrule may be conducted at the same IEP meeting that is convened under paragraph 41.71(2)*"b."*

f. Deficiencies in IEP or placement. If in the review in paragraphs 41.72(1)*"b"* and 41.72(1)*"c,"* a public agency identifies deficiencies in the eligible individual's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

41.72(2) *Determination that behavior was not manifestation of disability.*

a. General. If the result of the review described in subrule 41.72(1) is a determination, consistent with paragraph 41.72(1)*"d,"* that the behavior of the eligible individual was not a manifestation of the individual's disability, the relevant disciplinary procedures applicable to individuals without disabilities may be applied to the eligible individual in the same manner in which they would be applied to individuals without disabilities, except as provided in subrule 41.3(3).

b. Additional requirement. If the public agency initiates disciplinary procedures applicable to all individuals, the agency shall ensure that the special education and disciplinary records of the eligible individual are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

c. Child's status during due process proceedings. Subrule 41.125(1) applies if a parent requests a hearing to challenge a determination made through the review described in subrule 41.72(1), that the behavior of the eligible individual was not a manifestation of the individual's disability.

281—41.73(256B,34CFR300) Appeal.

41.73(1) *Parent appeal.*

a. General.

(1) If the eligible individual's parent disagrees with a determination that the eligible individual's behavior was not a manifestation of the individual's disability or with any decision regarding placement under rules 41.71(256B,34CFR300) to 41.73(256B,34CFR300), the parent may request a hearing.

(2) The state shall arrange for an expedited hearing in any case described in this subrule if requested by a parent.

b. Review of decision.

(1) In reviewing a decision with respect to the manifestation determination, the administrative law judge shall determine whether the public agency has demonstrated that the eligible individual's behavior was not a manifestation of the individual's disability consistent with the requirement of paragraph 41.72(1)*"d."*

(2) In reviewing a decision under subparagraph 41.71(2)*"a"*(2) to place the eligible individual in an interim alternative educational setting, the administrative law judge shall apply the standards in subrule 41.71(3).

41.73(2) *Placement during appeals.*

a. General. If a parent requests a hearing regarding a disciplinary action described in subparagraph 41.71(2)*"a"*(2) or subrule 41.71(3) to challenge the interim alternative educational setting or the manifestation determination, the eligible individual shall remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period provided for in subparagraph 41.71(2)*"a"*(2) or subrule 41.71(3), whichever occurs first, unless the parent and the state or local educational agency agree otherwise.

b. Current placement. If an eligible individual is placed in an interim alternative educational setting pursuant to subparagraph 41.71(2)*"a"*(2) or subrule 41.71(3) and school personnel propose to change the eligible individual's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the individual shall remain in the current placement (the individual's placement prior to the interim alternative educational setting), except as provided in paragraph *"c"* of this subrule.

c. Expedited hearing.

(1) If school personnel maintain that it is dangerous for the eligible individual to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the eligible individual may be placed in the alternative educational setting or in another appropriate placement ordered by the administrative law judge, the administrative law judge shall apply the standards in subrule 41.71(3).

(3) A placement ordered pursuant to subparagraph *"c"*(2) of this subrule may not be longer than 45 calendar days.

(4) The procedure in paragraph *"c"* of this subrule may be repeated as necessary.

41.73(3) *Protections for children not yet eligible for special education and related services.*

a. General. An individual who has not been determined to be eligible for special education under these rules and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in subrule 41.71(2) or subrule 41.71(3), may assert any of the protections provided for in these rules if the LEA had knowledge (as determined in accordance with paragraph *"b"* of this subrule) that the individual was an eligible individual before the behavior that precipitated the disciplinary action occurred.

b. Basis of knowledge. An LEA shall be deemed to have knowledge that an individual is an eligible individual if:

(1) The parent of the individual has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the individual is in need of special education and related services;

(2) The behavior or performance of the individual demonstrates the need for these services in accordance with division VII;

(3) The parent of the individual has requested an evaluation of the individual pursuant to division VII; or

(4) The teacher of the individual, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the individual to the director or to other personnel in accordance with the agency's established child find or special education referral system of the agency.

c. Exception. A public agency would not be deemed to have knowledge under paragraph *"b"* of this subrule if, as a result of receiving the information specified in that paragraph, the agency either conducted an evaluation in accordance with division VII, and determined that the individual was not an eligible individual or determined that an evaluation was not necessary and provided notice to the individual's parents of its determination consistent with rule 41.104(256B,34CFR300).

d. Conditions that apply if no basis of knowledge.

(1) General. If an LEA does not have knowledge that an individual is an eligible individual (in accordance with paragraphs *"b"* and *"c"* of this subrule) prior to taking disciplinary measures against the individual, the individual may be subjected to the same disciplinary measures as measures applied to individuals without disabilities who engaged in comparable behaviors consistent with subparagraph *"d"*(2) of this subrule.

(2) Limitations.

1. If a request is made for an evaluation of an individual during the time period in which the individual is subjected to disciplinary measures under subrule 41.71(2) or subrule 41.71(3), the evaluation shall be conducted in an expedited manner.

2. Until the evaluation is completed, the individual remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

3. If the individual is determined to be an eligible individual, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of these rules, including the requirements of rules 41.71(256B, 34CFR300) to 41.73(256B,34CFR300).

41.73(4) *Expedited due process hearings.* Expedited due process hearings under rules 41.71(3) to 41.73(2) shall be conducted by an administrative law judge as described in rule 41.112(17A,256B,290).

a. The parent of an individual with a disability, a representative of an LEA or AEA, or the attorney representing any of these parties shall provide notice to the department requesting an expedited hearing. This notice shall be in written form and shall include the name of the individual; the address of the residence of the individual; the name of the school the individual is attending and a description of the nature of the problem of the individual relating to the proposed or refused initiation or change, including facts relating to the problem.

b. The director of education or designee shall, within three business days after the receipt of the appeal, notify the proper school officials and the student's parents of the appeal. This notice may be done telephonically and confirmed in writing. School officials shall, within five business days after receipt of the notice, file with the department all records relevant to the decision appealed.

c. 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 to the original, if available. Any party has the right to object to the introduction of any evidence at the hearing that has not been disclosed to that party at least two business days before the hearing.

d. The presiding administrative law judge may limit the scope of evidence presented at an expedited due process hearing to information directly relevant to resolution of the issue or issues identified in the hearing request. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant. Any party dissatisfied by limitations imposed pursuant to this provision shall promptly notify the presiding administrative law judge of its objection and the reasons why the party believes additional evidence should be received.

e. The expedited due process hearing shall be held by telephone conference call unless otherwise specified by the presiding administrative law judge. The administrative law judge will determine the location of the parties and witnesses for telephone hearings. The convenience of the parties or witnesses, as well as the nature of the case, will be considered when location is chosen.

f. The administrative law judge may determine that there is a need to establish a specific time limitation for presentations from each party. Brief memoranda of law may be presented at the time of hearing but, unless ordered otherwise by the administrative law judge, these proceedings do not include the submission of written briefs following the hearing.

g. The parties to the appeal may request that the presiding officer issue an oral decision on the merits of the case at the conclusion of the hearing. Both parties must agree to the request for an oral decision. If the presiding officer agrees with this request the decision will be rendered orally followed by a written confirmation of the presiding officer's determination.

h. The final decision in these proceedings must be mailed to the parties within 45 calendar days of the public agency's receipt of the request for the hearing, without exceptions or extensions.

i. Decisions on expedited due process hearings are final as described in rule 41.124(17A,256B).

j. Restrictions on communications by the administrative law judge and parties are in accordance with rule 41.121(17A,256B).

k. The record requirements of rule 41.122(17A,256B) apply to expedited hearings, with the exception of parents being given the right to open the hearing to the public if the hearing is conducted telephonically.

41.73(5) *Referral to and action by law enforcement and judicial authorities.*

a. Nothing in these rules prohibits an agency from reporting a crime committed by an eligible individual to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by an eligible individual.

b. An agency reporting a crime committed by an eligible individual shall ensure that copies of the special education and disciplinary records of the eligible individual are transmitted for consideration by the appropriate authorities to whom it reports the crime.

c. An agency reporting a crime under this subrule may transmit copies of the eligible individual's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

281—41.74(34CFR300) Eligible individuals in nonpublic schools. To the extent consistent with the number and location of students enrolled in nonpublic schools, provision is made for the participation of nonpublic school students with disabilities in programs assisted by or carried out under 34 CFR Part 300, July 1, 1999, by providing them with special education and related services.

41.74(1) *Placed or referred by public agencies.*

a. Before a public agency places an eligible individual in, or refers an eligible individual to, a nonpublic school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the individual in accordance with division VIII.

b. The agency shall ensure that a representative of the nonpublic school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the nonpublic school or facility, including individual or conference telephone calls.

c. After an eligible individual enters a nonpublic school or facility, any meetings to review and revise the individual's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the public agency.

d. If the nonpublic school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative are involved in any decision about the individual's IEP and agree to any proposed changes in the program before those changes are implemented.

e. Even if a nonpublic school or facility implements an individual's IEP, responsibility for compliance with these rules remains with the public agency and the state.

41.74(2) *Placement of individuals by parents if FAPE is at issue.*

a. If an eligible individual has FAPE available and the parents choose to place the individual in a nonpublic school or facility, the public agency is not required by 34 CFR Part 300, July 1, 1999, to pay for the individual's education at the nonpublic school or facility. However, the public agency shall make services available to the individual as provided in rule 41.74(256B,34CFR300).

b. Disagreements between a parent and a public agency regarding the availability of a program appropriate for an eligible individual, and the question of financial responsibility, are subject to the due process procedures of division XI.

c. If the parents of an eligible individual, who previously received special education and related services under the authority of a public agency, enroll the child in a nonpublic preschool, elementary or secondary school without the consent of or referral by the public agency, a court or administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and the nonpublic placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education provided by the department and LEAs.

d. The cost of reimbursement described in paragraph 41.74(3)*"c"* may be reduced or denied:

(1) If, at the most recent IEP meeting that the parents attended prior to removal of the eligible individual from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or at least ten business days (including any holidays that occur on a business day) prior to the removal of the eligible individual from the public school, the parents did not give written notice to the public agency of the information described in this rule.

(2) If, prior to the parents' removal of the individual from the public school, the public agency informed the parents, through the notice requirements described in rule 41.104(256B,34CFR300) of its intent to evaluate the individual (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the individual available for the evaluation, or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

e. Notwithstanding the notice requirement in subparagraph *"d"*(1) of this subrule, the cost of reimbursement may not be reduced or denied for failure to provide the notice if:

(1) The parent is illiterate and cannot write in English;

(2) Compliance with subparagraph *"d"*(1) of this subrule would likely result in physical or serious emotional harm to the individual;

(3) The school prevented the parent from providing the notice; or

(4) The parents had not received notice of the notice requirement in subparagraph *"d"*(1) of this subrule.

281—41.75(256B,34CFR300,303) Transition from Part C to Part B. Each agency shall ensure a smooth transition for individuals receiving early intervention services through an IFSP under 20 U.S.C. Chapter 33, Part C to early childhood special education under 20 U.S.C. Chapter 33, Part B. A smooth transition shall include:

41.75(1) *Families.* A description of how the families will be included in planning for transition under 20 U.S.C. Chapter 33, Part B.

41.75(2) *AEA personnel.* The AEA shall:

a. Notify the appropriate LEA in which the child resides.

b. Convene, with the approval of the family, a planning conference among the family, the IFSP service coordinator, the LEA, AEA, and other appropriate providers at least 90 calendar days, and at the discretion of the parties, up to 6 months, before the child's third birthday to:

(1) Discuss any Part B services the child may need.

(2) Establish a transition plan.

(3) Determine the need for a full and individual initial evaluation or reevaluation as described in division VII of these rules.

(4) Convene the IEP team.

(5) Review the child's program options for the period from the child's third birthday through the remainder of the school year.

41.75(3) *LEA personnel.* The LEA shall:

a. Participate in a planning conference among the family, IFSP service coordinator, LEA, AEA, and other appropriate providers.

b. Discuss any Part B services the child may need.

c. Review the child's program options for the period from the child's third birthday through the remainder of the school year.

41.75(4) *IEP team.* The IEP team as described in 41.62(256B,34CFR300) shall:

a. Determine whether the child is an eligible individual as described in rules 41.48(256B,34CFR300) and 41.77(256B,34CFR300).

b. Implement an IEP by the child's third birthday for individuals who are eligible or continue to be eligible for early childhood special education.

281—41.76 Reserved.

281—41.77(256B,34CFR300) Reevaluation. Each agency shall ensure that the IEP of each eligible individual is reviewed in accordance with subrule 41.61(3) and that a reevaluation of each eligible individual, based on procedures that meet the requirements of subrules 41.48(3) and 41.48(4), is conducted every three years or more frequently if conditions warrant, if an eligible individual's parent or teacher requests an evaluation, or before determining that the individual is no longer eligible. A reevaluation of an eligible individual is not required before the termination of eligibility under these rules due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under these rules. The group described in subrule 41.48(4) may conduct its review without a meeting.

281—41.78(256B) Trial placement. Prior to transfer from a special education program or service, an eligible individual may be provided a trial placement in the general education setting of not more than 45 school days. A trial placement plan shall be incorporated into this individual's IEP.

281—41.79 Reserved.

281—41.80(256B,34CFR300) Extended school year services. Each public agency shall ensure that extended school year services are made available as necessary to provide FAPE.

41.80(1) *Definition.* Extended school year services means special education and related services that are provided to an eligible individual beyond the normal school year of the public agency in accordance with the eligible individual's IEP at no cost to the parents of the eligible individual and that meet the standards of the department.

41.80(2) *Basis for determining need.* Extended school year services must be provided only if an eligible individual's IEP team determines, on an individual basis, in accordance with rules 41.60(256B,34CFR300) to 41.70(256B,34CFR300) that the services are necessary for the provision of FAPE to the eligible individual. In implementing the requirements of this rule a public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

281—41.81 Reserved.

DIVISION IX
SERVICES

281—41.82(256B,34CFR300) General.

41.82(1) *Individually designed.* The special education and related services provided to an eligible individual shall be individually determined and based on the specific educational needs of the individual.

41.82(2) *Least restrictive environment.* To the maximum extent appropriate to the needs of the eligible individual, special education and related services shall be designed and delivered so as to maintain the individual in the general education environment and as detailed in division VI of these rules.

41.82(3) *Based on IEP.* The special education and related services provided an eligible individual shall be consistent with the services described in the individual's IEP.

41.82(4) *Combination of services.* A combination of services may be necessary to address the educational needs of an eligible individual. In such cases, the personnel providing the various services shall coordinate activities and efforts, and the services shall be described in one IEP.

281—41.83(256B,34CFR300) Continuum of services. Each LEA, in conjunction with the AEA, shall ensure that a continuum of services from birth to the maximum age provided by the Iowa Code are available or shall be made available to meet the educational needs of eligible individuals.

281—41.84(256B,273,34CFR300) Instructional services. Instructional services are the specially designed instruction and accommodations provided by special education instructional personnel to eligible individuals. These services are ordinarily provided by the LEA but, in limited circumstances, may be provided by another LEA, the AEA or another recognized agency through contractual agreement. An agency may choose to use the program models and related requirements described in subrule 41.84(1) for delivering instructional services, or the development process described in subrule 41.84(2) for creating a delivery system of instructional services.

41.84(1) *Program models.* An agency may elect to use the following program models and delivery methods in providing instructional services to eligible individuals.

a. The following program models are for school-aged individuals.

(1) "Resource teaching program" is an educational program for individuals who require specially designed instruction in specific skill areas on a part-time basis. Individuals enrolled in this type of program require specially designed instruction for a minimal average of 30 minutes per day. This program shall include provisions for ongoing consultation and demonstration with the general education teachers of the individuals served. This program may be operated on a multicategorical basis. The teacher of a resource teaching program shall serve in no more than two attendance centers. The maximum class size for this program is 18 students at both the elementary and secondary levels with the exception of programs for individuals with hearing impairment or visual impairment which shall be 15 students at both levels. (Reference Iowa Code section 256B.9(1)*"b"*)

(2) "Special class with integration" is an educational program for individuals who can benefit from participation in one or more academic offerings of the general education program and who require specially designed instruction for a significant portion of the school day. The program shall include provisions for ongoing consultation and demonstration with the general education teachers. To be operated on a multicategorical basis, the following conditions shall be considered: support services provided to the program including appropriately authorized consultant services; the need for and availability of paraprofessionals to assist the teacher; the individuals served have comparable educational needs; and the chronological age range does not exceed four years. The maximum class size for this program is 12 students at the elementary level and 15 students at the secondary level with the exception of programs for individuals with hearing impairment or visual impairment which shall be 10 students at both levels. (Reference Iowa Code section 256B.9(1)*"b"*)

(3) "Self-contained special class with little integration" is an educational program for individuals who require specially designed instruction for most of their educational program. The maximum class size for this program is 8 students at the elementary level and 10 students at the secondary level. The maximum class size of this program at the secondary level may be 15 students if an AEA work experience coordinator coordinates and supervises on- and off-campus work experiences for those individuals requiring specially designed career exploration and vocational preparation. (Reference Iowa Code section 256B.9(1)*"c"*)

(4) "Self-contained special class" is an educational program for individuals whose total instructional program must be specially designed and provided by a special education teacher. The students served by this program shall be provided opportunities to participate in activities with nondisabled individuals. The staff-to-student ratio for this program shall be one teacher and one paraprofessional for each five students. When students numbering six through nine are added, an additional paraprofessional must be employed. When the tenth student is added, another special education teacher must be employed. The chronological age range of students served in this program shall not exceed six years. (Reference Iowa Code section 256B.9(1)*"d"*)

b. Environments for delivery of ECSE instructional services include:

(1) "Early childhood settings" designed primarily for children without disabilities who are below the age of six may be used to provide special education instructional services. In such circumstances the early childhood settings may be publicly funded or fee-based community programs. The AEA or LEA responsible for providing special education may contract with a fee-based community program to provide special education instruction. Instructional services are provided and monitored on site by early childhood special education personnel.

(2) Special education instructional services may be provided through a combination of "part-time early childhood and part-time early childhood special education settings." These settings provide special education instruction in a general education environment designed primarily for children without disabilities who are below the age of six in addition to an ECSE classroom environment designed primarily for children with disabilities. The IEP shall be monitored in both settings by ECSE personnel.

(3) "Reverse integration settings" refer to the provision of special education instruction in an environment designed primarily for children with disabilities who are not age eligible for kindergarten. In such circumstances, at least 50 percent of the children enrolled in the ECSE setting do not have disabilities.

(4) "Early childhood special education settings" are designed primarily for children with disabilities who are below the age of six. These programs are served by one ECSE teacher and one paraprofessional and may be operated on a multicategorical basis. These settings serve up to eight children unless the setting is designed for individuals with severe disabilities in which case the maximum class size is five children.

(5) "Home instruction" refers to the provision of special education instruction in the home for children aged three to six.

c. In applying the maximum class sizes specified in this subrule, the following conditions shall be considered:

(1) Maximum class size limits are predicated upon one teacher to the specified class size. When a teacher is employed less than full-time for a resource teaching program or ECSE setting, the maximum class size shall be proportionate to the full-time equivalency of the teacher employed.

(2) If, in unique circumstances, it is necessary to exceed the class size maximum for a special class with integration, the chronological age range shall not exceed six years or four years for a class operated on a multicategorical basis.

(3) When circumstances necessitate placing an eligible individual in a less restrictive program for receipt of the recommended program, that individual shall count as two individuals in computing the class size.

41.84(2) *LEA-developed delivery system.* An agency may elect to use the following development process for creating a system for delivering instructional services.

a. The delivery system shall meet the continuum of services requirements of rules 41.38(256B,34CFR300) and 41.83(256B,34CFR300) and shall provide for the following:

(1) The provision of accommodations and modifications to the general education environment and program, including modification and adaptation of curriculum, instructional techniques and strategies, and instructional materials.

(2) The provision of specially designed instruction and related activities through cooperative efforts of special education teachers and general education teachers in the general education classroom.

(3) The provision of specially designed instruction on a limited basis by a special education teacher in the general classroom or in an environment other than the general classroom, including consultation with general education teachers.

(4) The provision of specially designed instruction to eligible individuals with similar special education instructional needs organized according to the type of curriculum and instruction to be provided, and the severity of the educational needs of the eligible individuals served.

b. The delivery system shall be described in writing and shall include the following components:

(1) A description of how services will be organized and how services will be provided to eligible individuals consistent with the requirements of divisions VI and IX of these rules, and the provisions described in paragraph 41.84(2)*"a."*

(2) A description of how the caseloads of special education teachers will be determined and regularly monitored to ensure that the IEPs of eligible individuals are able to be fully implemented.

(3) A description of the procedures a special education teacher can use to resolve concerns about caseload. The procedures shall specify timelines for the resolution of a concern and identify the person to whom a teacher reports a concern. The procedures shall also identify the person or persons who are responsible for reviewing a concern and rendering a decision, including the specification of any corrective actions.

(4) A description of the process used to develop the system, including the composition of the group responsible for its development.

(5) A description of the process that will be used to evaluate the effectiveness of the system.

c. The following procedures shall be followed by the agency:

(1) Before initiating the development of the delivery system, the LEA board shall approve such action and the LEA personnel and parents who will participate in the development of the alternative.

(2) The delivery system shall be developed by a group of individuals that includes parents of eligible individuals, special education and general education teachers, administrators, and at least one AEA representative. The AEA representative is selected by the director.

(3) The director shall verify that the delivery system is in compliance with these rules prior to LEA board adoption.

(4) Prior to presenting the delivery system to the LEA board for adoption, the group responsible for its development shall provide an opportunity for comment on the system by the general public. In presenting the delivery system to the LEA board for adoption, the group shall describe the comment received from the general public and how the comment was considered.

(5) The LEA board shall approve the system prior to implementation.

d. The procedure presented in subrule 41.132(9) shall be followed in applying the weighting plan for special education instructional funds described in Iowa Code section 256B.9 to any delivery system developed under these provisions.

281—41.85 Reserved.

281—41.86(256B,34CFR300) Support services. Support services are the specially designed instruction and activities which augment, supplement or support the educational program of eligible individuals. These services include special education consultant services, educational strategist services, audiology, occupational therapy, physical therapy, school psychology, school social work services, special education nursing services, speech-language services, and work experience services provided by the support personnel described in subrule 41.9(3). Support services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency.

281—41.87 Reserved.

281—41.88(256B,34CFR300) Itinerant services. Special education may be provided to eligible individuals on an itinerant basis. These services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the AEA board, by the LEA or another qualified agency.

41.88(1) *School based.* Special education may be provided on an itinerant basis whenever the number, age, severity, or location of eligible individuals to be served does not justify the provision of professional personnel on a full-time basis to an attendance center.

41.88(2) *Home service or hospital service.* Special education shall be provided to eligible individuals whose condition precludes their participation in the general and special education provided in schools or related facilities. The provision of services in a home or hospital setting shall satisfy the following:

a. The service and the location of the service shall be specified in the individual's IEP.

b. The status of these individuals shall be periodically reviewed to substantiate the continuing need for and the appropriateness of the service.

c. Procedural safeguards shall be afforded to individuals receiving special education through itinerant services in a home or hospital setting. A need for itinerant services in a home or hospital setting must be determined at a meeting to develop or revise the individual's IEP, and parents must give consent or be given notice, as appropriate.

281—41.89 Reserved.

281—41.90(256B,34CFR300) Supplementary aids and services. Supplementary aids and services shall be provided in order for an eligible individual to be served in the general education classroom environment or other education-related settings to enable the individual to be educated with nondisabled individuals to the maximum extent appropriate. These may include intensive short-term specially designed instruction; educational interpreters; readers for individuals with visual impairments; special education assistants; special education assistants for individuals with physical disabilities for assistance in and about school, and for transportation; materials; and specialized or modified instructionally related equipment for use in the school.

281—41.91 Reserved.

281—41.92(256B,34CFR300) Assistive technology services. Agencies shall ensure that assistive technology devices or assistive technology services, or both, as defined in rule 41.5(256B,34CFR300) and described in this rule, are made available to an eligible individual if required as part of the individual's special education and as specified in the IEP. Assistive technology services include:

41.92(1) *Functional evaluation.* The evaluation of the needs of an eligible individual, including a functional evaluation of this individual in the individual's customary environment.

41.92(2) *Acquisition.* Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices.

41.92(3) *Selections, adaptations and replacement.* Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.

41.92(4) *Coordination and planning.* Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.

41.92(5) *Training or technical assistance.* Training or technical assistance for an eligible individual or, when appropriate, the family of this individual; and for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of eligible individuals.

281—41.93 Reserved.

281—41.94(256B,34CFR300) Related services. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist an eligible individual to benefit from special education. The need for related services shall be individually determined and documented in each eligible individual's IEP. Payment for related services is an appropriate expenditure of special education funds for eligible individuals.

281—41.95(256B,34CFR300) Orientation and mobility services. Orientation and mobility services are services provided to blind or visually impaired eligible individuals by qualified personnel to enable those individuals to attain systematic orientation to and safe movement within their environments in school, home, and community. The services include teaching the individuals as appropriate: spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street); to use the long cane, to supplement visual travel skills or as a tool for safely negotiating the environment for individuals with no available travel vision; to understand and use remaining vision and distance, low vision aids, and other concepts, techniques. and tools.

281—41.96(256B) Special health services. Some eligible individuals need special health services to participate in an educational program. These individuals shall receive special health services concomitantly with their educational program.

41.96(1) *Definitions.* The following definitions shall be used in this division, unless the context otherwise requires:

"Assignment and delegation" occurs when licensed health personnel, in collaboration with the education team, determine the special health services to be provided and the qualifications of individuals performing the health services. Primary consideration is given to the recommendation of the licensed health personnel. Each designation considers the individual's special health service. The rationale for the designation is documented. If the designation decision of the team differs from the licensed health professional, team members may file a dissenting opinion.

"Coadministration" is the eligible individual's participation in the planning, management and implementation of the individual's special health service and demonstration of proficiency to licensed health personnel.

"Educational program" includes all school curricular programs and activities both on and off school grounds.

"Education team" may include the eligible individual, this individual's parent, administrator, teacher, licensed health personnel, and others involved in the individual's educational program.

"Health assessment" is health data collection, observation, analysis, and interpretation relating to the eligible individual's educational program.

"Health instruction" is education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual's health plan. Documentation of education and periodic updates shall be on file at school.

"Individual health plan" is the confidential, written, preplanned and ongoing special health service in the educational program. It includes assessment, planning, implementation, documentation, evaluation and a plan for emergencies. The plan is updated as needed and at least annually. Licensed health personnel develop this written plan with the education team.

"Licensed health personnel" includes licensed registered nurse, licensed physician, and other licensed health personnel legally authorized to provide special health services and medications.

"Prescriber" is licensed health personnel legally authorized to prescribe special health services and medications.

"Qualified designated personnel" is a person instructed, supervised and competent in implementing the eligible individual's health plan.

"Special health services" includes, but is not limited to, services for eligible individuals whose health status (stable or unstable) requires:

1. Interpretation or intervention,
2. Administration of health procedures and health care, or
3. Use of a health device to compensate for the reduction or loss of a body function.

"Supervision" is the assessment, delegation, evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.
2. Licensed health personnel are available at the same site.
3. Licensed health personnel are available on call.

41.96(2) *Special health services policy.* Each board of a public school or authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and guidelines for the provision of confidential special health services in conformity with rules 41.94(256B,34CFR300) and 41.96(256B). Such policy and guidelines shall address and contain:

a. Licensed health personnel shall provide special health services under the auspices of the school. Duties of the licensed personnel include:

(1) Participate as a member of the education team.
(2) Provide the health assessment.
(3) Plan, implement and evaluate the written individual health plan.
(4) Plan, implement and evaluate special emergency health services.
(5) Serve as liaison and encourage participation and communication with health service agencies and individuals providing health care.

(6) Provide health consultation, counseling and instruction with the eligible individual, the individual's parent and the staff in cooperation and conjunction with the prescriber.

(7) Maintain a record of special health services. The documentation includes the eligible individual's name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.

(8) Report unusual circumstances to the parent, school administration, and prescriber.

(9) Assign and delegate to, instruct, provide technical assistance and supervise qualified designated personnel.

(10) Update knowledge and skills to meet special health service needs.

b. Prior to the provision of special health services the following shall be on file:

(1) Written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.

(2) Written statement by the individual's parent requesting the provision of the special health service.

(3) Written report of the preplanning staffing or meeting of the education team.

(4) Written individual health plan available in the health record and integrated into the IEP.

c. Licensed health personnel, in collaboration with the education team, shall determine the special health services to be provided and the qualifications of individuals performing the special health services. The documented rationale shall include the following:

(1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.

(2) Determination that the special health service, task, procedure or function is part of the person's job description.

(3) Determination of the assignment and delegation based on the individual's needs.

(4) Review of the designated person's competency.

(5) Determination of initial and ongoing level of supervision required to ensure quality services.

d. Licensed health personnel shall supervise the special health services, define the level of supervision and document the supervision.

e. Licensed health personnel shall instruct qualified designated personnel to deliver and perform special health services contained in the eligible individual health plan. Documentation of instruction and periodic updates shall be on file at school.

f. Parents shall provide the usual equipment, supplies and necessary maintenance for such. The equipment shall be stored in a secure area. The personnel responsible for the equipment shall be designated in the individual health plan. The individual health plan shall designate the role of the school, parents and others in the provision, supply, storage and maintenance of necessary equipment.

281—41.97 Reserved.

281—41.98(256B,34CFR300) Transportation. Transportation of eligible individuals shall generally be provided as for other individuals, when appropriate. Specialized transportation of an eligible individual to and from a special education instructional service is a function of that service and, therefore, an appropriate expenditure of special education instructional funds generated through the weighting plan. Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

41.98(1) *Special arrangements.* Transportation of an eligible individual to and from a special education support service is a function of that service, shall be specified in the IEP, and is an appropriate expenditure of funds generated for special education support services. When, because of an eligible individual's educational needs or because of the location of the program, the IEP team determines that unique transportation arrangements are required and the arrangements are specified in the IEP, the resident LEA shall be required to provide one or more of the following transportation arrangements for instructional services and the AEA for support services:

a. Transportation from the eligible individual's residence to the location of the special education and back to this individual's residence, or child care placement for eligible individuals below the age of six.

b. Special assistance or adaptations in getting the eligible individual to and from and on and off the vehicle, en route to and from the special education.

c. Reimbursement of the actual costs of transportation when by mutual agreement the parents provide transportation for the eligible individual to and from the special education.

d. Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency-provided transportation.

41.98(2) *Responsibility for transportation.*

a. The AEA shall provide the cost of transportation of eligible individuals to and from special education support services. The AEA shall provide the cost of transportation which is necessary for the provision of special education support services to nonpublic school eligible individuals if the cost of that transportation is in addition to the cost of transportation provided for special education instructional services.

b. When individuals enrolled in nonpublic schools are dually enrolled in public schools to receive special education instructional services, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

c. Transportation of individuals, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support services.

41.98(3) *Purchase of transportation equipment.* When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA's general fund. The direct purchase of transportation equipment is not an appropriate expenditure of special education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA. An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report. Annual depreciation charges, except in unusual circumstances, shall be calculated by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion that special education mileage is of the total annual mileage.

41.98(4) *Lease of transportation equipment.* An LEA may elect to lease equipment to transport eligible individuals to special education instructional services. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall be considered a special education transportation cost and reported in the LEA Certified Annual Report.

41.98(5) *Transportation equipment safety standards.* All transportation equipment, either purchased or leased by an LEA to transport eligible individuals to special education instructional services or provided by an AEA, must conform to the transportation equipment safety and construction standards contained in 281—Chapters 43 and 44.

281—41.99 to 41.101 Reserved.

DIVISION X
PARENT PARTICIPATION

281—41.102(256B,34CFR300) Parent opportunity to examine records and participate in meetings.

41.102(1) *General.* In accordance with the provisions of rule 41.31(256B,34CFR99,300), the parents of an eligible individual must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the eligible individual and the provision of FAPE to the eligible individual; and participate in meetings in respect to identification, evaluation, and educational placement of the eligible individual and the provision of FAPE to the eligible individual.

41.102(2) *Parent participation in meetings.* Each agency shall provide notice consistent with rule 41.104(256B,34CFR300) to ensure that parents of eligible individuals have the opportunity to participate in meetings. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the eligible individual's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

41.102(3) *Parent involvement in placement decisions.* Each public agency shall ensure that the parents of each eligible individual are members of any group that makes decisions on the educational placement of the eligible individual. In implementing the requirements the public agency shall use procedures consistent with subrule 41.64(1). If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of the eligible individual, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of subrule 41.64(2). The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of the eligible individual, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

281—41.103(256B,34CFR300) Consent.

41.103(1) *"Consent"* means that:

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

b. The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom; and

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If the parent revokes consent, that revocation is not retroactive, i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked.

41.103(2) *Parental consent.* Informed parental consent must be obtained before the agency conducts an initial evaluation or reevaluation and before the initial provision of special education and related services to an eligible individual. Consent for initial evaluation may not be construed as consent for initial placement described in this subrule. Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is administered to all individuals unless, before administration of that test or evaluation, consent is required of parents of all individuals.

41.103(3) *Refusal.* If the parents of an eligible individual refuse consent for initial evaluation or reevaluation, the agency may continue to pursue those evaluations by using a preappeal conference as described in rule 41.106(256B,34CFR300), or a mediation or impartial due process hearing as described in division XI.

41.103(4) *Failure to respond to request for reevaluation.* Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the eligible individual's parent has failed to respond. To meet the reasonable measures requirement, the public agency must use procedures consistent with those in subrule 41.64(2).

281—41.104(256B,34CFR300) Prior notice by the public agency and content of notice. Written notice must be given to the parents of an eligible individual a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the individual or the provision of FAPE to the individual. The notice is intended to inform parents of an agency's final decision regarding a proposed or refused action. Such notice must be given to parents before the agency implements a proposed action, but after the agency's decision has been made. Following receipt of the written notice a parent or an agency has the right to request a preappeal conference or an impartial due process hearing. If the notice described in this rule relates to an action proposed by the public agency that also requires parental consent under rule 41.103(256B,34CFR300), the agency may give notice at the same time it requests parental consent.

41.104(1) *Notice content.* The written notice shall include:

a. A description of the action proposed or refused by the agency.

b. An explanation of why the agency proposes or refuses to take the action.

c. A description of any options the agency considered and the reasons why those options were rejected.

d. A description of each evaluation procedure, test, record or report the agency uses as a basis for the proposal or refused action.

e. A description of any other factors that are relevant to the agency's proposal or refusal.

f. A statement that the parents of an eligible individual have protection under the procedural safeguards of these rules and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.

g. Sources for parents to contact to obtain assistance in understanding the provisions of these rules.

41.104(2) *Notice requirements.* The notice under subrule 41.104(1) shall be:

a. Written in language understandable to the general public.

b. Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

c. If the native language or other mode of communication of the parent is not a written language, the agency shall take steps to ensure:

(1) That the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.

(2) That the parent understands the content of the notice.

(3) That there is written evidence that the requirements in this rule have been met.

41.104(3) *Procedural safeguards notice.* A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum, upon initial referral for evaluation; upon each notification of an IEP meeting; upon reevaluation of the child; and upon receipt of a request for due process under rule 41.107(256B,34CFR300). The procedural safeguards notice must include a full explanation of all the procedural safeguards and state complaint procedures relating to:

a. Independent educational evaluation.

b. Prior written notice.

c. Parental consent.

d. Access to educational records.

e. Opportunity to initiate due process hearings.

f. The individual's placement during pendency of due process proceedings.

g. Procedures for eligible individuals who are subject to placement in an interim alternative educational setting.

h. Requirements for unilateral placement by parents of eligible individuals in private schools at public expense.

i. Mediation.

j. Due process hearings, including requirements for disclosure of evaluation results and recommendations.

k. Civil actions.

l. Attorneys' fees.

m. The state complaint procedures, including a description on how to file a complaint and the timelines under those procedures.

41.104(4) *Implementation.* The final decision of the agency for a proposed action indicated in the written notice requirements cannot be implemented for ten calendar days. The purpose is to give parents an opportunity to review the decision and request a preappeal conference or an impartial due process hearing if they disagree. If the written notice requirements are fulfilled at the IEP meeting, the ten-calendar-day waiting period should be documented on the IEP by the starting date of the new IEP exceeding the meeting date by ten calendar days. If the parent chooses to waive the ten calendar days, the starting date of implementation of the new IEP would be immediate with documentation and rationale for the waiver clearly stated.

281—41.105(256B,34CFR300) Complaints to the department. An individual or organization may file a signed written complaint that includes a statement that an agency has violated these rules, which include 41.84(2)*"b"*(3), and the facts on which the statement is based. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received. The department shall review, investigate and act on any written complaint within 60 calendar days of the receipt of such complaint although the time limit can be extended if exceptional circumstances exist. Within 60 calendar days of the receipt of such complaint, the department may carry out an independent on-site investigation, if the department determines that such an investigation is necessary. The individual or organization filing the complaint shall be given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. After the relevant information is reviewed, an independent determination shall be made by the department as to whether the agency is violating these rules. The department shall issue a written decision to the individual or organization filing the complaint that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the department's final decision. If needed, the department shall provide for negotiations, technical assistance activities or corrective action to achieve compliance.

281—41.106(256B,34CFR300) Special education preappeal conference.

41.106(1) *Procedures.* The parent, the LEA or the AEA may request a special education preappeal conference on any decision relating to the identification, evaluation, educational placement, or the provision of FAPE. Participation is voluntary.

a. A request for a special education preappeal conference shall be made in the form of a letter which identifies the student, LEA and AEA, sets forth the facts, the issues of concern, or the reasons for the conference. The letter shall be mailed to the department.

b. Within five business days of receipt of the request for the conference, the department shall contact all pertinent parties to determine whether participation is desired. A checklist shall be sent by the department to the LEA or AEA to receive information about the student.

c. A preappeal conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The LEA or the AEA shall submit the special education preappeal checklist to the department (with a copy to the parent) within ten business days after receiving the request.

e. The student's complete school record shall be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the preappeal.

f. The individual's complete school record shall be available to the participants at the preappeal conference.

g. The preappeal conference shall be chaired by a mediator provided by the department.

h. If an agreement is reached, a written summary of the preappeal agreement shall be prepared by the assigned mediator and disseminated to all parties involved within ten business days following the conference.

i. If agreement is not reached at the special education preappeal conference, all parties shall be notified of the procedures to be followed in filing a formal special education appeal as described in division XI.

41.106(2) *Assurances.* The special education preappeal process shall in no way deny or delay a party's right to a full due process hearing if the party wishes to utilize the formal process. In addition, special education preappeal conference proceedings and offers of agreement during the conference shall not be entered as arguments or evidence in a hearing. However, the parties may stipulate to agreements reached in the special education preappeal conference.

41.106(3) *Placement during proceedings.* Unless the parties agree otherwise, the student involved in the preappeal must remain in the student's present educational placement during the pendency of the proceedings.

41.106(4) *Withdrawals or automatic closures.* The initiating party may request a withdrawal of the preappeal prior to the conference. Automatic closure of the department file will occur if any of the following circumstances apply:

a. One of the parties refuses to participate in the voluntary process.

b. The preappeal conference is held but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the preappeal to continue the placement as described in subrule 41.106(3) in the event a party wishes to pursue a hearing.

c. The preappeal conference is held and parties are able to reach an agreement and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.

281—41.107(256B,34CFR300) Right to a due process hearing. A parent or a public educational agency may initiate a hearing on any decision relating to the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The hearing shall be conducted by an impartial administrative law judge pursuant to division XI of these rules.

281—41.108(34CFR300) Attorney fees. In any action or proceeding involving procedural safeguards, courts may award parents reasonable attorney fees under 20 U.S.C. 1415(i)(3) as part of the costs to the parent or guardian of a child or youth with a disability who is a prevailing party. Funds under 20 U.S.C. Chapter 33, Part B, may not be used to pay attorney fees or costs of a party related to an action or proceeding described in division XI. Attorney fees may not be awarded relating to any meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or judicial action.

281—41.109(256B,34CFR300) Independent educational evaluation.

41.109(1) *Definitions.* As used in this rule:

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the agency responsible for the education of the individual in question.

"Public expense" means that the agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

41.109(2) *General.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the agency.

a. If a parent requests an independent educational evaluation at public expense, the agency must, without unnecessary delay, either initiate a hearing under division XI to show that its evaluation is appropriate, or ensure an independent educational evaluation is provided at public expense unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

b. If a parent requests an independent educational evaluation, the public agency may ask why the parent objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

41.109(3) *Locations and criteria of independent educational evaluations.* Each agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained, and the applicable agency criteria for independent educational evaluations as described in subrule 41.109(6).

41.109(4) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation, if it meets agency criteria, must be considered by the agency in any decision made with respect to the provision of FAPE to the individual and may be presented as evidence at a hearing.

41.109(5) *Administrative law judge.* If an administrative law judge requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be at public expense.

41.109(6) *Agency criteria.* Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for these criteria, an agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. These criteria shall be set forth in AEA board policy.

281—41.110(256B,34CFR300) Surrogate parent procedures.

41.110(1) Definitions as used in this rule:

"Eligible surrogate parents" are persons who are at least 18 years of age, known to be reliable and have had or will receive training in the education of individuals with disabilities. A person selected as a surrogate has no interest that conflicts with the interest of the individual represented and has knowledge and skills that ensure adequate representation of the individual. A person assigned as a surrogate may not be an employee of an agency that is involved in the education or care of the individual. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the surrogate is paid by the agency to serve as a surrogate parent. Parents of other individuals with disabilities or other interested and knowledgeable persons may be appointed to serve as surrogate parents. An agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the individual and who meets the standards in 41.110(2)*"b."* Foster parent is deemed a person acting as the parent of an individual and in such situations surrogate parent appointment is not necessary, unless circumstances indicate otherwise. A foster parent qualifies as a parent under these rules if the natural parents' authority to make educational decisions on the eligible individual's behalf has been extinguished under state law; the foster parent has an ongoing, long-term parental relationship with the eligible individual; the foster parent is willing to participate in making educational decisions in the eligible individual's behalf; and the foster parent has no interest that would conflict with the interests of the eligible individual. Group home directors and caseworkers may not be assigned as surrogate parents.

"Surrogate parent" means an individual who acts in place of a parent in protecting the rights of an individual in the educational decision-making process.

41.110(2) *Appointment.*

a. A surrogate parent for special education shall be appointed whenever the AEA documents that no parent can be identified; cannot discover the whereabouts of a parent after reasonable efforts; or the individual is a ward of the state and is known to be or is suspected of being an individual with disabilities.

b. In appointing a surrogate parent, it shall be ensured that there is no conflict of interest regarding the surrogate parent's responsibility to protect the special education rights of the individual; the surrogate parent is, or is willing to become, knowledgeable about the individual's disability and educational needs; and the surrogate parent is informed of the rights and responsibilities of serving as a surrogate parent.

c. The AEA director shall select a surrogate parent for special education purposes. The director shall contact the department of human services regional administrator to ascertain whether the proposed surrogate parent has any conflict of interest. The director shall appoint the surrogate parent by letter. The letter must contain the individual's name, age, educational placement and other information about the individual determined to be useful to the surrogate parent, and must specify the period of time for which the person shall serve. A copy of the letter shall be sent to the department.

41.110(3) *Responsibilities.* Confidential educational records may be reviewed by the surrogate parent who is acting as a parent as defined above. The surrogate parent may represent the individual in all matters relating to the identification, evaluation, and educational placement of the individual and the provision of FAPE to the individual.

41.110(4) *Training.*

a. Training shall be conducted as necessary by each AEA using a training procedure approved by the department, which includes rights and responsibilities of a surrogate parent, sample forms used by LEAs and AEAs, specific needs of individuals with disabilities and resources for legal and instructional technical assistance.

b. The department shall provide continuing education and assistance to AEAs upon request.

41.110(5) *Monitoring.* The department shall provide assistance to, and shall monitor, surrogate parent programs.

281—41.111(34CFR300) Transfer of parental rights at age of majority.

41.111(1) *Basic requirements.* When an eligible individual reaches the age of majority as defined by Iowa Code section 599.1, the agency shall provide any notice required by these rules to both the eligible individual and the parents. All other rights accorded to parents under these rules transfer to the eligible individual. Whenever rights are transferred, the agency shall notify the eligible individual and the parents of the transfer of rights as described in subrule 41.67(3). All rights accorded to parents under these rules transfer to eligible individuals who are incarcerated in an adult or juvenile, state, or local correctional institution.

41.111(2) *Appointment of guardian.* Transfer of rights to the eligible individual will occur as defined in subrule 41.111(1) unless a guardian is appointed through the provisions of Iowa Code chapter 633, division 13, part 1.

DIVISION XI
SPECIAL EDUCATION APPEALS

281—41.112(17A,256B,290) Definitions. As used in this division:

"Administrative law judge" means an administrative law judge designated by the director of education from the list of approved administrative law judges to hear the presentation of evidence and, if appropriate, oral arguments in the hearing. The administrative law judges are selected under authority granted by the board. Such authority provides for the contracting with qualified personnel to serve as administrative law judges who are not personally or professionally involved so as to conflict with objectivity and are not employees or board members of either state, intermediate or local education agencies involved in the education or care of the individual. The department shall keep a list of the persons who serve as administrative law judges. The list shall include a statement of the qualifications of each of those persons.

"Appellant" means the party bringing a special education appeal to the department.

"Appellee" means the party in a matter against whom an appeal is taken.

"Parties" means the appellant, appellee and third parties named or admitted as a party.

281—41.113(17A,256B) Manner of appeal.

41.113(1) *Initiating a hearing.*

a. A parent may initiate a preappeal conference or hearing when an educational public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the individual or the provision of FAPE to the individual. If a hearing is initiated, the department shall inform the parents of the availability of the mediation conference as described in subrule 41.113(10).

b. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the eligible individual, and the question of financial responsibility, are subject to the due process procedures of 34 CFR §§300.500-300.515.

c. A public agency may use the preappeal or hearing procedures to determine if the individual may be evaluated or initially provided special education and related services without parental consent. If a public agency requests a hearing and the administrative law judge upholds the agency, the agency may evaluate or initially provide special education and related services to the individual without the parent's consent.

d. The appropriate AEA serving the individual shall be deemed to be a party with the LEA whether or not specifically named by the parent or agency filing the appeal. In instances where the individual is served through a contract with another agency, the school district of residence of the individual shall be deemed a party.

e. Under certain circumstances, an expedited hearing is provided under subrule 41.73(4).

41.113(2) *Conducting a hearing.* The hearing shall be conducted by the department.

41.113(3) *Parent notice to the department.* The parent of an individual with a disability or the attorney representing the individual shall provide notice (which shall remain confidential) to the department in a request for a hearing.

41.113(4) *Content of parent notice.* The notice required in subrule 41.113(3) must include the name of the individual; the address of the residence of the individual; the name of the school the individual is attending; a description of the nature of the problem of the individual relating to the proposed or refused initiation or change, including facts relating to the problem and a proposed resolution of the problem to the extent known and available to the parents at the time.

41.113(5) *Model form to assist parents.* The department's model form shall be made available to assist parents in filing a request for due process that includes the information required in subrules 41.113(3) and 41.113(4).

41.113(6) *Right to due process hearing.* A public agency may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in subrules 41.113(3) and 41.113(4).

41.113(7) *Notice.* The director of education or designee shall, within five business days after the receipt of the appeal, notify the proper school officials in writing of the appeal and the officials shall, within ten business days after receipt of the notice, file with the department all records relevant to the decision appealed.

41.113(8) *Free or low-cost legal services.* The department shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency initiates a hearing.

41.113(9) *Written notice.* The director of education or designee shall provide notice in writing delivered by fax, personal service as in civil actions, or by certified mail, return receipt requested, to all parties at least ten calendar days prior to the hearing unless the ten-day period is waived by both parties. Such notice shall include the time and the place where the matter of appeal shall be heard. A copy of the appeal hearing rules shall be included with the notice.

41.113(10) *Mediation conference.* Parties shall be contacted by department personnel to ascertain whether they wish to participate in a mediation conference. Mediation is a voluntary process in which an impartial third party, a mediator, facilitates the resolution of disagreements by promoting dialogue among the parties to clarify the issues and assist them in making their own mutually acceptable decisions and agreements. The involved parties shall be notified that mediation is voluntary and that participation in mediation in no way shall deny or delay a party's right to a due process hearing or to any other rights afforded under these rules. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. Discussions that occur during the mediation process must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached in mediation. Prior to the start of the mediation, the parties to the mediation conference and the mediator will be required to sign an Agreement to Mediate form which contains this confidentiality provision. Agreements reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

a. The mediation process is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

b. The mediator shall not be an employee of an LEA, AEA or state agency, or another state education agency that is providing direct services to an individual who is the subject of the mediation process and must not have a personal or professional conflict of interest.

c. The state shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

d. An AEA may establish procedures to assist parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party, who is under contract with a parent training and information center or community parent resource center, or an appropriate alternative dispute resolution entity and who would explain the benefits of the mediation process, and encourage the parents to use the process.

41.113(11) *Continuance.* A request for continuance may be made by any party to the designated administrative law judge. The administrative law judge may grant specific extensions of time beyond 45 calendar days after the receipt of a request for a hearing. If a continuance is requested, it shall be heard and determined according to the provisions of this subrule.

41.113(12) *Dismissal.* A request for dismissal may be made to the administrative law judge at any time by the party initiating the appeal. A request or motion for dismissal made by the appellee shall be granted upon a determination by the administrative law judge that any of the following circumstances apply:

a. The appeal relates to an issue that does not reasonably fall under any of the appealable issues of identification, evaluation, placement, or the provision of a free appropriate public education.

b. The issue(s) raised is moot.

c. The individual is no longer a resident of the LEA or AEA against whom the appeal was filed.

d. The relief sought by the appellant is beyond the scope and authority of the administrative law judge to provide.

e. Circumstances are such that no case or controversy exists between the parties.

An appeal may be dismissed administratively when an appeal has been in continued status for more than one school year. Prior to an administrative dismissal, the administrative law judge shall notify the appellant at the last-known address and give the appellant an opportunity to give good cause as to why an extended continuance shall be granted. An administrative dismissal issued by the administrative law judge shall be without prejudice to the appellant.

41.113(13) *Time and place of hearing.* The hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and individual involved.

281—41.114(17A,256B) Participants in the hearing.

41.114(1) *Conducting hearing.* The hearing shall be conducted by the administrative law judge.

a. Any person serving or designated to serve as an administrative law judge is subject to disqualification for bias, prejudice, interest, or any other cause for which a judge is or may be disqualified.

b. Any party may timely request the disqualification of an administrative law judge after receipt of notice indicating that the person will preside or upon discovering facts establishing grounds for disqualification, whichever is later.

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

d. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute must be appointed by the director of education from the list of other qualified administrative law judges.

41.114(2) *Counsel.* Any party to a hearing has a right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of individuals with disabilities.

41.114(3) *Opportunity to be heard—appellant.* The appellant or representative shall have the opportunity to be heard.

41.114(4) *Opportunity to be heard—appellee.* The appellee or representative shall have the opportunity to be heard.

41.114(5) *Opportunity to be heard—director.* The director or designee shall have the opportunity to be heard.

41.114(6) *Opportunity to be heard—third party.* A person or representative who was neither the appellant nor appellee, but was a party in the original proceeding, may be heard at the discretion of the administrative law judge.

41.114(7) *Presence of individual.* Parents involved in hearings must be given the right to have the individual who is the subject of the hearing present.

281—41.115(17A,256B) Convening the hearing.

41.115(1) *Announcements and inquiries by administrative law judge.* At the established time, the name and nature of the case are to be announced by the administrative law judge. Inquiries shall be made as to whether the respective parties or their representatives are present.

41.115(2) *Proceeding with the hearing.* When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the appeal hearing may proceed. When any absent party has been properly notified, it shall be entered into the record. When notice to an absent party has been sent by certified mail, return receipt requested, the return receipt shall be placed in the record. If the notice was in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

41.115(3) *Types of hearing.* The administrative law judge shall establish with the parties that the hearing shall be conducted as one of three types:

a. A hearing based on the stipulated record.

b. An evidentiary hearing.

c. A mixed evidentiary and stipulated record hearing.

41.115(4) *Evidentiary hearing scheduled.* An evidentiary hearing shall be held unless both parties agree to a hearing based upon the stipulated record or a mixed evidentiary and stipulated record hearing.

41.115(5) *Educational record part of hearing.* The educational record submitted to the department by the educational agency shall, subject to timely objection by the parties, become part of the record of the hearing.

281—41.116(17A,256B) Stipulated record hearing.

41.116(1) *Record hearing is nonevidentiary.* A hearing based on stipulated record is nonevidentiary in nature. No witnesses shall be heard nor evidence received. The controversy shall be decided on the basis of the record certified by the proper official and the arguments presented on behalf of the respective parties. The parties shall be so reminded by the administrative law judge at the outset of the proceeding.

41.116(2) *Materials to illustrate an argument.* Materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

41.116(3) *One spokesperson per party.* Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

41.116(4) *Arguments and rebuttal.* The appellant shall present first argument. The appellee then presents second argument and rebuttal of the appellant's argument. A third party, at the discretion of the administrative law judge, may be allowed to make remarks. The appellant may then rebut the preceding arguments but may not introduce new arguments.

41.116(5) *Time to present argument.* Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit of argument shall be established by the administrative law judge.

41.116(6) *Written briefs.* Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties and, if desired, each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties not later than 45 calendar days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 calendar days. The time for filing briefs may extend the time for final decision.

281—41.117(17A,256B) Evidentiary hearing.

41.117(1) *Testimony and other evidence.* An evidentiary hearing provides for the testimony of witnesses, introduction of records, documents, exhibits or objects.

41.117(2) *Appellant statement.* The appellant may begin by giving a short opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence to be introduced and the conclusions which the appellant believes the evidence shall substantiate.

41.117(3) *Appellee statement.* The appellee may present an opening statement of a general nature and may discuss the type and nature of evidence to be introduced and the conclusion which the appellee believes the evidence shall substantiate.

41.117(4) *Third-party statement.* With the permission of the administrative law judge, a third party may make an opening statement of a general nature.

41.117(5) *Witness testimony and other evidence.* The appellant may then call witnesses and present other evidence.

41.117(6) *Witness under oath.* Each witness shall be administered an oath by the administrative law judge. The oath may be in the following form: "I do solemnly swear or affirm that the testimony or evidence which I am about to give in the proceeding now in hearing shall be the truth, the whole truth and nothing but the truth."

41.117(7) *Cross-examination by appellee.* The appellee may cross-examine all witnesses and may examine and question all other evidence.

41.117(8) *Witness testimony and other evidence.* Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

41.117(9) *Questions and other requests by administrative law judge.* The administrative law judge may address questions to each witness at the conclusion of questioning by the appellant and the appellee. The administrative law judge may request to hear other witnesses and receive other evidence not otherwise presented by the parties.

41.117(10) *Rebuttal witnesses and additional evidence.* At the conclusion of the initial presentation of evidence and at the discretion of the administrative law judge, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in evidence. No new matters of evidence may be raised during this period of rebuttal.

41.117(11) *Appellant final argument.* The appellant may make a final argument, not to exceed a length of time established by the administrative law judge, in which the evidence presented may be reviewed, the conclusions outlined which the appellant believes most logically follow from the evidence and a recommendation of action to the administrative law judge.

41.117(12) *Appellee final argument.* The appellee may make a final argument for a period of time not to exceed that granted to the appellant in which the evidence presented may be reviewed, the conclusions outlined which the appellee believes most logically follow from the evidence and a recommendation of action to the administrative law judge.

41.117(13) *Third-party final argument.* At the discretion of the administrative law judge, a third party directly involved in the original proceeding may make a final argument.

41.117(14) *Rebuttal of final argument.* At the discretion of the administrative law judge, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

41.117(15) *Written briefs.* Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties and, if desired, each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties not later than 45 calendar days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 calendar days. The time for filing briefs may extend the time for final decision.

281—41.118(17A,256B) Mixed evidentiary and stipulated record hearing.

41.118(1) *Written evidence of portions of record may be used.* A written presentation of the facts or portions of the certified record which are not contested by the parties may be placed into the hearing record by any party, unless there is timely objection by the other party. Such evidence cannot later be contested by the parties and no introduction of evidence contrary to that which has been stipulated may be allowed.

41.118(2) *Conducted as evidentiary hearing.* All oral arguments, testimony by witnesses and written briefs may refer to evidence contained in the material as any other evidentiary material entered at the hearing. The hearing is conducted as an evidentiary hearing.

281—41.119(17A,256B) Witnesses.

41.119(1) *Subpoenas.* The director of education shall have the power to issue (but not serve) subpoenas for witnesses, to compel the attendance of those thus served and the giving of evidence by them. The subpoenas shall be given to the requesting parties whose responsibility it is to serve to the designated witnesses. Requests for subpoenas may be denied or delayed if not submitted to the department at least five business days prior to the hearing date.

41.119(2) *Attendance of witness compelled.* Any party may compel by subpoena the attendance of witnesses, subject to limitations imposed by state law.

41.119(3) *Cross-examination.* Witnesses at the hearing or a person whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party necessary for a full and true disclosure of the facts.

281—41.120(17A,256B) Rules of evidence.

41.120(1) *Receiving relevant evidence.* Because the administrative law judge must decide each case fairly, based on the information presented, it is necessary to allow for the reception of all relevant evidence which shall contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

41.120(2) *Acceptable evidence.* Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The kind of evidence which reasonably prudent persons rely on may be accepted even if it would be inadmissible in a jury trial. The administrative law judge shall give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record. When a hearing shall be expedited and the interests of the parties shall not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

41.120(3) *Documentary evidence.* 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. Any party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

41.120(4) *Additional disclosure of information requirement.* At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. An administrative law judge may bar any party that fails to comply with these requirements from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

41.120(5) *Independent educational evaluation.* If deemed necessary, the administrative law judge may order an independent educational evaluation, which shall be provided at no cost to the parent and which meets criteria prescribed by the department.

41.120(6) *Opportunity to contest.* The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the administrative law judge. Parties shall be notified at the earliest practicable time, either before or during the hearing or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

41.120(7) *Administrative law judge may evaluate evidence.* The administrative law judge's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

41.120(8) *Decision.* A decision shall be made upon consideration of the whole record or such portions that are supported by and in accord with reliable, probative and substantial evidence.

281—41.121(17A,256B) Communications.

41.121(1) *Restrictions on communications—administrative law judge.* The administrative law judge 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.

41.121(2) *Restrictions on communications—parties.* Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with the administrative law judge except upon notice and opportunity for all parties to participate as are provided for by administrative rules. The recipient of any prohibited communication shall submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding.

41.121(3) *Sanctions.* Any or all of the following sanctions may be imposed upon a party who violates the rules regarding ex parte communications: censure, suspension or revocation of the privilege to practice before the department, or the rendering of a decision against a party who violates the rules.

281—41.122(17A,256B) Record.

41.122(1) *Open hearing.* Parents involved in hearings shall be given the right to open the hearing to the public. The hearing shall be recorded by mechanized means or by certified court reporters. Any party to a hearing or an appeal has the right to obtain a written or, at the option of the parents, electronic, verbatim record of the hearing and obtain written or, at the option of the parents, electronic findings of fact and decisions. The record of the hearing and the findings of fact and decisions described in this rule must be provided at no cost to parents.

41.122(2) *Transcripts.* All recording or notes by certified court reporters of oral proceedings or the transcripts thereof shall be maintained and preserved by the department for at least five years from the date of decision.

41.122(3) *Hearing record.* The record of a hearing shall be maintained and preserved by the department for at least five years from the date of the decision. The record under this division shall include:

a. All pleadings, motions and intermediate rulings.
b. All evidence received or considered and all other submissions.
c. A statement of matters officially noted.
d. All questions and offers of proof, objections and rulings thereof.
e. All proposed findings and exceptions.
f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—41.123(17A,256B) Decision and review.

41.123(1) *Decision.* The administrative law judge, after due consideration of the record and the arguments presented, shall make a decision on the appeal.

41.123(2) *Basis of decision.* The decision shall be based on the laws of the United States and the state of Iowa and the rules and policies of the department and shall be in the best interest of the education of the individual.

41.123(3) *Time of decision.* The administrative law judge's decision shall be reached and mailed to the parties within 45 calendar days after the department receives the original request for a hearing, unless a continuance has been granted by the administrative law judge for a good cause.

41.123(4) *Impartial decision maker.* No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case or other pending factually related matters. Nor shall any individual who participates in the making of any proposed decision be subject to the authority, direction or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing or a pending related matter involving the same parties.

281—41.124(17A,256B) Finality of decision.

41.124(1) *Decision final.* The decision of the administrative law judge is final. The date of postmark of the decision is the date used to compute time for purposes of appeal.

41.124(2) *Civil action.* Any party who is aggrieved by the findings and decision can bring civil action. A party initiating civil action in federal court shall provide an informational copy of the petition or complaint to the department within 14 days of filing the action. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

41.124(3) *Department dissemination.* The department, after deleting any personally identifiable information, shall transmit those findings and decisions to the state advisory panel and shall make those findings and decisions available to the public.

281—41.125(17A,256B) Individual's status during proceedings. Except as provided in subrule 41.73(2), during the pendency of any administrative or judicial proceeding regarding a hearing, unless the agency and the parents of the individual agree otherwise, the individual involved in the hearing must remain in the current educational placement. If the hearing involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. If the decision of an administrative law judge in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state or local agency and the parents. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with individuals who are endangering themselves or others.

281—41.126 and **41.127** Reserved.

DIVISION XII
FINANCE

281—41.128(256B,282) Contractual agreements. Any special education instructional program not provided directly by an LEA or any special education support service not provided by an AEA can only be provided through a contractual agreement. The board shall approve contractual agreements for AEA-operated special education instructional programs and contractual agreements permitting special education support services to be provided by agencies other than the AEA.

281—41.129(256B) Research and demonstration projects and models for special education program development. Applications for aid, whether provided directly from state or from federal funds, for special education research and demonstration projects and models for program development shall be submitted to the department.

281—41.130(256B,273) Additional special education. Additional special education made available through the provisions of Iowa Code section 273.3 shall be furnished in a manner consistent with these rules.

281—41.131(256B,273,282) Extended school year services. Approved extended school year programs for special education support services, when provided by the AEA for eligible individuals, shall be funded through procedures as provided for special education support services. Approved extended school year instructional programs shall be funded through procedures as provided for special education instructional programs.

281—41.132(256B,282,34CFR300,303) Program costs.

41.132(1) *Nonresident individual.* The program costs charged by an LEA or an AEA for an instructional program for a nonresident eligible individual shall be the actual costs incurred in providing that program.

41.132(2) *Contracted special education.* An AEA or LEA may make provisions for resident eligible individuals through contracts with public or private agencies which provide appropriate and approved special education. The program costs charged by or paid to a public or private agency for special education instructional programs shall be the actual costs incurred in providing that program.

41.132(3) *LEA responsibility.* The resident LEA shall be liable only for instructional costs incurred by an agency for those individuals certified as entitled in accord with these rules unless required by 34 CFR §300.302, July 1, 1999.

41.132(4) *Support service funds.* Support service funds may not be utilized to supplement any special education programs authorized to use special education instructional funds generated through the weighting plan.

41.132(5) *Responsibility for special education for children living in a foster care facility.* For eligible individuals who are living in a licensed child foster care facility as defined in Iowa Code section 237.1 or in a facility as defined in Iowa Code section 125.2, the LEA in which the facility is located must provide special education if the facility does not maintain a school. The costs of the special education, however, shall be paid by the school district of residence of the eligible individual. If the school district of residence of the eligible individual cannot be determined, and this individual is not included in the weighted enrollment of any LEA in the state, the LEA in which the facility is located may certify the costs to the director of education by August 1 of each year for the preceding fiscal year. Payment shall be made from the general fund of the state.

41.132(6) *Responsibility for special education for individuals placed by court.* For eligible individuals placed by the district court, and for whom parental rights have been terminated by the district court, the LEA in which the facility or home is located must provide special education. Costs shall be certified to the director of education by August 1 of each year for the preceding fiscal year by the director of the AEA in which this individual has been placed. Payment shall be made from the general fund of the state.

41.132(7) *Proper use of special education instructional and support service funds.* Special education instructional funds generated through the weighting plan may be utilized to provide special education instructional services both in state and out of state with the exceptions of itinerant hospital services or home services, itinerant instructional services and special education consultant services which shall utilize special education support service funds for both in-state and out-of-state placements.

41.132(8) *Funding of ECSE instructional options.* Eligible individuals below the age of six may be designated as full-time or part-time students depending on the needs of the child. Funding shall be based on individual needs as determined by the IEP team. Special education instructional funds generated through the weighting plan can be used to pay tuition, transportation, and other necessary special education costs, but shall not be used to provide child care.

a. Full-time ECSE instructional services shall include 20 hours or more instruction per week. The total hours of participation in special education and general education, such as kindergarten or special education tuitioned preschool placements, may be combined to constitute a full-time program.

b. Part-time ECSE instructional services shall include up to 20 hours of instruction per week. The total hours of participation in special education and general education, such as kindergarten or special education tuitioned preschool placements, may be combined to constitute a part-time program.

c. Funds under 20 U.S.C. Chapter 33, Part C, may be used to provide FAPE, in accordance with these rules, to eligible individuals from their third birthday to the beginning of the following school year.

41.132(9) *Funding for instructional services.* When an LEA board approves a delivery system for instructional services as described in subrule 41.84(2), the director, in accord with Iowa Code sections 256B.9 and 273.5, will assign the appropriate special education weighting to each eligible individual by designating a level of service. The level of service refers to the relationship between the general education program and specially designed instruction for an eligible individual. The level of service is determined based on an eligible individual's educational need and independent of the environment in which the specially designed instruction is provided. One of three levels of service shall be assigned by the director:

a. Level I. A level of service that provides specially designed instruction for a limited portion or part of the educational program. A majority of the general education program is appropriate. This level of service includes modifications and adaptations to the general education program. (Reference Iowa Code section 256B.9(1)*"b"*)

b. Level II. A level of service that provides specially designed instruction for a majority of the educational program. This level of service includes substantial modifications, adaptations, and special education accommodations to the general education program. (Reference Iowa Code section 256B.9(1)*"c"*)

c. Level III. A level of service that provides specially designed instruction for most or all of the educational program. This level of service requires extensive redesign of curriculum and substantial modification of instructional techniques, strategies and materials. (Reference Iowa Code section 256B.9(1)*"d"*)

41.132(10) *Children with disabilities who are covered by public insurance.*

a. A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under these rules, as permitted under the public insurance program, except as provided in paragraph *"b"* of this subrule.

b. With regard to services required to provide FAPE to an eligible individual under these rules, the public agency:

(1) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided under these rules, but may pay the cost that the parent otherwise would be required to pay; and

(3) May not use a child's benefits under a public insurance program if that use would:

1. Decrease available lifetime coverage or any other insured benefit;
2. Result in the family's paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
3. Increase premiums or lead to the discontinuation of insurance; or
4. Risk loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures.

41.132(11) *Children with disabilities who are covered by private insurance.*

a. With regard to services required to provide FAPE to an eligible child under these rules, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent as defined in subrule 41.103(1);

b. Each time the public agency proposes to access the parent's private insurance proceeds it must:

(1) Obtain parent consent in accordance with paragraph *"a"* of this subrule; and

(2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

281—41.133(256B,282) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B, 273 and 282.

281—41.134(256B,282,34CFR300) Evaluations.

41.134(1) *Educational or medical evaluation.* If an educational or medical evaluation is requested by the AEA, the cost of the evaluation including travel expenses shall be at no cost to the parent and shall be paid by the AEA.

41.134(2) *Independent educational evaluation—administrative law judge.* If an independent educational evaluation is requested by an administrative law judge to assist in making a decision about FAPE, the cost of the independent educational evaluation including travel expenses shall be at no cost to the parent and shall be paid by the department.

41.134(3) *Independent educational evaluation—parent.* When parents have the right to an independent educational evaluation at public expense, rule 41.109(256B,34CFR 300), the cost of the independent educational evaluation including travel expenses shall be at no cost to the parent and shall be paid by the AEA.

41.134(4) *AEA policy and procedures.* The AEA shall establish policy and procedures for paying costs of an independent educational evaluation authorized under 34 CFR §300.502, July 1, 1999.

281—41.135(256B,273,282) Sanctions.

41.135(1) *Suspension of financial aid.* Any financial aid provided to an agency in support of special education may be suspended in whole or in part if the agency is found to be in noncompliance with any of the provisions of applicable statutes or rules. Suspension of financial aid would be only for the specific special education not meeting compliance requirements.

41.135(2) *Noncompliance.* When it has been determined that an area of noncompliance exists, the department shall notify the involved agency in writing of the violation, the required corrective action with timelines, appeal rights and the financial aid to be suspended if corrective action does not occur. If corrective action within the prescribed time limit does not occur, the department shall amend its certification to the director of the department of management so that the financial aid in question will be subtracted from funds available to the agency in the next scheduled payment period. In turn, in accordance with 34 CFR §300.197, any public agency in receipt of a notice from the department that the agency has failed to comply with such corrective action shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this rule to the attention of the public within the jurisdiction of the agency.

281—41.136 and **41.137** Reserved.

DIVISION XIII
STATE PLAN

281—41.138(256,256B,273,281) State plan of education for all individuals with disabilities. In accord with 20 U.S.C. §1413 and 34 CFR §300.110, July 1, 1999, the state must submit a state plan to the Secretary of Education.

41.138(1) *Plan contents and process.* The state plan shall meet the requirements of 34 CFR §§300.121 through 300.156 and §§300.280 through 300.284, July 1, 1999.

41.138(2) *Applicability of final approved plan.* The provisions of the state plan are applicable to, shall be adopted by and implemented by all political subdivisions of the state that are involved in and have responsibility for the education of eligible individuals. These would include the department, LEAs, AEAs, and other state-operated special education programs as detailed in rule 41.1 (256B,34CFR300).

281—41.139 and **41.140** Reserved.

DIVISION XIV
MONITORING OF COMPLIANCE

281—41.141(256B,442) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B and 273.

281—41.142(256B,273,34CFR300) Compliance with federal and Iowa Codes. Each agency shall adhere to the provision of, and implementing regulations and rules to, 20 U.S.C. §§1400 et seq., applicable portions of 29 U.S.C. §794 pertaining to eligible individuals and Title 42 U.S.C. §§2116 et seq., and Iowa Code chapters 256B and 273.

281—41.143(34CFR300) Monitoring.

41.143(1) The agency's adherence to federal and state code shall be monitored on a regular basis by the department in accord with 20 U.S.C. §§1232 et seq. The department shall conduct monitoring activities based on predetermined and disseminated standards and procedures. Each agency shall provide the department with reports, records and access to programs and personnel needed to conduct monitoring activities.

41.143(2) Copies of applicable standards shall be disseminated to each private school and facility to which a public agency has referred or placed a child with a disability.

41.143(3) An opportunity shall be provided for those private schools and facilities to participate in the development and revision of standards that apply to them.

281—41.144(256B,273,282) Sanctions. When it has been determined that an area of noncompliance exists, the department shall notify the involved agency in writing of the violation and the required corrective action with timelines. If the corrective action within the prescribed timelines does not occur, the department shall implement sanctions as described in 41.135(256B,273,282).

These rules are intended to implement Iowa Code chapters 256B and 273 and 34 CFR Part 300.

[Filed 12/13/66; amended 10/31/74]
[Filed 5/23/77, Notice 3/23/77—published 6/15/77, effective 7/20/77]
[Filed 7/28/81, Notice 4/29/81—published 8/19/81, effective 9/23/81]
[Filed 10/7/83, Notice 8/31/83—published 10/26/83, effective 11/30/83]
[Filed emergency 8/10/84—published 8/29/84, effective 8/10/84]
[Filed 3/4/85, Notice 10/10/84—published 3/27/85, effective 6/1/85*]
[Filed emergency 7/11/85—published 7/31/85, effective 7/11/85]
[Filed 7/15/88, Notice 6/1/88—published 8/10/88, effective 9/14/88]
[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]
[Filed 4/13/90, Notice 2/7/90—published 5/2/90, effective 6/6/90]
[Filed emergency 9/14/90—published 10/3/90, effective 9/14/90]
[Filed 6/5/92, Notice 2/5/92—published 6/24/92, effective 7/29/92]
[Filed 6/11/93, Notice 3/31/93—published 7/7/93, effective 8/11/93**]
[Filed 5/12/95, Notice 3/29/95—published 6/7/95, effective 7/12/95]
[Filed 10/11/96, Notice 8/28/96—published 11/6/96, effective 12/11/96]
[Filed 12/10/99, Notice 10/6/99—published 12/29/99, effective 2/2/00]

CHAPTER 42
Reserved

*Effective date of Chapter 12 delayed 70 days by the Administrative Rules Review Committee. Delay lifted by Committee on 7/8/85.
**Effective date of 41.2(3); 41.3(256B), definitions of "Autism," "Head injury," "Transition services," "Behaviorally disordered," paragraph "1," "Special education support programs and services"; 41.4(1); 41.18(2)"*d*"; 41.33(4); 41.33(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held August 3, 1993; delay lifted by this Committee on 9/15/93.

CHAPTER 27
ASSISTED LIVING PROGRAMS

321—27.1(231C) Definitions.

"Dwelling unit" means an apartment, group of rooms, or single room occupied as a separate living quarter or, if vacant, intended for occupancy as a separate living quarter, in which the occupants can live and sleep separately from any other persons in the building and which has direct access from the outside of the building or through a common hall.

"Health care professional" means a physician, physician's assistant, or licensed nurse.

"Part-time or intermittent" means the less than daily provision of skilled nursing services and professional therapies; or the daily provision of skilled nursing services and professional therapies for temporary, but not indefinite, periods of time of up to 21 days a month; but does not include 24-hour care provided by a licensed nurse or other licensed health care professional. Skilled nursing services and professional therapies which are provided daily shall be for no more than 8 hours a day when combined with nurse-delegated activities and personal care.

"Supervision of self-administration" means activities including prompting and reminding, opening of containers or packaging, reading instructions and other label information in order for the tenant to administer a medication to self.

321—27.2(231C) Certification and voluntary accreditation.

27.2(1) *Recognition of voluntary accreditation.*

a. A list of organizations recognized by the department for the purposes of voluntary accreditation of assisted living programs will be available from the department.

b. An entity voluntarily accredited as an assisted living program by an organization listed according to 27.2(1), paragraph *"a,"* may choose to send a copy of the accreditation document in lieu of the application for certification.

c. Upon receipt of appropriate documentation of voluntary accreditation, the department will deem the assisted living program as certified and notify the assisted living program that it has been listed.

27.2(2) *Application process.*

a. Application materials may be obtained from the Iowa department of elder affairs.

b. The applicant shall submit two copies of the completed application and the certification fee to the Iowa department of elder affairs.

27.2(3) *Certification fees.*

a. The certification fee is to accompany the application for certification.

b. The application and certification fee are to be sent to Assisted Living Certification, Department of Elder Affairs, Clemens Building, Third Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609.

c. Initial 2-year certification fees for assisted living programs are as follows:

(1) Small Assisted Living Programs $500
(maximum occupancy is less than 16 individuals)

(2) Large Assisted Living Programs $750
(maximum occupancy is 16 or more tenants)

d. Fees for renewal of certification are as follows:

(1) Small Assisted Living Programs

Standard 2-year	$750
Expanded 3-year	$750
Expanded 4-year	$1,000

(2) Large Assisted Living Programs

Standard 2-year	$1,000
Expanded 3-year	$1,000
Expanded 4-year	$1,250

27.2(4) *Blueprint reviews for assisted living programs.*

a. Blueprints must be reviewed prior to construction or remodeling of a building for use as an assisted living program.

b. The blueprint review fee must accompany the blueprints.

c. Blueprints must be wet-sealed by an Iowa-licensed architect or engineer and must include all supporting plumbing, electrical and mechanical system documentation. Other documentation that must be provided with the blueprints for review prior to construction or remodeling includes:

(1) The evacuation/emergency plan;

(2) The product data and shop drawings for the fire alarm, smoke detection and sprinkler systems.

d. Blueprints, supporting documentation and the review fee are to be sent to Assisted Living Blueprint Review, Department of Elder Affairs, Clemens Building, Third Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609.

27.2(5) *Blueprint review fees.* Blueprint review fees for assisted living programs are as follows:

a. Small Assisted Living Programs $500
(maximum occupancy is less than 16 individuals)

b. Large Assisted Living Programs $900
(maximum occupancy is 16 or more tenants)

27.2(6) *Application contents.* Applications submitted to the department for certification and re-certification of an assisted living program shall include the following:

a. A listing with the name, address and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, trustees and the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The entity shall notify the department of any changes in the list within ten working days;

b. A statement affirming that none of the individuals listed in 27.2(6), paragraph *"a,"* have been convicted of a felony or found in violation of the dependent adult abuse code in any state;

c. A statement disclosing whether any of the individuals listed in 27.2(6), paragraph *"a,"* have or have had an ownership interest in an assisted living program, home health agency, residential care facility or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare programs; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect;

d. A copy of the policy and procedure for evaluation of each tenant in accordance with subrule 27.3(1), including:

(1) Any assessment tool to be used to identify the tenant's ability to function independently; or

(2) Indication that the assisted living program is using the long-term care coordinating unit's (LTCCU) designated assessment tool; or

(3) Indication that the assessment is included in the occupancy agreement.

e. Identification of target population, if applicable;

f. A copy of the service plan format;

g. If the assisted living program is contracting personal care or health-related care services from a certified home health agency or a licensed health care facility, copy of that entity's license;

h. Medication policy;

i. A policy describing accident and emergency response procedures;

j. A copy of the occupancy agreement;

k. The process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others;

l. Documentation by a qualified professional that the following systems have been inspected and are found to be installed and maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking, laundry, and elevators;

m. A copy of the food service establishment or health care facility license for the food service;

n. A copy of the documentation signed by the state fire marshal or designee showing that the structure meets the requirements of 661 IAC 5.626(231C);

o. A copy of the assisted living program's fire safety procedure; and

p. A copy of the floor plan for any structures operated as part of the assisted living program.

27.2(7) *Certification process.*

a. The department or its designee shall review the application for completion within five working days and notify the applicant of application status.

b. The department or its designee(s) shall determine whether or not the proposed assisted living program meets applicable administrative rules contained in 321—Chapter 27 within 30 days of receiving all finalized documentation.

c. The department or its designee shall send notification to the assisted living program within five working days of determination.

d. The department shall maintain a list of assisted living programs certified by the department or voluntarily accredited. The list will be available from the department on request.

27.2(8) *Scope of certificate.*

a. Duration of certificate. Certification as an assisted living program by the department will be applicable for two years, unless obtained through subrule 27.2(8), paragraph *"b"* or *"d,"* or suspended or revoked.

b. Expanded certificate. The department may certify for three or four years an assisted living program which demonstrates above-standard or exemplary operation.

c. Transference of certificates. A certificate, unless suspended or revoked, will be transferable to a new owner/sponsor. The new owners/sponsors are required to notify the state within 30 days prior to the change in ownership. The notice shall include assurance that the new owner will meet all requirements of 321—Chapter 27.

d. Transitional provisions. Programs that were operational prior to July 1, 1996, will be granted certification for one year from the date of issuance. At the end of the one-year certification, the program must meet all applicable administrative rules contained in 321—Chapter 27 to renew certification. Upon certification, the program shall be subject to rule 27.11(231C).

e. Renewal of certification. A certificate for an assisted living program, unless suspended or revoked, shall expire at the end of the time period specified in the certificate and shall be renewed upon application by the owner or operator in accordance with this paragraph. In order to obtain a renewal of the assisted living program certification, the applicant must submit:

(1) The completed application form at least 30 days prior to the expiration of such certificate;

(2) The required certification fee for an assisted living program with the application for renewal;

(3) Documentation by a qualified professional that the following systems have been inspected and are found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking, laundry, and elevators;

(4) If the assisted living program is contracting personal care or health-related care services from a certified home health agency or a licensed health care facility, copy of that entity's current license or monitoring report;

(5) A copy of the food service establishment or health care facility current license for the food service;

(6) A copy of the documentation signed by the state fire marshal or designee showing that the structure meets the requirements of 661 IAC 5.626(231C);

(7) Appropriate changes in the documentation submitted for certification to reflect any changes in the assisted living program; and

(8) An assurance that all other elements of the assisted living program's operation remain the same as previously submitted.

321—27.3(231C) Conditions for occupancy and transfer.

27.3(1) *Evaluation of tenant.* Each assisted living program shall have written policies and procedures for the evaluation of each tenant's functional ability and health status and the determination of needed services prior to occupancy and as needed.

27.3(2) *Signed agreement.* Each tenant shall sign an occupancy agreement and managed risk statement prior to occupancy.

27.3(3) *Occupancy and transfer criteria.*

a. An assisted living program shall not knowingly admit or retain a tenant:

(1) Who requires more than part-time or intermittent health-related care;

(2) Who is dangerous to self or others;

(3) Who is in an acute stage of alcoholism, drug addiction, or mental illness;

(4) Who is under age 18; or

(5) Who meets the assisted living program's transfer criteria.

b. An assisted living program may have additional occupancy or transfer criteria if disclosed in writing prior to occupancy.

c. An assisted living program may request an exception to the provision of 27.3(3)*"a"*(1) in accordance with the requirements of 321—27.6(231C).

27.3(4) *Transfer planning.* The assisted living program shall assist a tenant who requires more services than the assisted living program is able to provide in making arrangements for care in an alternative setting.

321—27.4(231C) Services.

27.4(1) *Service plan required.*

a. An individualized service plan shall be developed for each tenant:

(1) In consultation with the tenant and, at the tenant's request, with the family member(s) or designated responsible party;

(2) Prior to occupancy and updated at least annually or whenever changes in need are identified; and

(3) When the tenant needs personal care or health-related care, the service plan shall be developed in consultation with a multidisciplinary team, which consists of no less than three individuals, including a health care professional and a person with a bachelor's degree in a human services-related field.

b. The service plan shall be individualized and shall indicate, at a minimum:

(1) The tenant's identified needs and requests for assistance;

(2) Any services and care to be provided per agreement with tenant;

(3) The provider(s) if other than the assisted living program; and

(4) Transfer and referral arrangements for health care providers selected by each tenant.

27.4(2) *Medications.* Each assisted living program shall have a written medication policy which includes the following:

a. Tenants are allowed to self-administer medications unless the prescription states that tenant is not to self-administer the medication or the tenant delegates administration to the assisted living program by occupancy agreement or signed service plan.

b. Tenants may keep their own medications in their possession unless the prescription states that the medication is to be stored by the assisted living program or the tenant delegates partial or complete control of medications to the assisted living program by occupancy agreement or signed service plan.

c. The program shall list in a tenant's record any medications to be stored or administered by the program.

d. The following requirements shall apply to medications which are supervised or administered by the assisted living program:

(1) Supervision of self-medication and administration of medications shall be provided by a practitioner or the practitioner's authorized agent in accordance with 655—subrule 6.2(5) and Iowa Code chapter 155A.

(2) The program shall document by exception any medication the program has agreed to administer or supervise which is not taken by the tenant.

e. The following requirements shall apply to medications which are stored by the assisted living program:

(1) The medications shall be kept in a secure place that is not accessible to persons other than employees responsible for the supervision of such medications.

(2) The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

(3) No person other than the dispensing pharmacist shall alter a prescription label.

(4) Each tenant's medication shall be stored in its originally received container.

(5) When delegated partial or complete control by the tenant, medications may be transferred from the original prescription containers into medication reminder boxes or medication cups within the tenant's unit.

27.4(3) *Meals.*

a. The assisted living program shall have the capacity to provide hot or other appropriate meals at least once a day or coordinate with other community providers to make arrangements for the availability of meals.

b. Meals provided by the assisted living program but not prepared on site shall be obtained from or provided by an entity licensed for meal preparation.

27.4(4) *Service and medication records.* The assisted living program shall maintain a service and medication record for each tenant.

27.4(5) *Nurse review.*

a. An assisted living program which administers prescription drugs or provides physician-directed or health-related care shall provide for a registered nurse to:

(1) Monitor each tenant receiving program-administered prescription drugs for response to program-administered medications, ensure that the prescription drug orders are current, and that the prescription drugs are administered consistent with such orders at least every 30 days; and

(2) Ensure that physicians' orders for tenants receiving physician-directed care from the assisted living program are current at least every 30 days; and

(3) Assess and document the health status of each tenant receiving health-related care, make recommendations as appropriate and monitor progress on previous recommendations at least every 90 days.

b. The registered nurse shall provide the assisted living program with signed, dated and timed written documentation of the above activities.

321—27.5(231C) Staffing.

27.5(1) Sufficient trained staff shall be available at all times to fully meet tenant's identified needs.

27.5(2) Each tenant shall have access to a 24-hour personal emergency response system which automatically identifies the tenant in distress and can be activated with one touch.

27.5(3) The owner or sponsor of the assisted living program is responsible for ensuring that both management and direct service employees receive training appropriate to the task.

27.5(4) Any nursing services shall be available in accord with Iowa Code chapter 152 and 655—Chapter 6.

27.5(5) The assisted living program shall have a training and staffing plan on file and shall maintain documentation of training received by staff.

27.5(6) The owner or sponsor of the assisted living program may employ a qualified manager who is at least 21 years of age.

27.5(7) All personnel of the assisted living program shall be able to implement the assisted living program's accident, fire safety and emergency procedures.

321—27.6(231C) Exceptions to service limits. The department may grant on a time-limited basis an exception to the service limits of this chapter for a tenant who temporarily needs hospice care or more than part-time or intermittent health-related care.

27.6(1) *Procedures.* The department:

a. Shall accept a written request from an assisted living program for exception to an individual tenant's service limit as soon as it becomes apparent to the assisted living program's staff that the tenant is going to need skilled nursing activities daily for more than the 21-day limit;

b. Shall respond in writing to such requests within two working days of receipt of necessary documentation;

c. Shall monitor the tenant medical and functional information for continued appropriateness of the exception regularly for the duration of the exception;

d. Shall keep exceptions to a minimum.

27.6(2) *Criteria for service limit exception.* The department may grant an exception if the assisted living program proves by clear and convincing evidence the following criteria are met:

a. It is the informed choice of the tenant to remain in the home; and

b. The assisted living program is able to obtain the staff necessary to meet the tenant's extended care needs in addition to the care of the other tenants; and

c. The exception shall not jeopardize the care, health, safety or welfare of the tenants.

321—27.7(231C) Financial.

27.7(1) *Occupancy agreement.*

a. The assisted living program shall enter an occupancy agreement with each tenant for assisted living housing and services that clearly describes the rights and responsibilities of the tenant and of the provider.

b. The occupancy agreement shall also include, but not be limited to, the following:

(1) Description of all fees, charges and rates describing tenancy and basic services covered, any additional and optional services and related costs;

(2) Statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources will be accepted by the assisted living program;

(3) Procedure for nonpayment of fees;

(4) Identification of party responsible for payment of fees;

(5) Guarantee that the assisted living program will notify the tenant in writing at least 30 days in advance of any changes to the occupancy agreement and guarantee that all tenant information will be maintained in a confidential manner to the extent allowable under state and federal law;

(6) Occupancy and transfer criteria;

(7) Emergency response policy; and

(8) The staffing policy which identifies whether or not staff is available 24 hours a day, whether or not task delegation will be used, and how staffing will be adapted to changing tenant needs.

27.7(2) *Managed risk statement.* The assisted living program shall have a managed risk statement which includes the tenant's or responsible person's signed acknowledgment of the shared responsibility for identifying and meeting needs and the process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

27.7(3) *Tenant funds management.* The assisted living program shall have written policies, procedures and accounting records for handling tenant's financial resources. If the assisted living program or staff agree to manage a tenant's financial resources:

a. Appropriate documentation of income and expenditures for each tenant whose funds are managed shall be available; and

b. Tenants' funds shall be kept in a separate account.

321—27.8(231C) Structure.

27.8(1) The structure of the assisted living program shall be designed and operated to meet the needs of the tenants.

27.8(2) Building and grounds shall be well maintained, clean, safe and sanitary.

27.8(3) Assisted living programs may have private dwelling units with lockable doors and individual cooking facilities.

27.8(4) Dwelling units.

a. Each dwelling unit shall have at least one room which will have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit shall have not less than 190 square feet of floor area, excluding bathrooms.

c. A dwelling unit used for double-occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.

27.8(5) The assisted living program shall have a minimum common area of 15 square feet per tenant.

321—27.9(231C) Fire safety.

27.9(1) The assisted living program shall have a written fire safety procedure.

27.9(2) The assisted living program facility shall meet the fire safety standards designated for this category in 661 IAC 5.626(231C).

321—27.10(231C) Monitoring.

27.10(1) The department or its designee(s) will monitor a certified assisted living program at least once during the program's certification period.

27.10(2) All records and areas of the assisted living program deemed necessary to determine compliance with the requirements for certification under 321—Chapter 27 shall be accessible to the department or its designee for purposes of monitoring.

27.10(3) The area where food is stored, prepared or served by the assisted living program may be inspected annually by the department of inspections and appeals or its designee. If food is prepared in the assisted living program, a current food service establishment license shall be posted in the food service area.

321—27.11(231C) Complaint procedure. Any person with concerns regarding the operations and service delivery of an assisted living program may file a written complaint with the community-based housing and services unit of the Department of Elder Affairs, 200 Tenth Street, Third Floor - Clemens Building, Des Moines, Iowa 50309-3609.

27.11(1) The complaint shall include the complainant's name, address, and telephone number, and shall be signed and dated by the complainant. The complaint shall identify the assisted living program and shall include the complainant's concerns regarding the program.

27.11(2) Upon receipt of a complaint made in accordance with this rule, the department shall make a preliminary review of the complaint. Within 20 working days of receipt of the complaint, the department shall make or cause to be made an on-site inspection of the assisted living program.

27.11(3) The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. Upon conclusion of the investigation, the department shall notify the complainant and assisted living program promptly of the results.

321—27.12(231C) Denial, suspension, or revocation. The department shall have the authority to deny, suspend or revoke a certificate in any case where the department finds there has been a substantial or repeated failure on the part of the assisted living program to comply with the requirements of 321—Chapter 27 or for any of the following reasons:

27.12(1) Cruelty or indifference to assisted living program tenants.

27.12(2) Appropriation or conversion of the property of an assisted living program tenant without the tenant's written consent or the written consent of the tenant's legal guardian.

27.12(3) Permitting, aiding, or abetting the commission of any illegal act in the program.

27.12(4) Obtaining or attempting to obtain or retain a certificate by fraudulent means, misrepresentation, or by submitting false information.

27.12(5) Habitual intoxication or addiction to the use of drugs by the applicant, manager or supervisor of the assisted living program.

27.12(6) Securing the devise or bequest of the property of a tenant of an assisted living program by undue influence.

27.12(7) Any of the individuals listed in 27.2(6), paragraph *"a,"* have or have had an ownership interest in an assisted living program, home health agency, residential care facility or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare programs; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

27.12(8) In the case of a certificate applicant or an existing certified owner or operator which is an entity other than an individual, the department may deny, suspend, or revoke a certificate if any individual, who is in a position of control or is an officer of the entity, engages in any act or omission proscribed by this chapter.

321—27.13(231C) Notice—hearings.

27.13(1) The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by certified mail, return receipt requested, or by personal service of a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective 30 days after the mailing or service of the notice, unless the applicant or certificate holder, within such 30-day period, shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended.

27.13(2) If the applicant or certificate holder requests a hearing, the department shall transmit the request to the department of inspections and appeals pursuant to 481 IAC 10.4(10A).

27.13(3) The hearing shall be conducted by the department of inspections and appeals pursuant to 481 IAC 10.1(10A) to 10.24(10A,17A).

27.13(4) At any time at or prior to the hearing, the department may rescind the notice of the denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

321—27.14(231C) Appeals. All appeals shall be conducted pursuant to 321 IAC 2.7(4).

321—27.15(231C) Judicial review. Procedures for judicial review shall be conducted pursuant to 321 IAC 2.7(6).

321—27.16(231C) Records. The department collects and stores a variety of records in the course of certifying and monitoring assisted living programs. Some information stored may be personally identifiable. None is retrievable by personal identifier with the exception of a business which uses an individual's name in the title. Each assisted living program record maintained by the department contains both open and confidential information.

27.16(1) *Open information includes:*

a. Certificate application and status;
b. Final findings of state and Medicaid surveys;
c. Records of complaints;
d. Reports from the fire marshal;

e. Plans of correction submitted by the program;

f. Medicaid status;

g. Official notices of certificate and Medicaid sanctions;

h. Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 27.12(231C), 27.13(231C) and 27.14(231C).

27.16(2) ***Confidential information includes:***

a. Survey or investigation information which does not comprise a final finding. Survey information which does not comprise a final finding may be made public in a proceeding concerning the citation of a program, denial, suspension or revocation of a certificate;

b. Names of all complainants;

c. Names of tenants of all assisted living programs, identifying medical information and the address of anyone other than an owner.

These rules are intended to implement Iowa Code chapter 231C.

[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 7/1/97]
[Filed 12/10/99, Notice 10/20/99—published 12/29/99, effective 2/2/00]

TITLE I
GENERAL DEPARTMENTAL PROCEDURES

CHAPTER 1
DEPARTMENTAL ORGANIZATION AND PROCEDURES

[Prior to 7/1/83, Social Services [770] Ch 1]
[Prior to 2/11/87, Human Services[498]]

MISSION STATEMENT

The Iowa department of human services is a public expression of Iowa's desire for a stronger community. Working cooperatively with others, the department of human services meets the unique needs of individuals who are experiencing personal, economic, social, or health problems. The primary responsibilities of the department are to help and empower individuals and families to become increasingly self-sufficient and productive, and strive to improve the well-being of all the people of the state of Iowa.

441—1.1(17A) Director. All operations of the department of human services are, by law, the responsibility of the director. The director's responsibilities include:

1.1(1) The formulation of department policy within the limits set forth in the statutes of the state of Iowa;

1.1(2) Establishing standards of performance for all divisions and offices of the department;

1.1(3) Maintaining liaison with the governor, other agencies of the state, and public and private agencies outside of state government on behalf of the department;

1.1(4) Fully informing the public of department programs;

1.1(5) Serving as principal agent for the department in all legal matters and development of legislative programs to support and improve agency efforts.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

441—1.2(17A) Council. The director of the department has, by statute, the advice and counsel of the council on human services. This seven-member council is appointed by the governor with consent of two-thirds of the Senate and its powers and duties are policymaking and advisory with respect to the services and programs operated by the department.

1.2(1) A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

1.2(2) Where a quorum is present, a position is carried by a majority of the qualified members of the council.

1.2(3) Copies of administrative rules and other materials considered are made a part of the minutes by reference.

1.2(4) Copies of the minutes are kept on file in the director's office.

1.2(5) Tentative approval of departmental actions may be given by telephone when approval is needed prior to a formal meeting. A memorandum shall be kept of the approval and formal action taken at the next scheduled meeting.

1.2(6) At each meeting the council shall set the date and location of the next meeting.

a. The communications media shall be notified at least one week in advance of the meeting.

b. When it is necessary to hold an emergency meeting, the communications media shall be notified as far in advance of the meeting as time allows. The nature of the emergency shall be stated in the minutes.

1.2(7) In cases not covered by these rules, Robert's Rules of Order shall govern.

1.2(8) The department of inspections and appeals shall be the authorized representative to conduct hearings and appeals for the council on human services.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

441—1.3(17A) Organization at state level. The director oversees all service and administrative functions of the department including continuous quality improvement. The deputy director for administration, the deputy director for policy, the deputy director for operations, and the office of communications report directly to the director.

1.3(1) *Deputy director for administration.* The deputy director for administration manages the general support functions of all divisions of the department. Principal responsibilities include development of program and operational budgets, accounting and administrative control of appropriation expenditures, design and development of data processing systems, and monitoring and processing of provider payments.

The administrators of the divisions of data management, fiscal management, support services, and organization development and support report directly to the deputy director for administration.

a. The administrator of the division of data management is responsible for the development and operation of the automated systems that collect and process information to generate client and vendor payments, track cases and caseloads, monitor and control agency business applications, and assess social programs. Additionally, the administrator is responsible for providing a wide range of technical support for the state institutions, personal computing assistance, office automation support, program and operational research and analysis, forecasting of program expenditures, and utilization and report development and preparation.

b. The administrator of the division of fiscal management is responsible for developing annual budgets to be presented to the council on human services, governor's office, and legislature; for monitoring expenditures; for providing management with monthly forecasts for all department budget units and subunits; and for filing quarterly federal expenditures and estimate of expenditure reports. Additionally, the administrator is responsible for providing the accounting for the department's programs and operations; for coordinating payment and contracting for purchased services; for processing claims, invoices, and payroll checks; and for operating the cost allocation system which enables recovery of federal dollars.

c. The administrator of the division of support services has responsibility for equipment, purchasing, space allocation, printing, food stamp issuance and accountability, supplies management, cash receipts, manual distribution, fixed assets inventory control, central information delivery system (CIDS) teleconferencing and the mail. Additionally, the administrator is responsible for providing administration of surplus food distribution programs, nutrition consulting services, state vehicle fleet management, and liaison with the department of general services in the development of capital improvements and major maintenance projects for department institutions.

d. The administrator of the division of organization development and support has responsibility for providing leadership, direction, and oversight of organization staff development (learning resource team) and employee services (human resource team) including labor relations, compensation, recruitment, health and safety, disaster assistance, volunteer programs, professional library services, and diversity, affirmative action, and equal opportunity programs for employees, vendors, and department clients.

1.3(2) *Deputy director for policy.* The deputy director for policy manages the development of the financial, medical and social services programs for eligible Iowans.

The administrators of the divisions of adult, children and family services, economic assistance, medical services, and mental health and developmental disabilities report directly to the deputy director for policy. In addition, the office of policy analysis and the appeals unit report directly to the deputy director for policy.

a. The administrator of the division of adult, children and family services is responsible for the development and direction of service, regulatory, and financial reimbursement programs for children, families and dependent adults, including programs for foster care, adoption, child protection, family services, day care, and child and adult abuse registries. Additionally, the administrator is responsible for setting program policy for the following institutions:

(1) The state training school in Eldora.

(2) The Iowa juvenile home in Toledo.

b. The administrator of the division of economic assistance is responsible for the development and direction of financial assistance programs, including the family investment program, the food stamp program, emergency assistance, PROMISE JOBS, entrepreneurial training, refugee cash assistance, the family development and self-sufficiency demonstration program, systematic alien verification for entitlements, diversion programs, individual development accounts, and the food stamp employment and training program.

c. The administrator of the division of medical services is responsible for the development and direction of medical service programs, including Medicaid, state supplementary assistance, refugee medical assistance, the child health insurance program (HAWK-I), and interim assistance reimbursement.

d. The administrator of the division of mental health and developmental disabilities is responsible for the development and direction of supports and services as well as the financing of such services for persons with mental illness, mental retardation, and developmental disabilities. Additionally, the administrator is responsible for setting program policy for the following institutions and programs:

(1) Cherokee Mental Health Institute.

(2) Clarinda Mental Health Institute, located on the grounds of the Clarinda Treatment Complex Institute Campus.

(3) Independence Mental Health Institute.

(4) Mount Pleasant Mental Health Institute, located on the grounds of the Mount Pleasant Treatment Center Complex.

(5) Glenwood State Hospital-School.

(6) Woodward State Hospital-School.

(7) The Civil Commitment of Sexual Offenders Unit at Oakdale.

1.3(3) *Deputy director for operations.* The deputy director for operations manages the delivery of the financial, medical and social services programs for eligible Iowans. The administrators of the division of child support, case management, and refugee services and the office of field support and the administrators of the five departmental regions report directly to the deputy director for operations. Additionally, the deputy director is responsible for policy implementation and day-to-day operations at the following institutions: the state training school in Eldora; the Iowa juvenile home in Toledo; Cherokee Mental Health Institute; Clarinda Mental Health Institute, located on the grounds of the Clarinda Treatment Complex Institute Campus; Independence Mental Health Institute; Mount Pleasant Mental Health Institute, located on the grounds of the Mount Pleasant Treatment Center Complex; Glenwood State Hospital-School; Woodward State Hospital-School; and the Civil Commitment of Sexual Offenders Unit at Oakdale.

a. The administrator of the division of child support, case management, and refugee services is responsible for primary support services to all line elements of the department in the areas of child support and foster care collections and refugee services, and has responsibility for the department's Title XIX case management policy and budget.

b. The chief of the office of field support is responsible for the day-to-day contact with the regional offices on administrative and program operation issues and addressing client or constituent concerns.

1.3(4) *Office of communications.* The office of communications addresses the different facets of the department's internal and external communication needs. The office of communications is responsible for providing public information to clients, constituency groups, and the media, while also facilitating internal communications within the department.

a. The legislative liaison provides federal and state liaison services, maintains legislative relations, and reviews client and constituent concerns.

b. The internal communications consultant addresses the different facets of the department's internal communication needs.

c. The public information officer is responsible for the department's external communication to the media and other outside stakeholders.

441—1.4(17A) Organization at local level.

1.4(1) *Delivery system.* The department's community service delivery system functions through regional offices, each headed by an administrator. Each system is composed of area, local, and satellite offices strategically located for purposes of client accessibility.

1.4(2) *Regional offices.* The regional administrators shall be responsible for managing all department offices at the local level and directing all area, local, satellite, and regional personnel within the geographic boundaries of the region; and for implementing policies and procedures, within departmental priorities, to provide effective social services to those persons who need them, and the development of social service resources within the community, human services planning, complaints about area, local, and satellite offices, and technical support to area, local, and satellite offices. The regions have supervisory responsibilities for day care licensing and purchase of service. Regional offices are located in major population centers. Persons interested in contacting a regional office may inquire at the area, local, or satellite office for the location of the one serving their county.

1.4(3) *Area, local, and satellite offices.* There shall be at least one office in each county. These offices are generally located in the county seat in each county, but may be located in the major population center within each county. These offices shall be designated as either area, local, or satellite offices.

a. Area offices shall serve as the base for the area administrator and shall be open on a full-time basis. Activities of the area office include income maintenance and social service program delivery and responsibility for coordinating and supervising services within the area, which may be a county or cluster of counties. Activities also include child protection and other specialized services that will also be provided to surrounding counties.

b. Local offices shall be open on a full-time basis. Activities of the local offices include income maintenance and social service program delivery and serving as the bases for some satellite offices. Child protection and other specialized services may also be provided out of a local office in instances where client workload justifies it or where conducive to effective service delivery.

c. Satellite offices shall operate on a reduced number of days per week dependent on individual county needs. Activities of the satellite offices include income maintenance and social service program delivery.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

441—1.5 Rescinded, effective October 1, 1987.

441—1.6(17A) Mental health and mental retardation commission. The administrator of the division of mental health and developmental disabilities has, by statute, the advice and counsel of the mental health and mental retardation commission. This 15-member commission is appointed by the governor with confirmation by two-thirds of the members of the senate. The commission's powers and duties are policymaking and advisory with respect to mental health and mental retardation, services, and programs administered by the division of mental health and developmental disabilities.

1.6(1) A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

1.6(2) Where a quorum is present, a position is carried by a majority of the qualified members of the commission.

1.6(3) Copies of administrative rules and other materials considered are made a part of the minutes by reference.

1.6(4) Copies of the minutes are kept on file in the office of the administrator of the division of mental health and developmental disabilities.

1.6(5) At each meeting the commission shall determine the next meeting date. Special meetings may be called by the chair or at the request of the majority of commission members.

1.6(6) Any person wishing to make a presentation at a commission meeting shall notify the Administrator, Division of Mental Health and Developmental Disabilities, Hoover State Office Building, Des Moines, Iowa 50319-0114, (515)281-5874, at least 15 days prior to the commission meeting.

1.6(7) In cases not covered by these rules, Robert's Rules of Order shall govern.

1.6(8) The department of inspections and appeals shall be the authorized representative to conduct hearings and appeals for the mental health and mental retardation commission.

This rule is intended to implement Iowa Code section 17A.3.

441—1.7(17A) Governor's developmental disabilities council (governor's DD council). Pursuant to the Developmental Disabilities Assistance and Bill of Rights Act (DD Act), 42 U.S. Code, Section 6000 et seq., each state shall establish a state planning council to serve as an advocate for people with developmental disabilities. The department shall act as the council's designated state agency for the purposes of receiving funds under the DD Act.

1.7(1) *Governor's DD council responsibilities.* The governor's DD council shall:

a. Develop a state plan which meets the requirements of the DD Act.

b. Prepare and approve a budget to fund all activities and to hire staff and obtain services necessary to carry out its functions under the DD Act.

c. Hire after conferring with the director, supervise, and evaluate an executive director who shall hire and supervise council staff.

d. Prepare, submit and maintain all records and reports required by the Secretary of Health and Human Services.

1.7(2) *Governor's DD council membership.* The governor's DD council shall consist of up to 26 members appointed by the governor.

a. The principal state agencies, including, at a minimum, the departments of education, human services, and elder affairs, higher education training facilities, the university affiliated program, Iowa Protection and Advocacy Services, Inc., local agencies and nongovernmental agencies and private, nonprofit groups concerned with services to people with developmental disabilities in the state, shall be represented.

b. Consumers. At least one-half of the membership of the governor's DD council shall consist of people with developmental disabilities or their parents or guardians, or immediate relatives or guardians of people with mentally impairing developmental disabilities, and who are not employees of a state agency which receives funds or provides services under the provisions for state planning councils under the DD Act, who are not managing employees of any other entity which receives funds or provides services under the provisions for state planning councils under the DD Act, and who do not have an ownership or control interest with respect to such an entity.

(1) At least one-third of the consumer representatives shall be people with developmental disabilities.

(2) At least one-third of the consumer representatives shall be immediate relatives or guardians of people with mentally impairing developmental disabilities.

(3) At least one person shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability.

1.7(3) *Governor's DD council terms.* Members shall be appointed for three-year terms.

a. Appointments shall be staggered so that at least one-third of the members are appointed each year.

b. Governor's DD council members shall be appointed for a maximum of two consecutive, full terms. Members who have been reappointed for more than two consecutive terms on July 1, 1993, may complete the full term of their last appointment.

c. Governor's DD council members are not eligible to receive a per diem during their term. They shall receive reimbursement for expenses, including individual and family supports necessary for participation, subject to the limitations set for state boards and commissions.

1.7(4) *Governor's DD council action.*

a. A quorum shall consist of two-thirds of the members eligible to vote.

b. Where a quorum is present, a position is carried by a majority of the members eligible to vote.

c. The use of proxies shall not be allowed.

d. Any council member representing the council before any legislative committee, public body, governmental agency or media representative shall support the council's mission, guiding principles, goals, objectives and strategies approved by the council in its state plan and other policy positions adopted by the council.

1.7(5) *Governor's DD council minutes.* Copies of the minutes are kept on file in the office of the Governor's DD Council, 617 E. Second Street, Des Moines, Iowa 50309.

1.7(6) *Governor's DD council meetings.* The governor's DD council will meet at least four times a year. Dates will be determined by the governor's DD council. Special meetings may be called by the chair or upon the written request of a majority of governor's DD council members.

a. Any person wishing to make a presentation at a governor's DD council meeting shall submit a request to the executive director of the governor's DD council. The request shall be considered by the governor's DD council chair in setting the next meeting agenda.

b. The governor's DD council shall coordinate activities with the mental health and mental retardation commission in accordance with Iowa Code chapter 225C.

1.7(7) *Attendance.*

a. A member shall be considered to have submitted a resignation when absent for three consecutive, regular governor's DD council meetings or a total of more than one-half of all regular governor's DD council meetings during a calendar year in accordance with Iowa Code section 69.15.

b. The governor's office shall be immediately notified by the governor's DD council executive director of a resignation under this subrule.

441—1.10(17A) HAWK-I board. The director of the department has, by statute, the advice and counsel of the HAWK-I board on the healthy and well children in Iowa program. This seven-member board consists of the commissioner of insurance or the commissioner's designee, the director of the department of education or the director's designee, the director of the department of public health or the director's designee, and four public members appointed by the governor, subject to confirmation by two-thirds of the members of the senate. The board shall also include two members of the senate and two members of the house of representatives, serving as ex officio members.

1.10(1) *Organization.*

a. The members of the board shall annually elect from the board's voting membership a chairperson of the board.

b. Members appointed by the governor and the legislative members shall serve two-year terms.

1.10(2) *Duties and powers of the board.* The board's powers and duties are to make policy and to provide direction for the administration of all aspects of the healthy and well kids in Iowa program which is administered by the division of medical services. In carrying out these duties, the board shall do all of the following:

a. Adopt rules of the department.

b. Develop criteria for and approve all contracts.

c. Establish a clinical advisory committee.

d. Establish an advisory committee on children with special health care needs.

e. Conduct studies and evaluations and provide reports as directed by legislation.

f. Define regions of the state for which plans are offered.

g. Solicit input from the public about the program.

h. Improve interaction between the program and other public and private programs which provide services to eligible children.

i. Receive and accept grants, loans, or other advances of funds from any person and may receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purpose of the program.

1.10(3) *Board action.*

a. A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

b. When a quorum is present, a position is carried by a majority of the qualified members of the board.

1.10(4) *Board minutes.*

a. Copies of administrative rules and other materials considered are made part of the minutes by reference.

b. Copies of the minutes are kept on file in the office of the administrator of the division of medical services.

1.10(5) *Board meetings.*

a. The board shall meet at regular intervals at least ten times each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members.

b. Any person wishing to make a presentation at a board meeting shall notify the Administrator, Division of Medical Services, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50309-0114, telephone (515)281-8794, at least 15 days prior to the board meeting.

1.10(6) *Robert's Rules of Order.* In cases not covered by these rules, Robert's Rules of Order shall govern.

This rule is intended to implement Iowa Code paragraph 17A.3(1)*"a"* and 1998 Iowa Acts, chapter 1196, section 6.

[Filed 9/19/75, Notice 8/11/75—published 10/6/75, effective 11/10/75]
[Filed 4/30/76, Notice 3/22/76—published 5/17/76, effective 6/21/76]
[Filed 2/25/77, Notice 1/12/77—published 3/23/77, effective 4/27/77]
[Filed 12/6/77, Notice 9/21/77—published 12/28/77, effective 2/1/78]
[Filed 5/8/78, Notice 3/22/78—published 5/31/78, effective 7/5/78]
[Filed 6/1/78, Notice 4/19/78—published 6/28/78, effective 8/2/78]
[Filed without Notice 9/12/78—published 10/4/78, effective 11/8/78]
[Filed 1/4/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 3/30/79, Notice 2/21/79—published 4/18/79, effective 5/23/79]
[Filed emergency 6/30/81—published 7/22/81, effective 7/1/81]
[Filed emergency 8/21/81—published 9/16/81, effective 8/21/81]
[Filed emergency 12/30/81—published 1/20/82, effective 1/1/82]
[Filed 1/28/82, Notice 11/25/81—published 2/17/82, effective 3/24/82]
[Filed 4/9/82, Notice 1/20/82—published 4/28/82, effective 6/2/82]
[Filed 11/5/82, Notice 9/1/82—published 11/24/82, effective 1/1/83]
[Filed 9/26/83, Notice 8/17/83—published 10/12/83, effective 11/16/83]
[Filed 7/25/86, Notice 4/23/86—published 8/13/86, effective 10/1/86]
[Filed 9/5/86, Notice 6/18/86—published 9/24/86, effective 11/1/86]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 7/24/87, Notices 5/6/87 and 5/20/87—published 8/12/87, effective 10/1/87]
[Filed 1/21/87, Notice 11/4/87—published 2/10/88, effective 4/1/88]
[Filed 3/15/89, Notice 2/8/89—published 4/5/89, effective 6/1/89]
[Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
[Filed 2/19/92, Notice 8/7/91—published 2/19/92, effective 3/25/92]
[Filed emergency 5/13/92—published 6/10/92, effective 5/14/92]
[Filed 7/17/92, Notice 6/10/92—published 8/5/92, effective 10/1/92]
[Filed 12/4/92, Notice 8/19/92—published 12/23/92, effective 1/27/93]
[Filed 6/11/93, Notice 4/14/93—published 7/7/93, effective 9/1/93]
[Filed 1/10/96, Notice 11/22/95—published 1/31/96, effective 4/1/96]
[Filed emergency 6/29/98—published 7/29/98, effective 7/1/98]
[Filed 9/15/98, Notice 7/15/98—published 10/7/98, effective 12/1/98]
[Filed 10/21/98, Notice 7/29/98—published 11/18/98, effective 1/1/99]
[Filed 12/8/99, Notice 10/20/99—published 12/29/99, effective 3/1/00]

TITLE IV
FAMILY INVESTMENT PROGRAM

CHAPTER 40
APPLICATION FOR AID

[Prior to 7/1/83, Social Services[770] Ch 40]
[Prior to 2/11/87, Human Services[498]]

DIVISION I
FAMILY INVESTMENT PROGRAM—CONTROL GROUP

[Rescinded IAB 2/12/97, effective 3/1/97]

441—40.1 to **40.20** Reserved.

DIVISION II
FAMILY INVESTMENT PROGRAM—TREATMENT GROUP

[Prior to 10/13/93, 441—40.1(239) to 40.9(239)]

441—40.21(239B) Definitions.

"Applicant" means a person for whom assistance is being requested, parent(s) living in the home with the child(ren), and the nonparental relative as defined in 441—subrule 41.22(3) who is requesting assistance for the child(ren).

"Assistance unit" includes any person whose income is considered when determining eligibility or the amount of assistance for aid to dependent children.

"Budgeting process" means the process by which income is computed to determine eligibility under the 185 percent eligibility test described in 441—41.27(239B), Initial eligibility, the initial family investment program grant, ongoing eligibility, and the ongoing family investment program grant.

1. For retrospective budgeting, the budget month is the second month preceding the payment month.
2. For prospective budgeting, the budget month and payment month are the same calendar month.

"Budget month" means the calendar month from which the local office uses income or circumstances of the eligible group to compute eligibility and the amount of assistance.

"Central office" shall mean the state administrative office of the department of human services.

"Change in income" means a permanent change in hours worked, rate of pay, or beginning or ending income.

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

"Income in kind" is any gain or benefit which is not in the form of money payable directly to the eligible group including nonmonetary or in-kind benefits, such as meals, clothing, and vendor payments. Vendor payments are money payments which are paid to a third party and not to the eligible group.

"Initial two months" means the first two consecutive months for which assistance is paid. This may include a month for which a partial payment is made.

Whenever *"medical institution"* is used in this title, it shall mean a facility which is organized to provide medical care, including nursing and convalescent care, in accordance with accepted standards as authorized by state law and as evidenced by the facility's license. A medical institution may be public or private. Medical institutions include the following:

1. Hospitals
2. Extended care facilities (skilled nursing)
3. Intermediate care facilities
4. Mental health institutions
5. Hospital schools

"Payment month" means the calendar month for which assistance is paid.

"Payment standard" means the total needs of a group as determined by adding need according to the schedule of basic needs, described in 441—subrule 41.28(2), to any allowable special needs, described in 441—subrule 41.28(3).

"Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) programs" means the department's training program as described in 441—Chapter 93, Division II.

"Prospective budgeting" means the determination of eligibility and the amount of assistance for a calendar month based on the best estimate of income and circumstances which will exist in that calendar month.

"Recipient" means a person for whom assistance is paid, parent(s) living in the home with the eligible child(ren) and nonparental relative as defined in 441—subrule 41.22(3) who is receiving assistance for the child(ren). Unless otherwise specified, a person is not a recipient for any month in which the assistance issued for that person is subject to recoupment because the person was ineligible.

"Report month" for retrospective budgeting means the calendar month following the budget month. "Report month" for prospective budgeting means the calendar month in which a change occurs.

"Retrospective budgeting" means the computation of the amount of assistance for a payment month based on actual income and circumstances which existed in the budget month.

"Standard of need" means the total needs of a group as determined by adding need according to the schedule of living costs, described in 441—subrule 41.28(2), to any allowable special needs, described in 441—subrule 41.28(3).

"Suspension" means a month in which an assistance payment is not made due to ineligibility for one month when eligibility is expected to exist the following month.

"Unborn child" shall include an unborn child during the entire term of the pregnancy.

"X-PERT" means an automated knowledge-based computer system that determines eligibility for FIP and other assistance programs.

This rule is intended to implement Iowa Code sections 239B.3, 239B.5, and 239B.6.

441—40.22(239B) Application. For cases selected for the X-PERT system, the application for the family investment program shall be initiated by submitting Form 470-3112, Application for Assistance, Part 1, or Form 470-3122 (Spanish). Applicants whose cases are selected for the X-PERT system but whose eligibility cannot be determined through the X-PERT system may be requested to complete Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish). Form 470-3112 or Form 470-3122 shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf.

For cases not selected for the X-PERT system, the application for the family investment program shall be submitted on Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish). When submitting Application for Assistance, Part 1, Form 470-3112 or Form 470-3122 (Spanish), the applicant shall also be required to complete Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish), no later than at the time of the required face-to-face interview. Form PA-2207-0 or Form PA-2230-0 (Spanish) shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf. When both parents, or a parent and a stepparent, are in the home, both shall sign the application.

c. The recipient shall supply, insofar as the recipient is able, additional information needed to establish eligibility and the amount of the family investment program grant within five working days from the date a written request is mailed by the county office to the recipient's current mailing address or given to the recipient. The county office shall extend the deadline when the recipient requests an extension because the recipient is making every effort to supply the information or verification but is unable to do so. "Supply" shall mean the requested information is received by the department by the specified due date. The recipient shall give written permission for release of information when the recipient is unable to furnish information needed to establish eligibility and the amount of the family investment program grant. Failure to supply the information or refusal to authorize the county office to secure the information from other sources shall serve as a basis for cancellation of assistance.

d. The recipient or applicant shall cooperate with the department when the recipient's or applicant's case is selected by quality control for verification of eligibility. The recipient or applicant shall also cooperate with the front end investigations conducted by the department of inspections and appeals to determine whether information supplied to the department by the client is complete and correct regarding pertinent public assistance information unless the investigation revolves solely around the circumstances of a person whose income and resources do not affect family investment program eligibility. (See department of inspections and appeals rules 481—Chapter 72.) Failure to cooperate shall serve as a basis for cancellation or denial of the family's assistance. Once denied or canceled for failure to cooperate, the family may reapply but shall not be considered for approval until cooperation occurs.

e. The recipient, or an individual being added to the existing eligible group, shall timely report any change in the following circumstances:

(1) Income from all sources.
(2) Resources.
(3) Members of the household.
(4) School attendance.
(5) Becoming incapacitated or recovery from incapacity.
(6) Change of mailing or living address.
(7) Payment of child support.
(8) Rescinded IAB 2/5/92, effective 4/1/92.
(9) Receipt of a grant that exceeds the amount on the most recent notice from the department by $10 or more or receipt of a duplicate grant.
(10) Receipt of a social security number.
(11) Payment for child support, alimony, or dependents as defined in 441—paragraph 41.27(8)*"b"* and 441—subrule 41.27(10).

f. A report shall be considered timely when made within ten days from:

(1) The receipt of resources, income, or increased or decreased income.
(2) Rescinded IAB 12/29/99, effective 3/1/00.
(3) The date the address changes.
(4) The date the child is officially dropped from the school rolls.
(5) The date a person enters or leaves the household.
(6) The date medical or psychological evidence indicates a person becomes incapacitated or recovers from incapacity.
(7) The date the client increases or decreases child support payments.
(8) Rescinded IAB 2/5/92, effective 4/1/92.
(9) The date the recipient receives a grant that exceeds the amount on the most recent notice from the department by $10 or more or a duplicate grant.

(10) The receipt of a social security number.

(11) The date a person described in 441—paragraph 41.27(8)"*b*" or "*c*" or a sponsor increases or decreases payments for child support, alimony or dependents.

g. When a change is not timely reported, any excess assistance paid shall be subject to recovery.

40.27(5) After assistance has been approved, eligibility for continuing assistance and the amount of the grant shall be effective as of the first of each month. Any change affecting eligibility reported during a month shall be effective the first day of the next calendar month and any change affecting the amount of assistance shall be effective for the corresponding payment month except:

a. When the recipient reports a new person to be added to the eligible group, and that person meets eligibility requirements, a payment adjustment shall be made for the month of report, subject to the effective date of grant limitations prescribed in 441—40.26(239B).

b. When it is timely reported income ended during one of the initial two months of eligibility and a grant adjustment could not be made effective the first of the following month in accordance with 441—subparagraph 41.27(9)"*b*"(1), a payment adjustment shall be made.

c. When verification of an income deduction, diversions, or deposit into an individual development account is provided before the end of the report month or the extended filing date described at 40.22(5)"*c,*" whichever is later, but too late for a grant adjustment to be made effective the first of the following month, a payment adjustment shall be made.

d. When cancellation of assistance is later in those cases where issuance of a timely notice, as required by 441—7.6(217), requires that the action be delayed until the first day of the second calendar month. Any overpayment received in the first calendar month shall be recouped.

e. Any change not reported prospectively in the budget month and reported on the monthly report form shall be effective for the corresponding payment month. When the change creates ineligibility for more than one month, the payment made in the report month shall be recouped.

f. When the recipient timely reports, as defined in 40.24(1) or 40.27(4), a change in income or circumstances during the first initial month of eligibility, prospective eligibility and grant amount for the second initial month shall be determined based on the change. A payment adjustment shall be made when indicated. Recoupment shall be made for any overpayment regardless of when the change is reported.

g. When an individual included in the eligible group becomes ineligible, that individual's needs shall be removed prospectively effective the first of the next month. When the action must be delayed due to administrative requirements a payment adjustment or recoupment shall be made when appropriate.

h. When specifically indicated otherwise in these rules, such as in 441—subrule 41.25(5) and 441—subparagraph 41.27(9)"*c*"(2).

i. When a sanction under 441— subrule 41.25(8) is implemented or removed, the change shall be effective the first of the next calendar month after notification as described in that subrule has been received.

j. When a sanction under 441—paragraph 41.22(6)"*f*" is implemented, the change shall be effective the first of the next calendar month after the change has occurred when income maintenance determines noncooperation or after income maintenance receives notification from the child support recovery unit (CSRU) when CSRU determines noncooperation. When the sanction is removed, the change shall be effective the first of the next calendar month after the recipient has expressed willingness to cooperate as described in 441—paragraph 41.22(6)"*f.*" However, action to remove the sanction shall be delayed until cooperation has actually occurred or until notification has been received from CSRU that the client has cooperated.

This rule is intended to implement Iowa Code sections 239B.2, 239B.3, 239B.5, 239B.6 and 239B.18.

441—40.28(239B) Referral for investigation. The local office may refer questionable cases to the department of inspections and appeals for further investigation. Referrals shall be made using Form 427-0328, Referral For Front End Investigation.

This rule is intended to implement Iowa Code section 239B.5.

441—40.29(239B) Conversion to the X-PERT system. For conversion to the X-PERT system at a time other than review, the recipient may be required to provide additional information. To obtain this information, a recipient may be required to appear for a face-to-face interview. Failure to appear for this interview when so requested, or failure to provide requested information, shall result in cancellation.

These rules are intended to implement Iowa Code chapter 239B.

[Filed June 23, 1955; amended August 30, 1972, June 3, 1975, June 27, 1975]
[Filed 9/29/76, Notice 8/23/76—published 10/20/76, effective 11/24/76]
[Filed 8/18/77, Notice 6/15/77—published 9/7/77, effective 10/12/77]
[Filed 8/9/78, Notice 6/28/78—published 9/6/78, effective 11/1/78]
[Filed 1/4/79, Notice 11/29/78—published 1/24/79, effective 3/1/79]
[Filed emergency after Notice 9/6/79, Notice 7/11/79—published 10/3/79, effective 10/1/79]
[Filed 10/24/79, Notice 8/22/79—published 11/14/79, effective 1/1/80]
[Filed emergency 6/30/80—published 7/23/80, effective 7/1/80]
[Filed 12/19/80, Notice 10/29/80—published 1/7/81, effective 2/11/81]
[Filed without Notice 3/24/81—published 4/15/81, effective 6/1/81]
[Filed emergency 6/30/81—published 7/22/81, effective 7/1/81]
[Filed 6/30/81, Notice 4/29/81—published 7/22/81, effective 9/1/81]
[Filed emergency 9/25/81—published 10/14/81, effective 10/1/81]
[Filed emergency 10/23/81—published 11/11/81, effective 11/1/81]
[Filed 6/15/82, Notice 3/17/82—published 7/7/82, effective 9/1/82]
[Filed emergency 7/1/82—published 7/21/82, effective 7/1/82]
[Filed 7/1/82, Notice 4/28/82—published 7/21/82, effective 9/1/82]
[Filed 9/1/83, Notice 6/22/83—published 9/28/83, effective 11/2/83]
[Filed emergency 12/16/83—published 1/4/84, effective 1/1/84]
[Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]
[Filed 5/4/84, Notice 2/29/84—published 5/23/84, effective 7/1/84]
[Filed emergency 9/28/84—published 10/24/84, effective 10/1/84]
[Filed without Notice 9/28/84—published 10/24/84, effective 12/1/84]
[Filed 9/28/84, Notice 8/15/84—published 10/24/84, effective 12/1/84]
[Filed 12/11/84, Notice 10/10/84—published 1/2/85, effective 3/1/85]
[Filed emergency 1/21/85—published 2/13/85, effective 2/1/85]
[Filed 3/22/85, Notice 2/13/85—published 4/10/85, effective 6/1/85]
[Filed 4/29/85, Notice 10/24/84—published 5/22/85, effective 7/1/85]
[Filed 7/26/85, Notice 6/5/85—published 8/14/85, effective 10/1/85]
[Filed 11/15/85, Notice 10/9/85—published 12/4/85, effective 2/1/86]
[Filed emergency 5/28/86 after Notice 4/9/86—published 6/18/86, effective 6/1/86]
[Filed emergency 7/25/86 after Notice 6/4/86—published 8/13/86, effective 8/1/86]
[Filed 9/3/86, Notice 7/2/86—published 9/24/86, effective 11/1/86]
[Filed 10/17/86, Notice 8/27/86—published 11/5/86, effective 1/1/87]
[Filed 11/14/86, Notice 10/8/86—published 12/3/86, effective 2/1/87]

[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 9/24/87, Notice 8/12/87—published 10/21/87, effective 12/1/87]
[Filed 2/17/88, Notice 12/30/87—published 3/9/88, effective 6/1/88]
[Filed 4/13/89, Notice 3/8/89—published 5/3/89, effective 7/1/89]
[Filed emergency 6/29/89 after Notice 5/3/89—published 7/26/89, effective 7/1/89]
[Filed 12/15/89, Notice 7/26/89—published 1/10/90, effective 3/1/90]
[Filed 4/13/90, Notice 3/7/90—published 5/2/90, effective 7/1/90]
[Filed 7/10/91, Notice 5/29/91—published 8/7/91, effective 10/1/91]
[Filed without Notice 9/18/91—published 10/16/91, effective 11/21/91]
[Filed emergency 10/10/91—published 10/30/91, effective 11/21/91]
[Filed 1/16/92, Notice 9/18/91—published 2/5/92, effective 4/1/92]
[Filed 1/29/92, Notice 10/16/91—published 2/19/92, effective 3/25/92]
[Filed emergency 6/11/92 after Notice 4/15/92—published 7/8/92, effective 7/1/92]
[Filed 7/17/92, Notice 6/10/92—published 8/5/92, effective 10/1/92]
[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]
[Filed 12/16/93, Notice 10/13/93—published 1/5/94, effective 3/1/94]
[Filed 2/16/95, Notice 11/23/94—published 3/15/95, effective 5/1/95]
[Filed 8/15/96, Notice 5/8/96—published 9/11/96, effective 11/1/96]
[Filed emergency 1/15/97—published 2/12/97, effective 3/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 3/1/98]
[Filed emergency 1/14/98 after Notice 11/19/97—published 2/11/98, effective 2/1/98]
[Filed 6/10/98, Notice 5/6/98—published 7/1/98, effective 9/1/98]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 5/31/99]
[Filed 6/10/99, Notice 4/21/99—published 6/30/99, effective 9/1/99]
[Filed 8/11/99, Notice 6/16/99—published 9/8/99, effective 11/1/99]
[Filed 12/8/99, Notice 11/3/99—published 12/29/99, effective 3/1/00]

41.26(8) *Trusts.* The department shall determine whether assets from a trust or conservatorship, except one established solely for the payment of medical expenses, are available by examining the language of the trust agreement or order establishing a conservatorship.

a. Funds clearly conserved and available for care, support, or maintenance shall be considered toward resource or income limitations.

b. When the local office questions whether the funds in a trust or conservatorship are available, the local office shall refer the trust or conservatorship to central office. When assets in the trust or conservatorship are not clearly available, central office staff may contact the trustee or conservator and request that the funds in the trust or conservatorship be made available for current support and maintenance. When the trustee or conservator chooses not to make the funds available, the department may petition the court to have the funds released either partially or in their entirety or as periodic income payments. Funds in a trust or conservatorship that are not clearly available shall be considered unavailable until the trustee, conservator or court actually makes the funds available. Payments received from the trust or conservatorship for basic or special needs are considered income.

41.26(9) *Aliens sponsored by individuals.* When a sponsor is financially responsible for an alien according to subrule 41.27(10), the resources of the sponsor and the sponsor's spouse in excess of $1500 shall be applied to the alien's resource limitation.

a. When a person described in subrule 41.27(10) sponsors two or more aliens who apply for assistance on or after November 1, 1981, the resources of the sponsor and the sponsor's spouse in excess of $1500 shall be divided equally among the aliens.

b. The resources of a sponsor or sponsor's spouse receiving supplemental security income or the family investment program shall be treated in accordance with subrule 41.26(2).

c. Notwithstanding anything to the contrary in these rules or regulations, the resources of a sponsor who executed an affidavit of support pursuant to Section 213 of the Immigration and Nationality Act (as implemented by the Personal Responsibility and Work Reconciliation Act of 1996) on behalf of the alien and the resources of the sponsor's spouse shall be counted in their entirety when determining eligibility and benefit level for a sponsored alien who entered the United States on or after August 22, 1996.

41.26(10) *Not considered a resource.* Inventories and supplies, exclusive of capital assets, that are required for self-employment shall not be considered a resource. Inventory is defined as all unsold items, whether raised or purchased, that are held for sale or use and shall include, but not be limited to, merchandise, grain held in storage and livestock raised for sale. Supplies are items necessary for the operation of the enterprise, such as lumber, paint and seed. Capital assets are those assets which, if sold at a later date, could be used to claim capital gains or losses for federal income tax purposes. When self-employment is temporarily interrupted due to circumstances beyond the control of the household, such as illness, and inventory or supplies retained by the household shall not be considered a resource.

This rule is intended to implement Iowa Code section 239B.5.

441—41.27(239B) Income. All unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted as defined in these rules, shall be considered in determining initial and continuing eligibility and the amount of the family investment program grant. The determination of initial eligibility is a three-step process. Initial eligibility shall be granted only when (1) the countable gross nonexempt unearned and earned income, exclusive of the family investment program grant, received by the eligible group and available to meet the current month's needs is no more than 185 percent of the standard of need for the eligible group; (2) the countable net unearned and earned income is less than the standard of need for the eligible group; and (3) the countable net unearned and earned income, after applying allowable disregards, is less than the payment standard for the eligible group. The determination of continuing eligibility is a two-step process. Continuing eligibility shall be granted only when (1) countable gross nonexempt income, as described for initial eligibility, does not exceed 185 percent of the standard of need for the eligible group; and (2) countable net unearned and earned income is less than the payment standard for the eligible group. The amount of the family investment program grant shall be determined by subtracting countable net income from the payment standard for the eligible group. Child support assigned to the department in accordance with subrule 41.22(7) and retained by the department as described in subparagraph 41.27(1)*"h"*(2) shall be considered as exempt income for the purpose of determining continuing eligibility, including child support as specified in paragraph 41.27(7)*"q."* Deductions and diversions shall be allowed when verification is provided. The county office shall return all verification to the applicant or recipient.

41.27(1) *Unearned income.* Unearned income is any income in cash that is not gained by labor or service. When taxes are withheld from unearned income, the amount considered will be the net income after the withholding of taxes (federal insurance contribution Act, state and federal income taxes). Net unearned income, from investment and nonrecurring lump sum payments, shall be determined by deducting reasonable income producing costs from the gross unearned income. Money left after this deduction shall be considered gross income available to meet the needs of the eligible group.

a. Social security income is the amount of the entitlement before withholding of a Medicare premium.

b. Rescinded, effective December 1, 1986.

c. Rescinded, effective September 1, 1980.

d. Rescinded IAB 2/11/98, effective 2/1/98.

e. Rescinded IAB 2/11/98, effective 2/1/98.

f. When the applicant or recipient sells property on contract, proceeds from the sale shall be considered exempt as income. The portion of any payment that represents principal is considered a resource upon receipt as defined in 41.26(4). The interest portion of the payment is considered a resource the month following the month of receipt.

g. Every person in the eligible group shall apply for benefits for which that person may be qualified and accept those benefits, even though the benefit may be reduced because of the laws governing a particular benefit. The needs of any individual who refuses to cooperate in applying for or accepting benefits from other sources shall be removed from the eligible group. The individual is eligible for the 50 percent work incentive deduction in paragraph 41.27(2)*"c."*

h. Support payments in cash shall be considered as unearned income in determining initial and continuing eligibility.

(1) Any nonexempt cash support payment for a member of the eligible group, made while the application is pending, shall be treated as unearned income and deducted from the initial assistance grant(s). Any cash support payment for a member of the eligible group, except as described at 41.27(7)*"p"* and *"q,"* received by the recipient after the date of decision as defined in 441—subrule 40.24(4) shall be refunded to the child support recovery unit.

(2) Assigned support collected in a month and retained by child support recovery shall be exempt as income for determining prospective or retrospective eligibility. Participants shall have the option of withdrawing from FIP at any time and receiving their child support direct.

(3) and (4) Rescinded IAB 12/3/97, effective 2/1/98.

i. The applicant or recipient shall cooperate in supplying verification of all unearned income. When the information is available, the local office shall verify job insurance benefits by using information supplied to the department by the department of workforce development. When the local office uses this information as verification, job insurance benefits shall be considered received the second day after the date that the check was mailed by workforce development. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day. When the client notifies the local office that the amount of job insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. A payment adjustment shall be made when indicated. Recoupment shall be made for any overpayment. The client must report the discrepancy prior to the payment month or within ten days of the date on the Notice of Decision, Form PA-3102-0, applicable to the payment month, whichever is later, in order to receive a payment adjustment.

j. Every person in the eligible group shall apply for and accept health or medical insurance when it is available at no cost to the applicant or recipient, or when the cost is paid by a third party, including the department of human services. The needs of any individual who refuses to cooperate in applying for or accepting this insurance shall be removed from the eligible group. The individual is eligible for the 50 percent work incentive deduction in paragraph 41.27(2)*"c."*

41.27(2) *Earned income.* Earned income is defined as income in the form of a salary, wages, tips, bonuses, commission earned as an employee, income from Job Corps or profit from self-employment. Earned income from commissions, wages, tips, bonuses, Job Corps, or salary means the total gross amount irrespective of expenses of employment. With respect to self-employment, earned income means the profit determined by comparing gross income with the allowable costs of producing the income. Income shall be considered earned income when it is produced as a result of the performance of services by an individual.

a. Each person in the assistance unit whose gross nonexempt earned income, earned as an employee or net profit from self-employment, is considered in determining eligibility and the amount of the assistance grant is entitled to one 20 percent earned income deduction of nonexempt monthly gross earnings. The deduction is intended to include all work-related expenses other than child care. These expenses shall include, but are not limited to, all of the following: taxes, transportation, meals, uniforms, and other work-related expenses.

b. Rescinded IAB 12/29/99, effective 3/1/00.

c. After deducting the allowable work expense as defined in 41.27(2)*"a"* and income diversions as defined in subrules 41.27(4) and 41.27(8), 50 percent of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each individual whose income must be considered is deducted in determining eligibility and the amount of the assistance grant. The 50 percent work incentive deduction is not time limited. Initial eligibility is determined without the application of the 50 percent work incentive deduction as described at 41.27(9)*"a"*(2) and (3).

d. Rescinded IAB 6/30/99, effective 9/1/99.

e. Rescinded IAB 9/11/96, effective 11/1/96.

f. to *i.* Reserved.

j. A person is considered self-employed when the person:

(1) Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions.

(2) Establishes the person's own working hours, territory, and methods of work.

(3) Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

k. The net profit from self-employment income in a nonhome based operation shall be determined by deducting only the following expenses that are directly related to the production of the income:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees of the self-employed.

(3) The cost of shelter in the form of rent; the interest on mortgage or contract payments; taxes; and utilities.

(4) The cost of machinery and equipment in the form of rent or the interest on mortgage or contract payments.

(5) Insurance on the real or personal property involved.

(6) The cost of any repairs needed.

(7) The cost of any travel required.

(8) Any other expense directly related to the production of income, except the purchase of capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

l. When the client is renting out apartments in the client's home, the following shall be deducted from the gross rentals received to determine the profit:

(1) Shelter expense in excess of that set forth on the chart of basic needs components in subrule 41.28(2) for the eligible group.

(2) That portion of expense for utilities furnished to tenants which exceeds the amount set forth on the chart of basic needs components in subrule 41.28(2).

(3) Ten percent of gross rentals to cover the cost of upkeep.

m. In determining profit from furnishing board, room, operating a family life home, or providing nursing care, the following amounts shall be deducted from the payments received:

(1) $41 plus an amount equivalent to the monthly maximum food stamp allotment in the food stamp program for a one-member household for a boarder and roomer or an individual in the home to receive nursing care, or $41 for a roomer, or an amount equivalent to the monthly maximum food stamp allotment in the food stamp program for a one-member household for a boarder.

(2) Ten percent of the total payment to cover the cost of upkeep for individuals receiving a room or nursing care.

n. Gross income from providing child care in the applicant's or recipient's own home shall include the total payment(s) received for the service and any payment received due to the Child Nutrition Amendments of 1978 for the cost of providing meals to children. In determining profit from providing child care services in the applicant's or recipient's own home, 40 percent of the total gross income received shall be deducted to cover the costs of producing the income, unless the individual requests to have expenses in excess of the 40 percent considered. When the applicant or recipient requests to have actual expenses considered, profit shall be determined in the same manner as specified in 41.27(2)*"o."*

o. In determining profit for a self-employed enterprise in the home other than providing room and board, renting apartments or providing child care services in the home, the following expenses shall be deducted from the income received:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees.

(3) The cost of machinery and equipment in the form of rent; or the interest on mortgage or contract payment; and any insurance on such machinery equipment.

(4) Ten percent of the total gross income to cover the costs of upkeep when the work is performed in the home.

v. Bona fide loans. Evidence of a bona fide loan may include any of the following:

(1) The loan is obtained from an institution or person engaged in the business of making loans.

(2) There is a written agreement to repay the money within a specified time.

(3) If the loan is obtained from a person not normally engaged in the business of making a loan, there is a borrower's acknowledgment of obligation to repay (with or without interest), or the borrower expresses intent to repay the loan when funds become available in the future, or there is a timetable and plan for repayment.

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

x. The income of a person ineligible due to receipt of state-funded foster care, IV-E foster care, or subsidized adoption assistance.

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

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

aa. Payments received from the Radiation Exposure Compensation Act.

ab. Deposits into an individual development account (IDA) when determining eligibility and benefit amount. The amount of the deposit is exempt as income and shall not be used in the 185 percent eligibility test. The deposit shall be deducted from nonexempt earned and unearned income that the client receives in the same budget month in which the deposit is made. To allow a deduction, verification of the deposit shall be provided by the end of the report month or the extended filing date, whichever is later. The client shall be allowed a deduction only when the deposit is made from the client's money. The earned income deductions in 41.27(2)*"a"* and *"c"* shall be applied to nonexempt earnings from employment or net profit from self-employment that remain after deducting the amount deposited into the account. Allowable deductions shall be applied to any nonexempt unearned income that remains after deducting the amount of the deposit. If the client has both nonexempt earned and unearned income, the amount deposited into the IDA account shall first be deducted from the client's nonexempt unearned income. Deposits shall not be deducted from earned or unearned income that is exempt.

ac. Assigned support collected in a month and retained by child support recovery as described in subparagraph 41.27(1)*"h"*(2).

41.27(7) *Exempt as income.* The following are exempt as income.

a. Reimbursements from a third party.

b. Reimbursement from the employer for job-related expenses.

c. The following nonrecurring lump sum payments:

(1) Income tax refund.

(2) Retroactive supplemental security income benefits.

(3) Settlements for the payment of medical expenses.

(4) Refunds of security deposits on rental property or utilities.

(5) That part of a lump sum received and expended for funeral and burial expenses.

(6) That part of a lump sum both received and expended for the repair or replacement of resources.

d. Payments received by the family providing foster care to a child or children when the family is operating a licensed foster home.

e. Rescinded IAB 5/1/91, effective 7/1/91.

f. A small monetary nonrecurring gift, such as a Christmas, birthday or graduation gift, not to exceed $30 per person per calendar quarter.

When a monetary gift from any one source is in excess of $30, the total gift is countable as unearned income. When monetary gifts from several sources are each $30 or less, and the total of all gifts exceeds $30, only the amount in excess of $30 is countable as unearned income.

g. Earned income credit.

h. Supplementation from county funds providing:

(1) The assistance does not duplicate any of the basic needs as recognized by the family investment program, or

(2) The assistance, if a duplication of any of the basic needs, is made on an emergency basis, not as ongoing supplementation.

i. Any payment received as a result of an urban renewal or low-cost housing project from any governmental agency.

j. A retroactive corrective payment.

k. The training allowance issued by the division of vocational rehabilitation, department of education.

l. Payments from the PROMISE JOBS program.

m. Rescinded, effective July 1, 1989.

n. The training allowance issued by the department for the blind.

o. Payment(s) from a passenger(s) in a car pool.

p. Support refunded by the child support recovery unit for the first month of termination of eligibility and the family does not receive the family investment program.

q. Support refunded by the child support recovery unit or otherwise paid to or for the recipient for a month of suspension. The maximum exempt payment shall be the amount of the monthly support entitlement. The payment shall never exceed the amount of support collected for the month of suspension.

r. Retrospective income received by an individual, whose needs are prospectively removed from the eligible group or who is no longer a member of the household, except nonrecurring lump sum income that causes a period of ineligibility and the income of a parent or stepparent who remains in the home.

s. Income of a nonparental relative as defined in 41.22(3) except when the relative is included in the eligible group.

t. The retrospective income of individuals who are prospectively added to an eligible group for the initial two months of eligibility unless retrospective budgeting is required by 41.27(9)*"a"*(5). The benefit of this exemption shall also apply to the incomes of persons who made application for assistance for July or August 1983 provided the family is currently eligible for assistance.

u. Rescinded IAB 9/11/96, effective 11/1/96.

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

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

x. Rescinded, effective July 1, 1986.

y. Earnings of an applicant or recipient aged 19 or younger who is a full-time student as defined in 41.24(2)*"e."* The exemption applies through the entire month of the person's twentieth birthday.

EXCEPTION: When the twentieth birthday falls on the first day of the month, the exemption stops on the first day of that month.

z. Retrospective income attributed to an unmarried, underage parent in accordance with 41.27(8)*"c"* effective the first day of the month following the month in which the unmarried, underage parent turns age 18 or reaches majority through marriage. When the unmarried, underage parent turns age 18 on the first day of a month, the retrospective income of the self-supporting parent(s) becomes exempt as of the first day of that month.

aa. Rescinded IAB 12/3/97, effective 2/1/98.

ab. Incentive payments received from participation in the adolescent pregnancy prevention programs.

ac. Payments received from the comprehensive child development program, funded by the Administration for Children, Youth, and Families, provided the payments are considered complimentary assistance by federal regulation.

ad. Incentive allowance payments received from the work force investment project, provided the payments are considered complimentary assistance by federal regulation.

ae. Interest and dividend income.

af. Rescinded IAB 12/3/97, effective 2/1/98.

ag. Terminated income of recipient households who are subject to retrospective budgeting beginning with the calendar month the source of the income is absent, provided the absence of the income is timely reported as described at 441—subrule 40.24(1) and 441—subparagraph 40.27(4)*"f"*(1).

EXCEPTION: Income that terminated in one of the two initial months occurring at time of an initial application that was not used prospectively shall be considered retrospectively as required by 41.27(9)*"b"*(1). If income terminated and is timely reported but a grant adjustment cannot be made effective the first of the next month, a payment adjustment shall be made. This subrule shall not apply to nonrecurring lump sum income defined at 41.27(9)*"c"*(2).

ah. Welfare reform and regular household honorarium income. All moneys paid to a FIP household in connection with the welfare reform demonstration longitudinal study or focus groups shall be exempted.

ai. Diversion or self-sufficiency grants assistance as described at 441—Chapter 47.

aj. Payments from property sold under an installment contract as specified in paragraphs 41.26(4)*"b"* and 41.27(1)*"f."*

41.27(8) *Treatment of income in excluded parent cases, stepparent cases, and underage parent cases.*

a. Treatment of income in excluded parent cases.

(1) Treatment of income when the parent is a citizen or an alien other than those described in 41.23(4)*"a"*(3). A parent who is living in the home with the eligible child(ren) but whose needs are excluded from the eligible group is eligible for the 20 percent earned income deduction, the 50 percent work incentive deduction described at 41.27(2)*"a"* and *"c,"* and diversions described at 41.27(4), and shall be permitted to retain that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded except as described at 41.27(11). All remaining nonexempt income of the parent shall be applied against the needs of the eligible group.

(2) Treatment of income of a parent who is ineligible because of lawful temporary or permanent resident status. The income of a parent who is ineligible as described in 41.23(4)*"a"*(3) shall be attributable to the eligible group in the same manner as the income of a stepparent is determined pursuant to 41.27(8)*"b"*(1) to (7), (9) and (10). Nonrecurring lump sum income received by the parent shall be treated in accordance with 41.27(9)*"c"*(2).

b. Treatment of income in stepparent cases. The income of a stepparent who is not included in the eligible group, but is living with the parent in the home of the eligible child(ren), shall be given the same consideration and treatment as that of a natural parent subject to the limitations of subparagraphs (1) to (10) below.

(1) The stepparent's monthly gross nonexempt earned income, earned as an employee or monthly net profit from self-employment, shall receive a 20 percent earned income deduction.

(2) Rescinded IAB 6/30/99, effective 7/1/99.

(3) Any amounts actually paid by the stepparent to individuals not living in the home, who are claimed or could be claimed by the stepparent as dependents for federal income tax purposes, shall be deducted from nonexempt monthly earned and unearned income of the stepparent.

(4) The stepparent shall also be allowed a deduction from nonexempt monthly earned and unearned income for alimony and child support payments made to individuals not living in the home with the stepparent.

(5) Except as described at 41.27(11), the nonexempt monthly earned and unearned income of the stepparent remaining after application of the deductions in 41.27(8)*"b"*(1) to (4) above shall be used to meet the needs of the stepparent and the stepparent's dependents living in the home, when the dependents' needs are not included in the eligible group and the stepparent claims or could claim the dependents for federal income tax purposes. These needs shall be determined in accordance with the family investment program standard of need for a family group of the same composition.

(6) Income considered for prospective budgeting shall be the best estimate, based on knowledge of current and past circumstances and reasonable expectations of future circumstances.

(7) The 20 percent earned income deduction for each wage earner, as defined in 41.27(2)*"a,"* and the 50 percent work incentive deduction as defined in 41.27(2)*"c,"* shall be allowed.

b. Ongoing eligibility.

(1) After the initial two payment months, the amount of each grant shall be based, retrospectively, on income and other circumstances in the budget month. However, when the income was considered prospectively in the initial application and is not expected to continue, it shall not be considered again. This includes an eligible group not receiving a payment due to the restriction defined in 441—45.26(239B) and 441—45.27(239B).

(2) When a change in eligibility factors occurs, the local office shall prospectively compute eligibility based on the change, effective no later than the month following the month the change occurred. If eligibility continues, no action is taken. If ineligibility exists, assistance shall be canceled or suspended. Continuing eligibility under the 185 percent eligibility test, defined in 41.27(239B), shall be computed prospectively and retrospectively.

(3) Income considered for retrospective budgeting shall be the actual income received in the budget month, except for the income described in 41.27(9)*"c"*(1) and 41.27(9)*"i."* A payroll check will be considered received the date the employer distributes payroll checks to employees.

(4) The 20 percent earned income deduction for each wage earner, as defined in 41.27(2)*"a,"* and the 50 percent work incentive deduction, as defined in 41.27(2)*"c,"* shall be allowed.

c. Lump sum income.

(1) Lump sum income other than nonrecurring. Recurring lump sum earned and unearned income, except for the income of the self-employed, shall be considered as income in the budget month received. Income received by an individual employed under a contract shall be prorated over the period of the contract. Income received at periodic intervals or intermittently shall be considered as income in the budget month received, except periodic or intermittent income from self-employment shall be treated as described in 41.27(9)*"i."* When the income that is subject to proration is earned, appropriate disregards, deductions and diversions shall be applied to the monthly prorated income. Income that is subject to proration is prorated when a lump sum is received before the month of decision and is anticipated to recur; or a lump sum is received during the month of decision or any time during the receipt of assistance.

(2) Nonrecurring lump sum income. Moneys received as a nonrecurring lump sum, except as specified in subrules 41.26(4), 41.26(7), 41.27(8)*"b,"* and 41.27(8)*"c,"* shall be treated in accordance with this rule. Nonrecurring lump sum income shall be considered as income in the budget month and counted in computing eligibility and the amount of the grant for the payment month, unless the income is exempt. Nonrecurring lump sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance or workers' compensation. When countable income, exclusive of the family investment program grant but including countable lump sum income, exceeds the needs of the eligible group, the case shall be canceled or the application rejected. In addition, the eligible group shall be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter.

The period of ineligibility shall be shortened when the schedule of living costs as defined in 41.28(2) increases.

The period of ineligibility shall be shortened by the amount which is no longer available to the eligible group due to a loss, a theft or because the person controlling the lump sum no longer resides with the eligible group and the lump sum is no longer available to the eligible group.

The period of ineligibility shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their dependents for services listed in 441—Chapters 78, 81, 82 and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over $25 per incident; cost of replacement of exempt resources as defined in subrule 41.26(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

When countable income, including the lump sum income, is less than the needs of the eligible group, the lump sum shall be counted as income for the budget month. For purposes of applying the lump sum provision, the eligible group is defined as all eligible persons and any other individual whose lump sum income is counted in determining the period of ineligibility. During the period of ineligibility, individuals not in the eligible group when the lump sum income was received may be eligible for family investment program as a separate eligible group. Income of this eligible group plus income, excluding the lump sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant.

d. The third digit to the right of the decimal point in any computation of income and hours of employment shall be dropped. This includes the calculation of the amount of a truancy sanction as defined in paragraph 41.25(8)*"g"* or a child support sanction as defined in paragraph 41.22(6)*"f."*

e. In any month for which an individual is determined eligible to be added to a currently active family investment program case, the individual's needs shall be included subject to the effective date of grant limitations as prescribed in 441—40.26(239B). When adding an individual to an existing eligible group, any income of that individual shall be considered prospectively for the initial two months of that individual's eligibility and retrospectively for subsequent months. Any income considered in prospective budgeting shall be considered in retrospective budgeting only when the income is expected to continue. The needs of an individual determined to be ineligible to remain a member of the eligible group shall be removed prospectively effective the first of the following month.

f. Suspension. The local office shall suspend assistance retrospectively when income or circumstances in the budget month cause ineligibility and the local office has knowledge or reason to believe that ineligibility will exist for only one month. During the month of suspension, individuals not in the eligible group prior to suspension may be eligible for the family investment program as a separate eligible group. Income of this eligible group plus income of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant. The income of an ineligible parent or other legally responsible person shall be considered prospectively in accordance with 41.27(4) and 41.27(8).

g. Rescinded IAB 2/11/98, effective 2/1/98.

41.27(11) *Restriction on diversion of income.* No income may be diverted to meet the needs of a person living in the home who has been sanctioned under subrule 41.24(8) or 41.25(5), or who has been disqualified under subrule 41.25(10) or rule 441—46.28(239B) or 441—46.29(239B), or who is required to be included in the eligible group according to 41.28(1)*"a"* and has failed to cooperate. This restriction applies to 41.27(4)*"a"* and 41.27(8).

This rule is intended to implement Iowa Code section 239B.7.

441—41.28(239B) Need standards.

41.28(1) *Definition of the eligible group.* The eligible group consists of all eligible persons living together, except when one or more of these persons has elected to receive supplemental security income under Title XVI of the Social Security Act. There shall be at least one child in the eligible group except when the only eligible child is receiving supplemental security income. The unborn child is not considered a member of the eligible group for purposes of establishing the number of persons in the eligible group.

a. The following persons shall be included (except as otherwise provided in these rules):

(1) The dependent child and any brother or sister of the child, of whole or half blood or adoptive, if the brother or sister meets the eligibility requirements of age and school attendance specified in subrule 41.21(1) and is deprived as specified in subrule 41.21(5), or rule 441—42.22(239B) if the brother or sister is living in the same home as the dependent child.

(2) Any natural or adoptive parent of such child, if the parent is living in the same home as the dependent child.

b. The following persons may be included:

(1) The needy relative who assumes the role of parent.

(2) The needy relative who acts as payee when the parent is in the home, but is unable to act as payee.

(3) The incapacitated stepparent, upon request, when the stepparent is the legal spouse of the natural or adoptive parent by ceremonial or common law marriage and the incapacitated stepparent does not have a child in the eligible group.

(4) Rescinded IAB 6/30/99, effective 7/1/99.

41.28(2) *Schedule of needs.* The schedule of living costs represents 100 percent of basic needs. The schedule of living costs is used to determine the needs of individuals when these needs must be determined in accordance with the standard of need defined in 441—40.21(239B). The 185 percent schedule is included for the determination of eligibility in accordance with 441—41.27(239B). The schedule of basic needs is used to determine the basic needs of those persons whose needs are included in and are eligible for a family investment program grant. The eligible group is considered a separate and distinct group without regard to the presence in the home of other persons, regardless of relationship to or whether they have a liability to support members of the eligible group. The schedule of basic needs is also used to determine the needs of persons not included in the assistance grant, when these needs must be determined in accordance with the payment standard defined in 441—40.21(239B). The percentage of basic needs paid to one or more persons as compared to the schedule of living costs is shown on the chart below.

SCHEDULE OF NEEDS

Number of Persons	1	2	3	4	5	6	7	8	9	10	Each Additional Person
185% of Living Costs	675.25	1330.15	1570.65	1824.10	2020.20	2249.60	2469.75	2695.45	2915.60	3189.40	320.05
Schedule of Living Costs	365	719	849	986	1092	1216	1335	1457	1576	1724	173
Schedule of Basic Needs	183	361	426	495	548	610	670	731	791	865	87
Ratio of Basic Needs to Living Costs	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18

CHART OF BASIC NEEDS COMPONENTS
(all figures are on a per person basis)

Number of Persons	1	2	3	4	5	6	7	8	9	10 or More
Shelter	77.14	65.81	47.10	35.20	31.74	26.28	25.69	22.52	20.91	20.58
Utilities	19.29	16.45	11.77	8.80	7.93	6.57	6.42	5.63	5.23	5.14
Household Supplies	4.27	5.33	4.01	3.75	3.36	3.26	3.10	3.08	2.97	2.92
Food	34.49	44.98	40.31	39.11	36.65	37.04	34.00	33.53	32.87	32.36
Clothing	11.17	11.49	8.70	8.75	6.82	6.84	6.54	6.39	6.20	6.10
Pers. Care & Supplies	3.29	3.64	2.68	2.38	2.02	1.91	1.82	1.72	1.67	1.64
Med. Chest Supplies	.99	1.40	1.34	1.13	1.15	1.11	1.08	1.06	1.09	1.08
Communications	7.23	6.17	3.85	3.25	2.50	2.07	1.82	1.66	1.51	1.49
Transportation	25.13	25.23	22.24	21.38	17.43	16.59	15.24	15.79	15.44	15.19

a. The definitions of the basic need components are as follows:

(1) Shelter: Rental, taxes, upkeep, insurance, amortization.

(2) Utilities: Fuel, water, lights, water heating, refrigeration, garbage.

(3) Household supplies and replacements: Essentials associated with housekeeping and meal preparation.

(4) Food: Including school lunches.

(5) Clothing: Including layette, laundry, dry cleaning.

(6) Personal care and supplies: Including regular school supplies.

(7) Medicine chest items.

(8) Communications: Telephone, newspapers, magazines.

(9) Transportation: Includes bus fares and other out-of-pocket costs of operating a privately owned vehicle.

b. Special situations in determining eligible group:

(1) The needs of a child or children in a nonparental home shall be considered a separate eligible group when the relative is receiving the family investment program assistance for the relative's own children.

[Filed emergency 3/14/91—published 4/3/91, effective 3/14/91]
[Filed without Notice 4/11/91—published 5/1/91, effective 7/1/91]
[Filed 5/17/91, Notice 3/20/91—published 6/12/91, effective 8/1/91]
[Filed emergency 6/14/91—published 7/10/91, effective 7/1/91]
[Filed 7/10/91, Notice 5/29/91—published 8/7/91, effective 10/1/91]
[Filed 9/18/91, Notice 7/10/91◊—published 10/16/91, effective 12/1/91]
[Filed emergency 10/10/91 after Notice 9/4/91—published 10/30/91, effective 11/1/91]
[Filed 11/15/91, Notice 9/18/91—published 12/11/91, effective 2/1/92]
*[Filed 12/11/91, Notice 10/16/91—published 1/8/92, effective 3/1/92]◊
[Filed 1/16/92, Notice 9/18/91—published 2/5/92, effective 4/1/92]
[Filed emergency 4/15/92—published 5/13/92, effective 4/16/92]
[Filed emergency 6/11/93 after Notice 4/28/93—published 7/7/93, effective 7/1/93]
[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]
[Filed emergency 11/12/93—published 12/8/93, effective 1/1/94]
[Filed 12/16/93, Notice 10/13/93—published 1/5/94, effective 3/1/94]
[Filed 2/10/94, Notice 12/8/93—published 3/2/94, effective 5/1/94]
[Filed 8/12/94, Notice 7/6/94—published 8/31/94, effective 11/1/94]
[Filed emergency 1/11/95 after Notice 11/23/94—published 2/1/95, effective 2/1/95]
[Filed 2/16/95, Notice 11/23/94—published 3/15/95, effective 5/1/95]
[Filed 7/12/95, Notice 5/10/95—published 8/2/95, effective 10/1/95]
[Filed without Notice 9/25/95—published 10/11/95, effective 12/1/95]
[Filed emergency 11/16/95—published 12/6/95, effective 12/1/95]
[Filed emergency 1/10/96 after Notice 10/11/95—published 1/31/96, effective 2/1/96]
[Filed 1/10/96, Notice 10/11/95—published 1/31/96, effective 4/1/96]
[Filed 8/15/96, Notice 5/8/96—published 9/11/96, effective 11/1/96]
[Filed emergency 9/19/96—published 10/9/96, effective 9/19/96]
[Filed emergency 12/12/96—published 1/1/97, effective 1/1/97]
[Filed 12/12/96, Notice 10/9/96—published 1/1/97, effective 3/1/97]
[Filed emergency 1/15/97—published 2/12/97, effective 3/1/97]
[Filed 3/12/97, Notice 1/1/97—published 4/9/97, effective 6/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed emergency 6/12/97—published 7/2/97, effective 7/1/97]
[Filed emergency 9/16/97—published 10/8/97, effective 10/1/97]
[Filed 9/16/97, Notice 7/2/97—published 10/8/97, effective 12/1/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 3/1/98]
[Filed 12/10/97, Notice 10/8/97—published 12/31/97, effective 3/1/98]

◊Two ARCs
*Effective date of 3/1/92 delayed until adjournment of the 1992 General Assembly by the Administrative Rules Review Committee at its meeting held February 3, 1992.

[Filed emergency 1/14/98 after Notice 11/19/97—published 2/11/98, effective 2/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed 6/10/98, Notice 5/6/98—published 7/1/98, effective 9/1/98]
[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 5/31/99]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 6/1/99]
[Filed 4/15/99, Notice 2/10/99—published 5/5/99, effective 7/1/99]
[Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]
[Filed 6/10/99, Notice 4/21/99—published 6/30/99, effective 9/1/99]
[Filed 8/11/99, Notice 6/30/99—published 9/8/99, effective 11/1/99]
[Filed 12/8/99, Notice 11/3/99—published 12/29/99, effective 3/1/00]

CHAPTER 51
ELIGIBILITY

[Prior to 7/1/83, Social Services[770] Ch 51]
[Prior to 2/11/87, Human Services[498]]

441—51.1(249) Application for other benefits. An applicant or any other person whose needs are included in determining the state supplementary assistance payment must have applied for or be receiving all other benefits, including supplemental security income or aid to dependent children, for which the person may be eligible. The person must cooperate in the eligibility procedures while making application for the other benefits. Failure to cooperate shall result in ineligibility for state supplementary assistance.

This rule is intended to implement Iowa Code section 249.3.

441—51.2(249) Supplementation. Any supplemental payment made on behalf of the recipient from any source other than a nonfederal governmental entity shall be considered as income, and the payment shall be used to reduce the state supplementary assistance payment.

441—51.3(249) Eligibility for residential care.

51.3(1) *Licensed facility.* Payment for residential care shall be made only when the facility in which the applicant or recipient is residing is currently licensed by the department of inspections and appeals pursuant to laws governing health care facilities.

51.3(2) *Physician's statement.* Payment for residential care shall be made only when there is on file an order written by a physician certifying that the applicant or recipient being admitted requires residential care but does not require nursing services. The certification shall be updated whenever a change in the recipient's physical condition warrants reevaluation, but no less than every 12 months.

51.3(3) *Income eligibility.* The resident shall be income eligible when the income according to 52.1(3)*"a"* is less than 31 times the per diem rate of the facility. Partners in a marriage who both enter the same room of the residential care facility in the same month shall be income eligible for the initial month when their combined income according to 52.1(3)*"a"* is less than twice the amount of allowed income for one person (31 times the per diem rate of the facility).

51.3(4) *Diversion of income.* Rescinded IAB 5/1/91, effective 7/1/91.

51.3(5) *Resources.* Rescinded IAB 5/1/91, effective 7/1/91.

This rule is intended to implement Iowa Code section 249.3.

441—51.4(249) Dependent relatives.

51.4(1) *Income.* Income of a dependent relative shall be less than $257. When the dependent's income is from earnings, an exemption of $65 shall be allowed to cover work expense.

51.4(2) *Resources.* The resource limitation for a recipient and a dependent child or parent shall be $2,000. The resource limitation for a recipient and a dependent spouse shall be $3,000. The resource limitation for a recipient, spouse, and dependent child or parent shall be $3,000.

51.4(3) *Living in the home.* A dependent relative shall be eligible until out of the recipient's home for a full calendar month starting at 12:01 a.m. on the first day of the month until 12 midnight on the last day of the same month.

51.4(4) *Dependency.* A dependent relative may be the recipient's ineligible spouse, parent, child, or adult child who is financially dependent upon the recipient. A relative shall not be considered to be financially dependent upon the recipient when the relative is living with a spouse who is not the recipient.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

441—51.5(249) Residence. A recipient of state supplementary assistance shall be living in the state of Iowa.

This rule is intended to implement Iowa Code section 249.3.

441—51.6(249) Lump sum payment. Rescinded IAB 3/4/92, effective 5/1/92.

441—51.7(249) Income from providing room and board. In determining profit from furnishing room and board or providing family life home care, $257 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

441—51.8(249) Furnishing of social security number. As a condition of eligibility applicants or recipients of state supplementary assistance must furnish their social security account numbers or proof of application for the numbers if they have not been issued or are not known and provide their numbers upon receipt.

Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of the numbers when the applicants or recipients are cooperating in providing information necessary for issuance of their social security numbers.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

441—51.9(249) Recovery.

51.9(1) *Definitions.*

"Administrative overpayment" means assistance incorrectly paid to or for the client because of continuing assistance during the appeal process.

"Agency error" means assistance incorrectly paid to or for the client because of action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.
3. Computer input errors.
4. Mathematical errors.
5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the local office.
6. Failure to make prompt revisions in payment following changes in policies requiring the changes as of a specific date.

"Client" means a current or former applicant or recipient of state supplementary assistance.

"Client error" means assistance incorrectly paid to or for the client because the client or client's representative failed to disclose information, or gave false or misleading statements, oral or written, regarding the client's income, resources, or other eligibility and benefit factors. It also means assistance incorrectly paid to or for the client because of failure by the client or client's representative to timely report as defined in rule 441—76.10(249A).

"Department" means the department of human services.

51.9(2) *Amount subject to recovery.* The department shall recover from a client all state supplementary assistance funds incorrectly expended to or on behalf of the client, or when conditional benefits have been granted.

a. The department also shall seek to recover the state supplementary assistance granted during the period of time that conditional benefits were correctly granted the client under the policies of the supplemental security income program.

b. The incorrect expenditures may result from client or agency error, or administrative overpayment.

51.9(3) *Notification.* All clients shall be promptly notified when it is determined that assistance was incorrectly expended. Notification shall include for whom assistance was paid; the time period during which assistance was incorrectly paid; the amount of assistance subject to recovery, when known; and the reason for the incorrect expenditure.

51.9(4) *Source of recovery.* Recovery shall be made from the client or from parents of children under the age of 21 when the parents completed the application and had responsibility for reporting changes. Recovery must come from income, resources, the estate, income tax refunds, and lottery winnings of the client.

51.9(5) *Repayment.* The repayment of incorrectly expended state supplementary assistance funds shall be made to the department.

51.9(6) *Appeals.* The client shall have the right to appeal the amount of funds subject to recovery under the provisions of 441—Chapter 7.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

[Filed 2/19/76, Notice 1/12/76—published 3/8/76, effective 4/12/76]
[Filed 6/25/76, Notice 5/17/76—published 7/12/76, effective 8/16/76]
[Filed 12/17/76, Notice 11/3/76—published 1/12/77, effective 3/1/77]
[Filed emergency 5/24/77—published 6/15/77 effective 7/1/77]
[Filed 3/27/78, Notice 2/8/78—published 4/19/78, effective 5/24/78]
[Filed emergency 6/28/78—published 7/26/78, effective 7/1/78]
[Filed 7/17/78, Notice 5/31/78—published 8/9/78, effective 9/13/78]
[Filed emergency 6/26/79—published 7/25/79, effective 7/1/79]
[Filed emergency 6/30/80—published 7/23/80, effective 7/1/80]
[Filed emergency 6/30/81—published 7/22/81, effective 7/1/81]
[Filed 6/30/81, Notice 4/29/81—published 7/22/81, effective 9/1/81]
[Filed 10/23/81, Notice 9/2/81—published 11/11/81, effective 1/1/82]
[Filed 11/20/81, Notice 9/30/81—published 12/9/81, effective 2/1/82]
[Filed emergency 9/23/82—published 10/13/82, effective 9/23/82]
[Filed emergency 6/17/83—published 7/6/83, effective 7/1/83]
[Filed emergency 11/18/83, after Notice 10/12/83—published 12/7/83, effective 1/1/84]
[Filed emergency 12/11/84—published 1/2/85, effective 1/1/85]
[Filed without Notice 1/22/85—published 2/13/85, effective 4/1/85]
[Filed 3/22/85, Notice 2/13/85—published 4/10/85, effective 6/1/85]
[Filed emergency 12/2/85—published 12/18/85, effective 1/1/86]
[Filed 4/29/86, Notice 3/12/86—published 5/21/86, effective 8/1/86]
[Filed emergency 12/22/86—published 1/14/87, effective 1/1/87]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed emergency 12/10/87—published 12/30/87, effective 1/1/88]
[Filed emergency 12/8/88—published 12/28/88, effective 1/1/89]
[Filed emergency 11/16/89—published 12/13/89, effective 1/1/90]
[Filed 2/16/90, Notice 12/13/89—published 3/7/90, effective 5/1/90]
[Filed emergency 12/13/90—published 1/9/91, effective 1/1/91]
[Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
[Filed 2/14/91, Notice 1/9/91—published 3/6/91, effective 5/1/91]
[Filed 4/11/91, Notice 3/6/91—published 5/1/91, effective 7/1/91]
[Filed emergency 12/11/91—published 1/8/92, effective 1/1/92]
[Filed 2/13/92, Notices 12/25/91, 1/8/92—published 3/4/92, effective 5/1/92]
[Filed emergency 12/1/92—published 12/23/92, effective 1/1/93]
[Filed 2/10/93, Notice 12/23/92—published 3/3/93, effective 5/1/93]
[Filed emergency 12/16/93—published 1/5/94, effective 1/1/94]
[Filed 12/16/93, Notice 10/27/93—published 1/5/94, effective 3/1/94]
[Filed 2/10/94, Notice 1/5/94—published 3/2/94, effective 5/1/94]
[Filed emergency 12/15/94—published 1/4/95, effective 1/1/95]
[Filed 2/16/95, Notice 1/4/95—published 3/15/95, effective 5/1/95]
[Filed emergency 12/12/95—published 1/3/96, effective 1/1/96]
[Filed 2/14/96, Notice 1/3/96—published 3/13/96, effective 5/1/96]
[Filed emergency 12/12/96—published 1/1/97, effective 1/1/97]
[Filed 2/12/97, Notice 1/1/97—published 3/12/97, effective 5/1/97]
[Filed emergency 12/10/97—published 12/31/97, effective 1/1/98]
[Filed 2/11/98, Notice 12/31/97—published 3/11/98, effective 5/1/98]
[Filed emergency 12/9/98—published 12/30/98, effective 1/1/99]
[Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/15/99]
[Filed emergency 12/8/99—published 12/29/99, effective 1/1/00]

CHAPTER 52
PAYMENT

[Prior to 7/1/83, Social Services[770] Ch 52]
[Prior to 2/11/87, Human Services[498]]

441—52.1(249) Assistance standards. Assistance standards are the amounts of money allowed on a monthly basis to recipients of state supplementary assistance in determining financial need and the amount of assistance granted.

52.1(1) *Protective living arrangement.* The following assistance standards have been established for state supplementary assistance for persons living in a protective living arrangement:

Family life home certified under rules in 441—Chapter 111.

$521.20	care allowance
73.00	personal allowance
$594.20	Total

52.1(2) *Dependent relative.* The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

a. Aged or disabled client and a dependent relative $769
b. Aged or disabled client, eligible spouse, and a dependent relative $1026
c. Blind client and a dependent relative $791
d. Blind client, aged or disabled spouse, and a dependent relative $1048
e. Blind client, blind spouse, and a dependent relative $1070

52.1(3) *Residential care.* Payment to a recipient in a residential care facility shall be made on a flat per diem rate of $17.36 or on a cost-related reimbursement system with a maximum reimbursement per diem rate of $24.26. A cost-related per diem rate shall be established for each facility choosing this method of payment according to rule 441—54.3(249).

The facility shall accept the per diem rate established by the department for state supplementary assistance recipients as payment in full from the recipient and make no additional charges to the recipient.

a. All income of a recipient as described in this subrule after the disregards described in this subrule shall be applied to meet the cost of care before payment is made through the state supplementary assistance program.

Income applied to meet the cost of care shall be the income considered available to the resident pursuant to supplemental security income (SSI) policy plus the SSI benefit less the following monthly disregards applied in the order specified:

(1) When income is earned, impairment related work expenses, as defined by SSI plus $65 plus one-half of any remaining earned income.

(2) Effective January 1, 2000, a $73 allowance to meet personal expenses and Medicaid copayment expenses.

(3) When there is a spouse at home, the amount of the SSI benefit for an individual minus the spouse's countable income according to SSI policies. When the spouse at home has been determined eligible for SSI benefits, no income disregard shall be made.

(4) When there is a dependent child living with the spouse at home who meets the definition of a dependent according to the SSI program, the amount of the SSI allowance for a dependent minus the dependent's countable income and the amount of income from the parent at home that exceeds the SSI benefit for one according to SSI policies.

(5) Established unmet medical needs of the resident, excluding private health insurance premiums and Medicaid copayment expenses. Unmet medical needs of the spouse at home, exclusive of health insurance premiums and Medicaid copayment expenses, shall be an additional deduction when the countable income of the spouse at home is not sufficient to cover those expenses. Unmet medical needs of the dependent living with the spouse at home, exclusive of health insurance premiums and Medicaid copayment expenses, shall also be deducted when the countable income of the dependent and the income of the parent at home that exceeds the SSI benefit for one is not sufficient to cover the expenses.

(6) The income of recipients of state supplementary assistance or Medicaid needed to pay the cost of care in another residential care facility, a family life home, an in-home health-related care provider, a home- and community-based waiver setting, or a medical institution is not available to apply to the cost of care. The income of a resident who lived at home in the month of entry shall not be applied to the cost of care except to the extent the income exceeds the SSI benefit for one person or for a married couple if the resident also had a spouse living in the home in the month of entry.

b. Payment is made for only the days the recipient is a resident of the facility. Payment shall be made for the date of entry into the facility, but not the date of death or discharge.

c. Payment shall be made in the form of a grant to the recipient on a post payment basis.

d. Payment shall not be made when income is sufficient to pay the cost of care in a month with less than 31 days, but the recipient shall remain eligible for all other benefits of the program.

e. Payment will be made for periods the resident is absent overnight for the purpose of visitation or vacation. The facility will be paid to hold the bed for a period not to exceed 30 days during any calendar year, unless a family member or legal guardian of the resident, the resident's physician, case manager, or department service worker provides signed documentation that additional visitation days are desired by the resident and are for the benefit of the resident. This documentation shall be obtained by the facility for each period of paid absence which exceeds the 30-day annual limit. This information shall be retained in the resident's personal file. If documentation is not available to justify periods of absence in excess of the 30-day annual limit, the facility shall submit a Case Activity Report, Form AA-4166-0, to the county office of the department to terminate the state supplementary assistance payment.

A family member may contribute to the cost of care for a resident subject to supplementation provisions at rule 441—51.2(249) and any contributions shall be reported to the county office of the department by the facility.

f. Payment will be made for a period not to exceed 20 days in any calendar month when the resident is absent due to hospitalization. A resident may not start state supplementary assistance on reserve bed days.

g. The per diem rate established for recipients of state supplementary assistance shall not exceed the average rate established by the facility for private pay residents.

(1) Residents placed in a facility by another governmental agency are not considered private paying individuals. Payments received by the facility from such an agency shall not be included in determining the average rate for private paying residents.

(2) To compute the facilitywide average rate for private paying residents, the facility shall accumulate total monthly charges for those individuals over a six-month period and divide by the total patient days care provided to this group during the same period of time.

52.1(4) *Blind.* The standard for a blind recipient not receiving another type of state supplementary assistance is $22 per month.

52.1(5) *In-home, health-related care.* Payment to a person receiving in-home, health-related care shall be made in accordance with rules in 441—Chapter 177.

52.1(6) *Minimum income level cases.* The income level of those persons receiving old age assistance, aid to the blind, and aid to the disabled in December 1973 shall be maintained at the December 1973 level as long as the recipient's circumstances remain unchanged and that income level is above current standards. In determining the continuing eligibility for the minimum income level, the income limits, resource limits, and exclusions which were in effect in October 1972 shall be utilized.

This rule is intended to implement Iowa Code sections 234.6, 234.38, 249.2, 249.3, 249.4, and 249A.4.

[Filed 2/19/76, Notice 1/12/76—published 3/8/76, effective 4/12/76]
[Filed emergency 6/9/76—published 6/28/76, effective 7/1/76]
[Filed emergency 7/29/76—published 8/23/76, effective 9/1/76]
[Filed 9/29/76, Notice 8/23/76—published 10/20/76, effective 11/24/76]
[Filed 12/17/76, Notice 11/3/76—published 1/12/77, effective 3/1/77]
[Filed emergency 5/24/77—published 6/15/77, effective 7/1/77]
[Filed 3/27/78, Notice 2/8/78—published 4/19/78, effective 5/24/78]
[Filed emergency 5/8/78—published 5/31/78, effective 5/24/78]
[Filed emergency 6/28/78—published 7/26/78, effective 7/1/78]
[Filed 7/17/78, Notice 5/31/78—published 8/9/78, effective 9/13/78]
[Filed 11/7/78, Notice 4/19/78—published 11/29/78, effective 1/3/79]
[Filed emergency 6/26/79—published 7/25/79, effective 7/1/79]
[Filed emergency 6/30/80—published 7/23/80, effective 7/1/80]
[Filed emergency 6/30/81 —published 7/22/81, effective 7/1/81]
[Filed 2/26/82, Notice 10/28/81—published 3/17/82, effective 5/1/82]
[Filed emergency 5/21/82—published 6/9/82, effective 7/1/82]
[Filed emergency 7/1/82—published 7/21/82, effective 7/1/82]
[Filed 2/25/83, Notice 1/5/83—published 3/16/83, effective 5/1/83]
[Filed emergency 6/17/83—published 7/6/83, effective 7/1/83]
[Filed emergency 10/7/83—published 10/26/83, effective 11/1/83]
[Filed without Notice 10/7/83—published 10/26/83, effective 12/1/83]
[Filed emergency 11/18/83, after Notice 10/12/83—published 12/7/83, effective 1/1/84]
[Filed 11/18/83, Notice 10/12/83—published 12/7/83, effective 2/1/84]
[Filed emergency 6/15/84—published 7/4/84, effective 7/1/84]
[Filed emergency 12/11/84—published 1/2/85, effective 1/1/85]
[Filed emergency 6/14/85—published 7/3/85, effective 7/1/85]
[Filed emergency after Notice 6/14/85, Notice 5/8/85—published 7/3/85, effective 8/1/85]
[Filed emergency 10/1/85—published 10/23/85, effective 11/1/85]
[Filed without Notice 10/1/85—published 10/23/85, effective 12/1/85]
[Filed emergency 12/2/85—published 12/18/85, effective 1/1/86]
[Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 2/1/86]
[Filed emergency 6/26/86—published 7/16/86, effective 7/1/86]
[Filed emergency 12/22/86—published 1/14/87, effective 1/1/87]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed emergency 12/10/87—published 12/30/87, effective 1/1/88]
[Filed emergency 6/9/88—published 6/29/88, effective 7/1/88]
[Filed emergency 12/8/88—published 12/28/88, effective 1/1/89]
[Filed emergency 6/9/89—published 6/28/89, effective 7/1/89]
[Filed 8/17/89, Notice 6/28/89—published 9/6/89, effective 11/1/89]
[Filed emergency 11/16/89—published 12/13/89, effective 1/1/90]

Note: History for Chapter 52 continued on next page.

[Filed 2/16/90, Notice 12/13/89—published 3/7/90, effective 5/1/90]
[Filed emergency 6/20/90—published 7/11/90, effective 7/1/90]
[Filed 8/16/90, Notice 7/11/90—published 9/5/90, effective 11/1/90]
[Filed emergency 12/13/90—published 1/9/91, effective 1/1/91]
[Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
[Filed 2/14/91, Notice 1/9/91—published 3/6/91, effective 5/1/91]
[Filed 4/11/91, Notice 3/6/91—published 5/1/91, effective 7/1/91]
[Filed 9/18/91, Notice 7/24/91—published 10/16/91, effective 12/1/91]
[Filed emergency 12/11/91—published 1/8/92, effective 1/1/92]
[Filed 12/11/91, Notice 10/16/91—published 1/8/92, effective 3/1/92]*
[Filed 2/13/92, Notice 1/8/92—published 3/4/92, effective 5/1/92]
[Filed emergency 4/15/92—published 5/13/92, effective 4/16/92]
[Filed 4/16/92, Notice 1/8/92—published 5/13/92, effective 7/1/92]
[Filed emergency 12/1/92—published 12/23/92, effective 1/1/93]
[Filed 2/10/93, Notice 12/23/92—published 3/3/93, effective 5/1/93]
[Filed emergency 6/11/93—published 7/7/93, effective 7/1/93]
[Filed 8/12/93, Notice 7/7/93—published 9/1/93, effective 11/1/93]
[Filed emergency 12/16/93—published 1/5/94, effective 1/1/94]
[Filed 12/16/93, Notice 10/27/93—published 1/5/94, effective 3/1/94]
[Filed 2/10/94, Notice 1/5/94—published 3/2/94, effective 5/1/94]
[Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
[Filed 8/12/94, Notice 7/6/94—published 8/31/94, effective 11/1/94]
[Filed emergency 10/12/94—published 11/9/94, effective 11/1/94]
[Filed emergency 12/15/94—published 1/4/95, effective 1/1/95]
[Filed 12/15/94, Notice 11/9/94—published 1/4/95, effective 3/1/95]
[Filed 2/16/95, Notice 1/4/95—published 3/15/95, effective 5/1/95]
[Filed emergency 6/7/95—published 7/5/95, effective 7/1/95]
[Filed 8/10/95, Notice 7/5/95—published 8/30/95, effective 11/1/95]
[Filed emergency 10/31/95—published 11/22/95, effective 11/1/95]
[Filed emergency 12/12/95—published 1/3/96, effective 1/1/96]
[Filed 1/10/96, Notice 11/22/95—published 1/31/96, effective 4/1/96]
[Filed 2/14/96, Notice 1/3/96—published 3/13/96, effective 5/1/96]
[Filed emergency 6/13/96—published 7/3/96, effective 7/1/96]
[Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]
[Filed emergency 12/12/96—published 1/1/97, effective 1/1/97]
[Filed 2/12/97, Notice 1/1/97—published 3/12/97, effective 5/1/97]
[Filed emergency 3/12/97—published 4/9/97, effective 4/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed 5/14/97, Notice 4/9/97—published 6/4/97, effective 8/1/97]
[Filed emergency 12/10/97—published 12/31/97, effective 1/1/98]
[Filed 2/11/98, Notice 12/31/97—published 3/11/98, effective 5/1/98]
[Filed emergency 12/9/98—published 12/30/98, effective 1/1/99]
[Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/15/99]
[Filed emergency 12/8/99—published 12/29/99, effective 1/1/00]

*Effective date of 3/1/92 delayed until adjournment of the 1992 General Assembly by the Administrative Rules Review Committee at its meeting held February 3, 1992.

441—65.4(234) Issuance. All food stamp coupons are issued by direct mail except for expedited food stamp benefits, exchange for improperly manufactured or mutilated coupons, and exchange of old series coupons for new series coupons. Expedited food stamp coupons shall be issued over the counter by local or area offices. Persons residing in counties in which a local or area office is not located shall have their expedited food stamp coupons mailed unless the interview is conducted in person at a local or area office in the administrative area in which they reside and benefits are picked up on the day of the interview. Exchanged coupons are issued over the counter by local or area offices. Food stamp recipients may chose to receive and use their benefits by electronic benefit transfer (EBT) instead of food stamp coupons in counties where this option is available. Where the option of EBT issuance is available and the household chooses this option, expedited food stamp benefits may be issued by EBT if expedited time frames can be met. Food stamp benefits for ongoing certifications are mailed or are otherwise made available to the household on a staggered basis during the first 15 days of each month.

65.4(1) When persons reside in counties in which a local or area office is located and have coupons replaced as a result of a mail loss for one month, the coupons shall be mailed to the local or area office in the county in which the persons reside for six months. When persons reside in counties in which a local or area office is not located and have coupons replaced as a result of a mail loss for two months in a six-month period, the coupons shall be mailed to the local or area office to which that county's satellite office is directly assigned for six months except when the mail loss occurs because of the department's failure to mail to the address specified by the household. When a change of mailing address is reported, the old address becomes the wrong address as of the date of the report.

65.4(2) When a household reports a shortage in its mail issuance, the household shall present the coupon books received to an office in the administrative area in which the household resides for examination.

65.4(3) When a household presents $200 or more of old series coupons to be exchanged for new series coupons, the household shall sign a statement that the coupons were validly purchased by the household, telling the approximate dates of purchase, and giving the reasons for the accumulation and the delay in presenting them for exchange.

65.4(4) When a household meets the residency requirements of the food stamp program within the state of Iowa and is eligible for direct mailing, the household may have the coupon allotment sent to any mailing address within the state or to a community or mailing address which does not exceed ten miles beyond the legal boundaries of the state.

65.4(5) Notwithstanding anything to the contrary in these rules or regulations, households applying for initial months' benefits after the fifteenth day of the month and eligible for expedited services who are determined eligible for the initial month and the next subsequent month shall receive their prorated initial month expedited allotment and their first full month's allotment at the same time.

441—65.5(234) Hotline. Rescinded IAB 10/30/91, effective 1/1/92.

441—65.6(234) Delays in certification.

65.6(1) When by the thirtieth day after the date of application the agency cannot take any further action on the application due to the fault of the household, the agency shall give the household an additional 30 days to take the required action. The agency shall send the household a notice of pending status on the thirtieth day.

65.6(2) When there is a delay beyond 60 days from the date of application and the agency is at fault and the application is complete enough to determine eligibility, the application shall be processed. For subsequent months of certification, the agency may require a new application form to be completed when household circumstance indicates changes have occurred or will occur.

65.6(3) When there is a delay beyond 60 days from the date of application and the agency is at fault and the application is not complete enough to determine eligibility, the application shall be denied. The household shall be notified to file a new application and that it may be entitled to retroactive benefits.

441—65.7(234) Expedited service. Notwithstanding anything to the contrary in these rules or regulations, the following shall apply to households applying for expedited service:

65.7(1) *Period of certification.* When a household has been certified under expedited service provisions and verification of eligibility factors has been postponed, the household shall be certified only for the month of application.

65.7(2) *Homelessness.* Homelessness shall not be a criteria for eligibility for expedited service.

441—65.8(234) Deductions.

65.8(1) *Standard allowance for households with heating or air-conditioning expenses.* When a household is receiving heating or air-conditioning service for which it is required to pay or receives assistance under the Low-Income Home Energy Assistance Act (LIHEAA) of 1981, the heating or air-conditioning standard shall be allowed. The standard allowance for utilities which include heating or air-conditioning costs is a single utility standard. This standard is $202 effective August 1, 1991. Beginning October 1, 1992, this allowance shall change annually effective each October 1 using the percent increase reported in the consumer price index monthly periodical for January for fuels and other utilities for the average percent increases for the prior year for all urban consumers United States city average. Any numeral after the second digit following the decimal point will be dropped in this calculation. Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar. The cent amount will be included when calculating the next year's increase.

65.8(2) *Heating expense.* Heating expense is the cost of fuel for the primary heating service normally used by the household.

65.8(3) *Telephone standard.* When a household is receiving telephone service for which it is required to pay and the household is not entitled or chooses not to receive a single standard allowance, a standard allowance shall be allowed. This standard shall be $18 effective August 1, 1991. Beginning October 1, 1992, this allowance shall change annually effective each October 1 using the percent increase reported in the consumer price index monthly periodical for January for telephone service for the average percent increases for the prior year for all urban consumers United States city average. Any numeral after the second digit following the decimal point will be dropped in this calculation. Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar. The cent amount will be included when calculating the next year's increase.

65.8(4) *Energy assistance payments.* For purposes of prorating the low income energy assistance payments to determine if households have incurred out-of-pocket expenses for utilities, the heating period shall consist of the months from October through March.

65.8(5) *Standard allowance for households without heating or air-conditioning expenses.* When a household is receiving some utility service other than heating or air-conditioning for which it is responsible to pay, or receives a fee for excess utility cost which can be for excess heating or air-conditioning expense, the following nonheating or air-conditioning standard shall be allowed. These utility expenses cannot be solely for telephone. This standard is $103 effective August 1, 1991. Beginning October 1, 1992, this allowance shall change annually effective each October 1 using the percent increase reported in the consumer price index monthly periodical for January for electric service for the average percent increases for the prior year for all urban consumers United States city average. Any numeral after the second digit following the decimal point will be dropped in this calculation. Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar. The cent amount will be included when calculating the next year's increase.

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) *Sharing utility standards.* When a household lives with another individual not participating in the food stamp program, another household participating in the food stamp program, or both, and they share utility expenses, the appropriate utility standard shall be prorated between the food stamp households and the nonparticipating household members who share the expense. The share of the standard shall be determined by considering each food stamp household to be one share of the standard and the other non-food stamp household members who agree to share utility expenses as one share of the standard. When households or individuals share the telephone standard, each must be responsible for a share of the basic fee for telephone service to receive a share of the telephone standard.

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.

65.19(17) *Additional information and verification.* The household which has submitted a complete monthly report shall submit, or cooperate in obtaining, additional information and verification needed to determine eligibility or benefits within ten calendar days of the agency's written request.

65.19(18) *Household membership.* Except for applications received during a period of time when the household was not certified to receive food stamps, household membership shall be determined as it was or is anticipated to be on the first day of the issuance month. Changes in household membership occurring on or after the first day of the month which are reported during the month in which the change occurs, will not be considered until the following month. Except for qualified residents of a shelter for battered women and children, individuals shall not be added to the household prior to their being removed from another household where they were receiving food stamps.

65.19(19) *Certification periods.* Households in which all members are receiving family investment program (FIP) cash assistance, a family medical assistance program (FMAP), or FMAP-related medical assistance will be assigned certification periods of 6 to 12 months. However, a certification period of less than 6 months may be assigned at application or recertification to match the food stamp recertification date and the public assistance review date.

Households in which one or more members are not receiving FIP cash assistance, or FMAP or FMAP-related medical assistance, and which are not required to file a monthly report will be assigned certification periods of one to six months based on the predictability of the household's circumstances except when the adult members are all 60 years of age or older with very stable income such as social security, supplemental security income, pensions or disability payments. These households shall be certified for up to 12 months.

65.19(20) *Households subject to retrospective budgeting.* Notwithstanding anything to the contrary in these rules or regulations, all households are subject to retrospective budgeting except:

a. Migrant or seasonal farm worker households.

b. Households whose adult members are all elderly or disabled with no earned income.

c. Households in beginning months as outlined in subrule 65.19(8).

d. Households in which all members are homeless individuals.

e. Households residing on a reservation.

65.19(21) *Self-employment income for less than a year.* Notwithstanding anything to the contrary in these rules or regulations, self-employment income received over a period of less than a year shall be prorated over that period and used to calculate benefits only retrospectively. This income will be used prospectively to determine eligibility.

441—65.20(234) Notice of expiration issuance.

65.20(1) Issuance of the automated Notice of Expiration will occur with the mailing of Form 470-2881, Review/Recertification Eligibility Document, or a hand-issued Form FP 2310-0, Notice of Expiration.

65.20(2) Issuance of the Notice of Expiration, Form FP-2310-0, will occur at the time of certification if the household is certified for one month, or for two months, and will not receive the Automated Notice of Expiration.

441—65.21(234) Claims.

65.21(1) *Time period.* Inadvertent household error and agency error claims shall be calculated back to the month the error originally occurred to a maximum of three years prior to month of discovery of the overissuance.

65.21(2) *Suspension status.* Rescinded IAB 7/1/98, effective 8/5/98.

65.21(3) *Application of restoration of lost benefits.* If the household is entitled to any benefits which it did not receive due to delay or error by the department, these benefits shall first be applied to any claims (including a suspended claim) with any remaining benefits being issued to the household.

65.21(4) *Demand letters.* Households which have food stamp claims shall return the repayment agreement no later than 20 days after the date the demand letter is mailed. For agency error and inadvertent household error, households which do not return the repayment agreement by the due date or do not timely request an appeal, allotment reduction shall occur with the first allotment issued after the expiration of the Notice of Adverse Action time period. For intentional program violation, households which do not return the repayment agreement by the due date, allotment reduction shall occur with the next month's allotment.

65.21(5) *Calculating the amount of an overissuance.* The earned income deduction shall not be allowed when a claim is calculated to determine an overissuance caused by the failure of a household to timely report earned income.

65.21(6) *Collection of claims.* All claims for overissued food stamps can be collected by allotment reduction. Individuals not participating in the food stamp program who are 180 days delinquent in repaying their overissuance will be subject to collection action through the treasury offset program (TOP) which includes, but is not limited to, federal salary offset and federal tax refund offset as outlined in rule 441—11.5(234).

441—65.22(234) Verification.

65.22(1) *Required verification.*

a. Income. Households shall be required to verify income at time of application, recertification and when income is reported or when income changes with the following exceptions:

1. Households are not required to verify the public assistance grant.
2. Households are not required to verify job insurance benefits when the information is available to the department from the department of employment services.
3. Households are only required to verify interest income at the time of application and recertification.

b. Dependent care costs. Households shall be required to verify dependent care costs at the time of application and recertification, when reported in the monthly reporting system, and whenever a change is reported (when a household is not in the monthly reporting system).

c. Medical expenses. Households shall be required to verify medical expenses at the time of application and recertification and whenever a change is reported.

d. Shelter costs. Households shall be required to verify shelter costs (other than utility expenses) at the time of application and recertification and whenever the household reports moving or a change in its shelter costs.

e. Utilities. Households eligible for a utility standard shall verify responsibility for the utility expense that makes them eligible for that standard when not previously verified, whenever the household has moved or a change in responsibility for utility expenses is reported.

[Filed emergency 12/11/84—published 1/2/85, effective 1/1/85]
[Filed 1/21/85, Notice 11/21/84—published 2/13/85, effective 4/1/85]
[Filed emergency 2/19/85—published 3/13/85, effective 3/1/85]
[Filed emergency 3/4/85—published 3/27/85, effective 4/1/85]
[Filed 3/4/85, Notice 12/19/84—published 3/27/85, effective 5/1/85]
[Filed 3/4/85, Notice 1/2/85—published 3/27/85, effective 5/1/85]
[Filed emergency 3/22/85—published 4/10/85, effective 4/1/85]
[Filed 3/22/85, Notice 2/13/85—published 4/10/85, effective 6/1/85]
[Filed 5/29/85, Notices 3/27/85◊—published 6/19/85, effective 8/1/85]
[Filed emergency 7/26/85—published 8/14/85, effective 8/1/85]
[Filed 7/26/85, Notice 6/5/85—published 8/14/85, effective 10/1/85]
[Filed 10/1/85, Notice 8/14/85—published 10/23/85, effective 12/1/85]
[Filed 1/22/86, Notice 12/4/85—published 2/12/86, effective 4/1/86]
[Filed emergency 3/21/86—published 4/9/86, effective 3/21/86]
[Filed emergency 4/29/86 after Notice 3/12/86—published 5/21/86, effective 5/1/86]
[Filed emergency 5/28/86 after Notice 4/9/86—published 6/18/86, effective 6/1/86]
[Filed emergency 6/20/86 after Notice 4/23/86—published 7/16/86, effective 7/1/86]
[Filed emergency 6/20/86—published 7/16/86, effective 7/1/86]
[Filed emergency 7/25/86—published 8/13/86, effective 8/1/86]
[Filed emergency 9/26/86 after Notice 4/9/86—published 10/22/86, effective 9/26/86]
[Filed emergency 9/26/86—published 10/22/86, effective 10/1/86]
[Filed 9/26/86, Notice 8/13/86—published 10/22/86, effective 12/1/86]
[Filed 11/14/86, Notice 10/8/86—published 12/3/86, effective 2/1/87]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed emergency 1/15/87—published 2/11/87, effective 2/1/87]
[Filed 1/15/87, Notice 12/3/86—published 2/11/87, effective 4/1/87]
[Filed emergency 2/25/87—published 3/25/87, effective 2/25/87]
[Filed emergency 3/26/87—published 4/22/87, effective 4/1/87]
[Filed emergency 4/23/87—published 5/20/87, effective 4/23/87]
[Filed 5/29/87, Notice 4/22/87—published 6/17/87, effective 8/1/87]
[Filed 7/24/87, Notice 5/20/87—published 8/12/87, effective 10/1/87]
[Filed without Notice 8/28/87—published 9/23/87, effective 11/1/87]
[Filed 9/24/87, Notice 8/12/87—published 10/21/87, effective 12/1/87]
[Filed 11/25/87, Notice 9/23/87—published 12/16/87, effective 2/1/88]
[Filed without Notice 11/25/87—published 12/16/87, effective 2/1/88]
[Filed 6/9/88, Notice 4/20/88—published 6/29/88, effective 9/1/88]
[Filed 8/4/88, Notice 6/29/88—published 8/24/88, effective 10/1/88]
[Filed emergency 9/1/88—published 9/21/88, effective 9/1/88]
[Filed emergency 9/21/88—published 10/19/88, effective 10/1/88]
[Filed without Notice 10/27/88—published 11/16/88, effective 1/1/89]
[Filed without Notice 12/8/88—published 12/28/88, effective 2/1/89]

◊Two ARCs

[Filed emergency 2/16/89—published 3/8/89, effective 2/16/89]
[Filed 4/13/89, Notice 2/22/89—published 5/3/89, effective 7/1/89]
[Filed emergency 9/15/89—published 10/4/89, effective 10/1/89]
[Filed 11/20/89, Notices 9/20/89, 10/4/89—published 12/13/89, effective 2/1/90]
[Filed emergency 2/16/90—published 3/7/90, effective 4/1/90]
[Filed 4/13/90, Notice 3/7/90—published 5/2/90, effective 7/1/90]
[Filed 4/11/91, Notices 2/6/91, 3/6/91—published 5/1/91, effective 7/1/91]
[Filed emergency 7/10/91 after Notice 5/15/91—published 8/7/91, effective 8/1/91]
[Filed without Notice 9/18/91—published 10/16/91, effective 11/21/91]
[Filed emergency 10/10/91 after Notice 8/21/91—published 10/30/91, effective 11/1/91]
[Filed emergency 10/10/91—published 10/30/91, effective 11/21/91]
[Filed 10/10/91, Notice 9/4/91—published 10/30/91, effective 1/1/92]
[Filed 1/16/92, Notice 9/18/91—published 2/5/92, effective 4/1/92]
[Filed 1/29/92, Notice 10/16/91—published 2/19/92, effective 3/25/92]
[Filed emergency 5/13/92—published 6/10/92, effective 5/14/92]
[Filed 7/17/92, Notice 6/10/92—published 8/5/92, effective 10/1/92]
[Filed emergency 10/15/92 after Notice 8/19/92—published 11/11/92, effective 11/1/92]
[Filed 10/15/92, Notice 8/19/92—published 11/11/92, effective 12/16/92]
[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]
[Filed 12/16/93, Notice 10/13/93—published 1/5/94, effective 3/1/94]
[Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
[Filed emergency 8/12/94—published 8/31/94, effective 9/1/94]
[Filed emergency 10/12/94—published 11/9/94, effective 11/1/94]
[Filed 10/12/94, Notice 8/31/94—published 11/9/94, effective 1/1/95]
[Filed emergency 11/9/94—published 12/7/94, effective 12/1/94]
[Filed emergency 1/11/95 after Notice 11/23/94—published 2/1/95, effective 2/1/95]
[Filed 1/11/95, Notice 11/23/94—published 2/1/95, effective 4/1/95]
[Filed 2/16/95, Notice 11/23/94—published 3/15/95, effective 5/1/95]
[Filed emergency 9/25/95—published 10/11/95, effective 10/1/95]
[Filed emergency 11/16/95—published 12/6/95, effective 12/1/95]
[Filed 11/16/95, Notice 10/11/95—published 12/6/95, effective 2/1/96]
[Filed emergency 1/10/96—published 1/31/96, effective 2/1/96]
[Filed 1/10/96, Notice 12/6/95—published 1/31/96, effective 4/1/96]
[Filed 3/13/96, Notice 1/31/96—published 4/10/96, effective 6/1/96]
[Filed 8/15/96, Notice 5/8/96—published 9/11/96, effective 11/1/96]
[Filed emergency 9/19/96—published 10/9/96, effective 9/21/96]*
[Filed without Notice 9/19/96—published 10/9/96, effective 11/22/96]**
[Filed emergency 10/9/96—published 11/6/96, effective 10/10/96]
[Filed 12/12/96, Notices 10/9/96, 11/6/96—published 1/1/97, effective 3/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed 6/10/98, Notice 5/6/98—published 7/1/98, effective 8/5/98]
[Filed 8/12/98, Notices 6/17/98, 7/1/98—published 9/9/98, effective 11/1/98]
[Filed emergency 10/14/98—published 11/4/98, effective 11/1/98]
[Filed 12/9/98, Notice 11/4/98—published 12/30/98, effective 3/1/99]
[Filed 7/15/99, Notice 6/2/99—published 8/11/99, effective 11/1/99]
[Filed emergency 10/13/99 after Notice 8/25/99—published 11/3/99, effective 11/1/99]
[Filed 12/8/99, Notice 8/25/99—published 12/29/99, effective 5/1/00]

*Amendments to subrules 65.30(5) and 65.130(7) and rules 65.32(234) and 65.132(234) effective 10/1/96.
** Subrules 65.8(11) and 65.108(11) effective 1/1/97.

75.1(38) *Continued Medicaid for disabled children from August 22, 1996.* Medical assistance shall be available to persons who were receiving SSI as of August 22, 1996, and who would continue to be eligible for SSI but for Section 211(a) of the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193).

75.1(39) *Working persons with disabilities.*

a. Medical assistance shall be available to all persons who meet all of the following conditions:

(1) They are disabled as determined pursuant to rule 441—75.20(249A), except that being engaged in substantial gainful activity will not preclude a determination of disability.

(2) They are less than 65 years of age.

(3) They are members of families (including families of one) whose income is less than 250 percent of the most recently revised official federal poverty level for the family. Family income shall include gross income of all family members, less supplemental security income program disregards, exemptions, and exclusions, including the earned income disregards.

(4) They receive earned income from employment or self-employment or are eligible under paragraph *"c."*

(5) They would be eligible for medical assistance under another coverage group set out in this rule (other than the medically needy coverage groups at subrule 75.1(35)), disregarding all income, up to $10,000 of available resources, and any additional resources held by the disabled individual in a retirement account, a medical savings account, or an assistive technology account. For this purpose, disability shall be determined as under subparagraph (1) above.

(6) They have paid any premium assessed under paragraph *"b"* below.

b. A monthly premium shall be assessed when gross income of the eligible individual is greater than 150 percent of the federal poverty level for an individual. Gross income includes all earned and unearned income of the eligible individual.

Beginning with the month of application, the monthly premium amount shall be established for a six-month period based on projected average monthly income for the six-month period. The monthly premium established for a six-month period shall not be increased during the six-month period but may be reduced or eliminated prospectively during the period if a reduction in projected average monthly income is documented.

Eligible persons with income above 150 percent of the federal poverty level are required to complete and return Form 470-3693, Earned Income Statement for Premium, with income information to determine premium amount.

(1) Premiums shall be assessed as follows:

INCOME OF THE ELIGIBLE INDIVIDUAL ABOVE:	MONTHLY PREMIUM
150% of Federal Poverty Level	$20
174% of Federal Poverty Level	$38
198% of Federal Poverty Level	$56
222% of Federal Poverty Level	$74
246% of Federal Poverty Level	$92
270% of Federal Poverty Level	$110
294% of Federal Poverty Level	$128
318% of Federal Poverty Level	$146
342% of Federal Poverty Level	$164
366% of Federal Poverty Level	$182
390% of Federal Poverty Level	$201

(2) Eligibility for a month is contingent upon the payment of any assessed premium for the month. Except as provided in subparagraph (3), continued eligibility is contingent upon the payment of all assessed premiums.

(3) When the department notifies the applicant of the amount of the premiums, the applicant shall pay any premiums due as follows:

1. Payment of the premium for the two months following the month of approval must be received by the fourteenth day of the month following the month of approval.

2. Payments for retroactive months, months prior to the month of approval, and approval month must be paid within 60 days of notice by the department to receive coverage for those months of eligibility.

3. After the month following the month of approval, premiums must be received no later than the fourteenth day of the month prior to the month of coverage.

When the premium is not received by the due date, Medicaid eligibility shall be canceled, except when the premium not received is due during or after the month of coverage.

At the request of the client, premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

(4) An individual's case may be reopened no more than once every six months when a premium due is not received as described within this subparagraph. However, the premium must be paid in full within the calendar month following the month of nonpayment for reopening.

(5) Premiums may be submitted in the form of cash, money orders, or personal checks to the department at the following address: Department of Human Services, Supply Unit A-Level, Room 77, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319.

(6) Except as provided in subparagraph (3), failure to pay the premium in accordance with policy established under this paragraph shall result in cancellation of Medicaid. Once an individual is canceled from Medicaid due to nonpayment of premiums, the individual must reapply to establish Medicaid eligibility unless the reopening provisions of this subrule apply.

(7) A medical card shall not be issued for a month until any premium due has been received. When a premium is not received by the due date, a notice of decision will be issued to cancel Medicaid, except as provided in subparagraph (3). The notice will include reopening provisions that apply if payment is received and appeal rights.

(8) Form 470-3694, Billing Statement, and Form 470-3695, Reminder of Nonpayment, shall be used for billing and collection.

c. Persons receiving assistance under this coverage group who become unable to work due to a change in their medical condition or who lose employment shall remain eligible for a period of six months from the month of the change in their medical condition or loss of employment as long as they intend to return to work and continue to meet all other eligibility criteria under this subrule.

d. For purposes of this rule, the following definitions apply:

"Assistive technology" is the systematic application of technologies, engineering, methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, technology devices and assistive technology services.

"Assistive technology accounts" include funds in contracts, savings, trust or other financial accounts, financial instruments or other arrangements with a definite cash value set aside and designated for the purchase, lease or acquisition of assistive technology, assistive technology devices or assistive technology services. Assistive technology accounts must be held separate from other accounts and funds and must be used to purchase, lease or otherwise acquire assistive technology, assistive technology services or assistive technology devices for the working person with a disability when a physician, certified vocational rehabilitation counselor, licensed physical therapist, licensed speech therapist, or licensed occupational therapist has established the medical necessity of the device, technology, or service and determined the technology, device, or service can reasonably be expected to enhance the individual's employment.

"Assistive technology device" is any item, piece of equipment, product system or component part, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities or address or eliminate architectural, communication, or other barriers confronted by persons with disabilities.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device or other assistive technology. It includes, but is not limited to, services referred to or described in the Assistive Technology Act of 1998, 29 U.S.C. 3002(4).

"Family," if the individual is under 18 and unmarried, includes parents living with the individual, siblings under 18 and unmarried living with the individual, and children of the individual who live with the individual. If the individual is 18 years of age or older, or married, "family" includes the individual's spouse living with the individual and any children living with the individual who are under 18 and unmarried. No other persons shall be considered members of an individual's family. An individual living alone or with others not listed above shall be considered to be a family of one.

"Medical savings account" means an account exempt from federal income taxation pursuant to Section 220 of the United States Internal Revenue Code (26 U.S.C. § 220).

"Retirement account" means any retirement or pension fund or account, listed in Iowa Code section 627.6(8)*"f"* as exempt from execution, regardless of the amount of contribution, the interest generated, or the total amount in the fund or account.

This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.6.

441—75.2(249A) Medical resources. Medical resources include health and accident insurance, eligibility for care through Veterans' Administration, specialized child health services, Title XVIII of the Social Security Act (Medicare) and other resources for meeting the cost of medical care which may be available to the recipient. These resources must be used when reasonably available.

When a medical resource may be obtained by filing a claim or an application, and cooperating in the processing of that claim or application, that resource shall be considered to be reasonably available, unless good cause for failure to obtain that resource is determined to exist.

Payment will be approved only for those services or that part of the cost of a given service for which no medical resources exist unless pay and chase provisions as defined in rule 441—75.25(249A) are applicable. Persons who have been approved by the Social Security Administration for supplemental security income shall complete Form MA-2124-0, Supplementary Information—Medicaid Application—Retroactive Medicaid Eligibility, and return it to the local office of the department of human services. Persons eligible for Part B of the Medicare program shall make assignment to the department on Form MA-2124-0, Supplementary Information—Medicaid Application—Retroactive Medicaid Eligibility.

75.2(1) The recipient, or one acting on the recipient's behalf, shall file a claim, or submit an application, for any reasonably available medical resource, and shall also cooperate in the processing of the claim or application. Failure to do so, without good cause, shall result in the termination of medical assistance benefits. The medical assistance benefits of a minor or a legally incompetent adult recipient shall not be terminated for failure to cooperate in reporting medical resources.

75.2(2) When a parent or payee, acting on behalf of a minor, or of a legally incompetent adult recipient, fails to file a claim or application for reasonably available medical resources, or fails to cooperate in the processing of a claim or application, without good cause, the medical assistance benefits of the parent or payee shall be terminated.

75.2(3) Good cause for failure to cooperate in the filing or processing of a claim or application shall be considered to exist when the recipient, or one acting on behalf of a minor, or of a legally incompetent adult recipient, is physically or mentally incapable of cooperation. Good cause shall be considered to exist when cooperation is reasonably anticipated to result in:

a. Physical or emotional harm to the recipient for whom medical resources are being sought.

b. Physical or emotional harm to the parent or payee, acting on the behalf of a minor, or of a legally incompetent adult recipient, for whom medical resources are being sought.

75.2(4) The determination of good cause shall be made by the Utilization Review Section of the Bureau of Medical Services. This determination shall be based on information and evidence provided by the recipient, or by one acting on the recipient's behalf.

75.2(5) When the department receives information through a cross-match with department of employment services and child support recovery files which indicates the absent parent of a Medicaid-eligible child is employed, the department shall send Form 470-0413, Absent Parent Insurance Questionnaire, to the absent parent in order to obtain health insurance coverage information. If the absent parent does not respond within 15 days from the date Form 470-0413 is sent, the department shall send Form 470-2240, Employer Insurance Questionnaire, to the employer in order to obtain the health insurance coverage information.

This rule is intended to implement Iowa Code sections 249A.4, 249A.5 and 249A.6.

441—75.3(249A) Acceptance of other financial benefits. An applicant or recipient shall take all steps necessary to apply for and, if entitled, accept any income or resources for which the applicant or recipient may qualify, unless the applicant or recipient can show an incapacity to do so. Sources of benefits may be, but are not limited to, contributions, annuities, pensions, retirement or disability benefits, veterans' compensation and pensions, old-age, survivors, and disability insurance, railroad retirement benefits, black lung benefits, or unemployment compensation.

75.3(1) When it is determined that the supplemental security income (SSI)-related applicant or recipient may be entitled to other cash benefits, a Notice Regarding Acceptance of Other Cash Benefit, Form MA-3017-0, shall be sent to the applicant or recipient.

75.3(2) The SSI-related applicant or recipient must express an intent to apply or refuse to apply for other benefits within five working days from the date the notice is issued. A signed refusal to apply or failure to return the form shall result in denial of the application or cancellation of Medicaid unless the applicant or recipient is mentally or physically incapable of filing the claim for other cash benefits.

75.3(3) When the SSI-related applicant or recipient is physically or mentally incapable of filing the claim for other cash benefits, the local office shall request the person acting on behalf of the recipient to pursue the potential benefits.

75.3(4) The SSI-related applicant or recipient shall cooperate in applying for the other benefits. Failure to timely secure the other benefits shall result in cancellation of Medicaid.

EXCEPTION: An applicant or recipient shall not be required to apply for supplementary security income to receive Medicaid under subrule 75.1(17).

This rule is intended to implement Iowa Code sections 249A.3 and 249A.4.

441—75.4(249A) Medical assistance lien.

75.4(1) The agency within the department of human services responsible for administration of the department's lien is the division of medical services. When payment is made by the department for medical care or expenses through the medical assistance program on behalf of a recipient, the department shall have a lien, to the extent of those payments, to all monetary claims which the recipient may have against third parties. A lien under this section is not effective unless the department files a notice of lien with the clerk of the district court in the county where the recipient resides and with the recipient's attorney when the recipient's eligibility for medical assistance is established. The notice of lien shall be filed before the third party has concluded a final settlement with the recipient, the recipient's attorney, or other representative. The third party shall obtain a written determination from the department concerning the amount of the lien before a settlement is deemed final for purposes of this section. A compromise, including, but not limited to, notification, settlement, waiver or release, of a claim under this section does not defeat the department's lien except pursuant to the written agreement of the director or the director's designee under which the department would receive less than full reimbursement of the amounts it expended. A settlement, award, or judgment structured in any manner not to include medical expenses or an action brought by a recipient or on behalf of a recipient which fails to state a claim for recovery of medical expenses does not defeat the department's lien if there is any recovery on the recipient's claim.

(4) Other property essential to the means of self-support of either spouse as to warrant its exclusion under the SSI program.

(5) Resources of a blind or disabled person who has a plan for achieving self-support as determined by division of vocational rehabilitation or the department of human services.

(6) For natives of Alaska, shares of stock held in a regional or a village corporation, during the period of 20 years in which the stock is inalienable, as provided in Section 7(h) and Section 8(c) of the Alaska Native Claims Settlement Act.

(7) Assistance under the Disaster Relief Act and Emergency Assistance Act or other assistance provided pursuant to federal statute on account of a presidentially declared major disaster and interest earned on these funds for the nine-month period beginning on the date these funds are received or for a longer period where good cause is shown.

(8) Any amount of underpayment of SSI or social security benefit due either spouse for one or more months prior to the month of receipt. This exclusion shall be limited to the first six months following receipt.

(9) A life insurance policy(ies) whose total face value is $1500 or less per spouse.

(10) An amount, not in excess of $1500 for each spouse that is separately identifiable and has been set aside to meet the burial and related expenses of that spouse. The amount of $1500 shall be reduced by an amount equal to the total face value of all insurance policies which are owned by the person or spouse and the total of any amounts in an irrevocable trust or other irrevocable arrangement available to meet the burial and related expenses of that spouse.

(11) Federal assistance paid for housing occupied by the spouse.

(12) Assistance from a fund established by a state to aid victims of crime for nine months from receipt when the client demonstrates that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.

(13) Relocation assistance provided by a state or local government to a client comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which is subject to the treatment required by Section 216 of the Act.

d. Method of attribution. The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized and community spouse as of the first moment of the first day of the month of the spouse's first entry to a medical facility. However, if one-half of the resources is less than $24,000, then $24,000 shall be protected for the community spouse. Also, when one-half the resources attributed to the community spouse exceeds $84,120, the amount over $84,120 shall be attributed to the institutionalized spouse. (The maximum limit shall be indexed annually by the consumer price index.)

If the institutionalized spouse has transferred resources to the community spouse under a court order for the support of the community spouse, the amount transferred shall be the amount attributed to the community spouse if it exceeds the specified limits above.

e. Notice and appeal rights. The department shall provide each spouse a notice of the attribution results. The notice shall state that either spouse has a right to appeal the attribution if the spouse believes:

(1) That the attribution is incorrect, or

(2) That the amount of income generated by the resources attributed to the community spouse is inadequate to raise the community spouse's income to the minimum monthly maintenance allowance.

If an attribution has not previously been appealed, either spouse may appeal the attribution upon the denial of an application for Medicaid benefits based on the attribution.

f. Appeals. Hearings on attribution decisions shall be governed by procedures in 441—Chapter 7. If the hearing establishes that the community spouse's resource allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance allowance, there shall be substituted an amount adequate to provide the minimum monthly maintenance needs allowance.

(1) To establish that the resource allowance is inadequate and receive a substituted allowance, the applicant must provide verification of all the income of the community spouse.

(2) The amount of resources adequate to provide the community spouse minimum maintenance needs allowance shall be based on the cost of a single premium lifetime annuity with monthly payments equal to the difference between the monthly maintenance needs allowance and other countable income not generated by either spouse's countable resources.

(3) The resources necessary to provide the minimum maintenance needs allowance shall be based on the maintenance needs allowance as provided by these rules at the time of the filing of the appeal.

(4) To receive the substituted allowance, the applicant shall be required to obtain three estimates of the cost of the annuity and these amounts shall be averaged to determine the cost of an annuity.

(5) The averaged estimates representing the cost of an annuity shall be substituted for the amount of resources attributed to the community spouse when the amount of resources previously determined is less than the averaged cost of an annuity. If the amount of resources previously attributed for the community spouse is greater than the averaged cost of an annuity, there shall be no substitution for the cost of the annuity and the attribution will remain as previously determined.

(6) The applicant shall not be required to purchase this annuity as a condition of Medicaid eligibility.

(7) If the appellant provides a statement from three insurance companies that they will not provide estimates due to the potential annuitant's age, the amount to be set aside shall be determined using the following calculation: The difference between the community spouse's gross monthly income not generated by countable resources (times 12) and the minimum monthly maintenance needs allowance (times 12) shall be multiplied by the annuity factor for the age of the community spouse in the Table for an Annuity for Life published at the end of Iowa Code chapter 450. This amount shall be substituted for the amount of resources attributed to the community spouse pursuant to subparagraph 75.5(3)*"f"*(5).

75.5(4) Consideration of resources of married people.

a. One spouse in a medical facility who entered the facility on or after September 30, 1989.

(1) Initial month. When the institutionalized spouse is expected to stay in a medical facility less than 30 consecutive days, the resources of both spouses shall be considered in determining initial Medicaid eligibility.

When the institutionalized spouse is expected to be in a medical facility 30 consecutive days or more, only the resources not attributed to the community spouse according to subrule 75.5(3) shall be considered in determining initial eligibility for the institutionalized spouse.

The amount of resources counted for eligibility for the institutionalized spouse shall be the difference between the couple's total resources at the time of application and the amount attributed to the community spouse under this rule.

(2) Ongoing eligibility. After the month in which the institutionalized spouse is determined eligible, no resources of the community spouse shall be deemed available to the institutionalized spouse during the continuous period in which the spouse is in an institution. Resources which are owned wholly or in part by the institutionalized spouse and which are not transferred to the community spouse shall be counted in determining ongoing eligibility. The resources of the institutionalized spouse shall not count for ongoing eligibility to the extent that the institutionalized spouse intends to transfer and does transfer the resources to the community spouse within 90 days unless unable to effect the transfer.

(3) Exception based on estrangement. When it is established by a disinterested third-party source that the institutionalized spouse is estranged from the community spouse, Medicaid eligibility will not be denied on the basis of resources when the applicant can demonstrate hardship.

"Qualifying quarters" includes all of the qualifying quarters of coverage as defined under Title II of the Social Security Act worked by a parent of an alien while the alien was under age 18 and all of the qualifying quarters worked by a spouse of the alien during their marriage if the alien remains married to the spouse or the spouse is deceased. No qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien if the parent or spouse of the alien received any federal means-tested public benefit during the period for which the qualifying quarter is so credited.

75.11(2) *Citizenship and alienage.*

a. To be eligible for Medicaid a person must be one of the following:

(1) A citizen or national of the United States.

(2) A qualified alien as defined in subrule 75.11(1) residing in the United States prior to August 22, 1996.

(3) A qualified alien who entered the United States on or after August 22, 1996, and who is:

- A refugee who is admitted to the United States under Section 207 of the Immigration and Nationality Act;
- Granted asylum under Section 208 of the Immigration and Nationality Act;
- An alien whose deportation is being withheld under Section 243(h) of the Immigration and Nationality Act; or
- A veteran with a discharge characterized as an honorable discharge and not on account of alienage, an alien who is on active duty in the Armed Forces of the United States other than active duty for training, or the veteran's spouse or unmarried dependent child.

(4) A qualified alien who entered the United States on or after August 22, 1996, and who has resided in the United States for a period of at least five years.

b. As a condition of eligibility, each recipient shall complete and sign Form 470-2549, Statement of Citizenship Status, attesting to the recipient's citizenship or alien status. The form shall be signed by the recipient, or when the recipient is incompetent or deceased, someone acting responsibly on the recipient's behalf. When both parents are in the home, both shall sign the form. An adult recipient shall sign the form for dependent children. As a condition of eligibility, all applicants for Medicaid shall attest to their citizenship status by signing the application form which contains the same declaration. As a condition of continued eligibility, recipients of SSI-related Medicaid not actually receiving SSI who have been continuous recipients since August 1, 1988, shall attest to their citizenship status by signing the application form which contains a similar declaration at time of review.

75.11(3) *Deeming of sponsor's income and resources.*

a. In determining the eligibility and amount of benefits of an alien, the income and resources of the alien shall be deemed to include the following:

(1) The income and resources of any person who executed an affidavit of support pursuant to Section 213A of the Immigration and Nationality Act (as implemented by the Personal Responsibility and Work Reconciliation Act of 1996) on behalf of the alien.

(2) The income and resources of the spouse of the person who executed the affidavit of support.

b. When an alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act or has worked 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with qualifying quarters as defined at subrule 75.11(1) and, in the case of any qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means-tested public benefits, as defined in subrule 75.11(1), during any period, deeming of the sponsor's income and resources no longer applies.

75.11(4) *Eligibility for payment of emergency medical services.* Aliens who do not meet the provisions of subrule 75.11(2) and who would otherwise qualify except for their alienage status are eligible to receive Medicaid for emergency medical care as defined in subrule 75.11(1). To qualify under these provisions, the alien must meet all eligibility criteria, including state residence requirements provided at rules 441—75.10(249A) and 441—75.53(249A). However, the requirements of rule 441—75.7(249A) and subrules 75.11(2) and 75.11(3) do not apply to eligibility for aliens seeking the care and services necessary for the treatment of an emergency medical condition not related to an organ transplant procedure furnished on or after August 10, 1993.

441—75.12(249A) Persons who enter jails or penal institutions. A person who enters a jail or penal institution, including a work release center, shall not be eligible for Medicaid.

441—75.13(249A) Categorical relatedness.

75.13(1) *FMAP-related Medicaid eligibility.* Medicaid eligibility for persons who are under the age of 21, pregnant women, children, or specified relatives of dependent children who are not blind or disabled shall be determined using the income criteria in effect for the family medical assistance program (FMAP) as provided in subrule 75.1(14) unless otherwise specified. Income shall be considered prospectively.

75.13(2) *SSI-related Medicaid.* Except as otherwise provided in subrule 75.13(3) and in 441—Chapters 75 and 76, persons who are 65 years of age or older, blind, or disabled are eligible for Medicaid only if eligible for the Supplemental Security Income (SSI) program administered by the United States Social Security Administration. The statutes, regulations, and policy governing eligibility for SSI are found in Title XVI of the Social Security Act (42 U.S.C. Sections 1381 to 1383f), in the federal regulations promulgated pursuant to Title XVI (20 CFR Sections 416.101 to 416.2227), and in Part 5 of the Program Operations Manual System published by the United States Social Security Administration. The Program Operations Manual System is available at Social Security Administration offices in Ames, Burlington, Carroll, Cedar Rapids, Clinton, Creston, Davenport, Decorah, Des Moines, Dubuque, Fort Dodge, Iowa City, Marshalltown, Mason City, Oskaloosa, Ottumwa, Sioux City, Spencer, Storm Lake, and Waterloo, or through the Department of Human Services, Division of Medical Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

For SSI-related Medicaid eligibility purposes, income shall be considered prospectively.

Income that a person contributes to a trust as specified at 75.24(3)*"b"* shall not be considered for purposes of determining eligibility for SSI-related Medicaid.

For purposes of determining eligibility for SSI-related Medicaid, the SSI conditional eligibility process, by which a client may receive SSI benefits while attempting to sell excess resources, found at 20 CFR 416.1240 to 416.1245, is not considered an eligibility methodology.

Valuation of life estates and remainder interests. In the absence of other evidence, the value of a life estate or remainder interest in property shall be determined using the following table by multiplying the fair market value of the entire underlying property (including all life estates and all remainder interests) by the life estate or remainder interest decimal corresponding to the age of the life estate holder or other person whose life controls the life estate.

If a Medicaid applicant or recipient disputes the value determined using the following table, the applicant or recipient may submit other evidence and the value of the life estate or remainder interest shall be determined based on the preponderance of all the evidence submitted to or obtained by the department, including the value given by the following table.

75.16(2) *Allowable deductions from income.* In determining the amount of client participation, the department allows the following deductions from the client's income, taken in the order they appear:

a. Ongoing personal needs allowance. All clients shall retain $30 of their monthly income for a personal needs allowance with the following exception. If the client is a veteran or surviving spouse of a veteran who receives a Veterans' Administration pension subject to limitation of $90 after the month of entry pursuant to 38 U.S.C. Section 3203(f)(2), the veteran or surviving spouse of a veteran shall retain $90 from the veteran's pension for their personal needs allowance beginning the month after entry to a medical institution. The $90 allowance from a veteran's pension is in lieu of the $30 allowance from any income, not in addition thereto.

If the client has earned income, an additional $65 is added to the ongoing personal needs allowance from the earned income only.

b. Personal needs in the month of entry.

(1) Single person. A single person shall be given an allowance for stated home living expenses during the month of entry, up to the amount of the SSI benefit for a single person.

(2) Spouses entering institutions together and living together. Partners in a marriage who enter a medical institution in the same month and live in the same room shall be given an allowance for stated home living expenses during the month of entry, up to the amount of the SSI benefit for a couple.

(3) Spouses entering an institution together but living apart. Partners in a marriage who enter a medical institution during the same month and who are considered separately for eligibility shall each be given an allowance for stated home living expenses during the month of entry, up to one-half of the amount of the SSI benefit for a married couple. However, if the income of one spouse is less than one-half of the SSI benefit for a couple, the remainder of the allowance shall be given to the other spouse. If the couple's eligibility is determined together, an allowance for stated home living expenses shall be given to them during the month of entry up to the SSI benefit for a married couple.

(4) Community spouse enters a medical institution. When the second member of a married couple enters a medical institution in a later month, that spouse shall be given an allowance for stated expenses during the month of entry, up to the amount of the SSI benefit for one person.

c. Personal needs in the month of discharge. The client shall be allowed a deduction for home living expenses in the month of discharge. The amount of the deduction shall be the SSI benefit for one person (or for a couple, if both members are discharged in the same month). This deduction does not apply when a spouse is at home.

d. Maintenance needs of spouse and other dependents.

(1) Persons covered. An ongoing allowance shall be given for the maintenance needs of a community spouse. The allowance is limited to the extent that income of the institutionalized spouse is made available to or for the benefit of the community spouse. If there are minor or dependent children, dependent parents, or dependent siblings of either spouse who live with the community spouse, an ongoing allowance shall also be given to meet their needs.

(2) Income considered. The verified gross income of the spouse and dependents shall be considered in determining maintenance needs. The gross income of the spouse and dependent shall include all monthly earned and unearned income and assistance from the family investment program (FIP), supplemental security income (SSI), and state supplementary assistance (SSA). It shall also include the proceeds of any annuity or contract for sale of real property. Otherwise, the income shall be considered as the SSI program considers income. In addition, the spouse and dependents shall be required to apply for every income benefit for which they are eligible except that they shall not be required to accept SSI, FIP or SSA in lieu of the maintenance needs allowance. Failure to apply for all benefits shall mean reduction of the maintenance needs allowance by the amount of the anticipated income from the source not applied for.

(3) Needs of spouse. The maintenance needs of the spouse shall be determined by subtracting the spouse's gross income from $2,103. (This amount shall be indexed for inflation annually according to the consumer price index.)

However, if either spouse established through the appeal process that the community spouse needs income above $2,103, due to exceptional circumstances resulting in significant financial duress, an amount adequate to provide additional income as is necessary shall be substituted.

Also, if a court has entered an order against an institutionalized spouse for monthly income to support the community spouse, then the community spouse income allowance shall not be less than this amount.

(4) Needs of other dependents. The maintenance needs of the other dependents shall be established by subtracting each person's gross income from 133 percent of the monthly federal poverty level for a family of two and dividing the result by three. (Effective July 1, 1992, the percent shall be 150 percent.)

e. Maintenance needs of children (without spouse). When the client has children under 21 at home, an ongoing allowance shall be given to meet the children's maintenance needs.

The income of the children is considered in determining maintenance needs. The children's countable income shall be their gross income less the disregards allowed in the FIP program.

The children's maintenance needs shall be determined by subtracting the children's countable income from the FIP payment standard for that number of children. (However, if the children receive FIP, no deduction is allowed for their maintenance needs.)

f. Client's medical expenses. A deduction shall be allowed for the client's incurred expenses for medical or remedial care that are not subject to payment by a third party. This includes Medicare premiums and other health insurance premiums, deductibles or coinsurance, and necessary medical or remedial care recognized under state law but not covered under the state Medicaid plan.

This rule is intended to implement Iowa Code sections 239.5 and 249A.4.

441—75.17(249A) Verification of pregnancy. For the purpose of establishing Medicaid eligibility for pregnant women under this chapter, a signed statement from a maternal health center, family planning agency, physician's office, physician-directed qualifying provider, or advanced registered nurse practitioner who is a certified nurse midwife, as specified under the federal Social Security Act, Subsection 1902, shall serve as verification of pregnancy. Additionally, the number of fetuses shall be verified if more than one exists, and the probable date of conception shall be established when necessary to determine eligibility. When an examination is required and other medical resources are not available to meet the expense of the examination, the provider shall be authorized to make the examination and submit the claim for payment.

441—75.18(249A) Continuous eligibility for pregnant women. A pregnant woman who applies for Medicaid prior to the end of her pregnancy and subsequently establishes initial Medicaid eligibility under the provisions of this chapter shall remain continuously eligible throughout the pregnancy and the 60-day postpartum period, as provided in subrule 75.1(24), regardless of any changes in family income.

[Filed emergency 6/11/93—published 7/7/93, effective 7/1/93]
[Filed emergency 6/11/93 after Notice 4/28/93—published 7/7/93, effective 7/1/93]
[Filed 7/14/93, Notice 5/12/93—published 8/4/93, effective 10/1/93]
[Filed 8/12/93, Notice 7/7/93—published 9/1/93, effective 11/1/93]
[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]
[Filed 9/17/93, Notice 7/21/93—published 10/13/93, effective 12/1/93]
[Filed emergency 11/12/93—published 12/8/93, effective 1/1/94]
[Filed emergency 12/16/93—published 1/5/94, effective 1/1/94]
[Filed without Notice 12/16/93—published 1/5/94, effective 2/9/94]
[Filed 12/16/93, Notices 10/13/93, 10/27/93—published 1/5/94, effective 3/1/94]
[Filed 2/10/94, Notices 12/8/93, 1/5/94◊—published 3/2/94, effective 5/1/94]
[Filed 3/10/94, Notice 2/2/94—published 3/30/94, effective 6/1/94]
[Filed 4/14/94, Notice 2/16/94—published 5/11/94, effective 7/1/94]
[Filed 5/11/94, Notice 3/16/94—published 6/8/94, effective 8/1/94]
[Filed 6/16/94, Notice 4/27/94—published 7/6/94, effective 9/1/94]
[Filed 9/15/94, Notice 8/3/94—published 10/12/94, effective 11/16/94]
[Filed 10/12/94, Notice 8/17/94—published 11/9/94, effective 1/1/95]
[Filed emergency 12/15/94—published 1/4/95, effective 1/1/95]
[Filed 12/15/94, Notices 10/26/94, 11/9/94—published 1/4/95, effective 3/1/95]
[Filed 2/16/95, Notices 11/23/94, 12/21/94, 1/4/95—published 3/15/95, effective 5/1/95]
[Filed 4/13/95, Notices 2/15/95, 3/1/95—published 5/10/95, effective 7/1/95]
[Filed emergency 9/25/95—published 10/11/95, effective 10/1/95]
[Filed 11/16/95, Notices 9/27/95, 10/11/95—published 12/6/95, effective 2/1/96]
[Filed emergency 12/12/95—published 1/3/96, effective 1/1/96]
[Filed 12/12/95, Notice 10/25/95—published 1/3/96, effective 3/1/96]
[Filed 2/14/96, Notice 1/3/96—published 3/13/96, effective 5/1/96]
[Filed 4/10/96, Notice 2/14/96—published 5/8/96, effective 7/1/96]
[Filed emergency 9/19/96—published 10/9/96, effective 9/19/96]
[Filed 10/9/96, Notice 8/28/96—published 11/6/96, effective 1/1/97]
[Filed emergency 12/12/96—published 1/1/97, effective 1/1/97]◊
[Filed 12/12/96, Notices 9/11/96, 10/9/96—published 1/1/97, effective 3/1/97]
[Filed 2/12/97, Notice 1/1/97—published 3/12/97, effective 5/1/97]
[Filed 3/12/97, Notice 1/1/97—published 4/9/97, effective 6/1/97]
[Filed 4/11/97, Notice 2/26/97—published 5/7/97, effective 7/1/97]
[Filed emergency 9/16/97—published 10/8/97, effective 10/1/97]
[Filed 9/16/97, Notice 7/16/97—published 10/8/97, effective 12/1/97]
[Filed emergency 12/10/97—published 12/31/97, effective 1/1/98]
[Filed emergency 12/10/97 after Notices 10/22/97, 11/5/97—published 12/31/97, effective 1/1/98]
[Filed emergency 1/14/98 after Notice 11/19/97—published 2/11/98, effective 2/1/98]
[Filed 2/11/98, Notice 12/31/97—published 3/11/98, effective 5/1/98]◊
[Filed 3/11/98, Notice 1/14/98—published 4/8/98, effective 6/1/98]
[Filed 4/8/98, Notice 2/11/98—published 5/6/98, effective 7/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed emergency 6/25/98—published 7/15/98, effective 7/1/98]
[Filed 7/15/98, Notices 6/3/98—published 8/12/98, effective 10/1/98]
[Filed 8/12/98, Notices 6/17/98, 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 9/15/98, Notice 7/15/98—published 10/7/98, effective 12/1/98]

◊Two or more ARCs

[Filed 11/10/98, Notice 9/23/98—published 12/2/98, effective 2/1/99]
[Filed emergency 12/9/98—published 12/30/98, effective 1/1/99]
[Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/15/99]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 6/1/99]
[Filed 3/10/99, Notice 1/27/99—published 4/7/99, effective 7/1/99]
[Filed 4/15/99, Notice 2/10/99—published 5/5/99, effective 7/1/99]
[Filed 5/14/99, Notice 4/7/99—published 6/2/99, effective 8/1/99]
[Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]
[Filed 6/10/99, Notice 4/21/99—published 6/30/99, effective 9/1/99]
[Filed emergency 8/12/99 after Notice 6/16/99—published 9/8/99, effective 9/1/99]
[Filed 8/11/99, Notice 6/30/99—published 9/8/99, effective 11/1/99]
[Filed emergency 11/10/99 after Notice 10/6/99—published 12/1/99, effective 12/1/99]
[Filed emergency 12/8/99—published 12/29/99, effective 1/1/00]
[Filed 12/8/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]
[Filed 12/8/99, Notice 10/6/99—published 12/29/99, effective 3/1/00]

441—95.13(17A) Appeals. Rescinded IAB 8/11/99, effective 10/1/99.

441—95.14(252B) Termination of services.

95.14(1) *Case closure criteria.* In order to be eligible for closure, the case shall meet the requirements of subrule 95.14(3) or at least one of the following criteria:

a. There is no ongoing support obligation and arrearages are under $500 or unenforceable under state law.

b. The noncustodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken.

c. Paternity cannot be established because:

(1) The child is at least 18 years old and action to establish paternity is barred by the statute of limitations.

(2) A genetic test or a court or administrative process has excluded the putative father and no other putative father can be identified.

(3) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the child support recovery unit with the recipient of services.

d. The noncustodial parent's location is unknown, and the child support recovery unit has made diligent efforts using multiple sources, in accordance with regulations in 45 CFR 303.3, as amended to March 10, 1999, which outline use of appropriate sources in established time frames to locate the noncustodial parent, all of which have been unsuccessful, within one of the following time frames:

(1) Over a three-year period when there is sufficient information to initiate an automated locate effort.

(2) Over a one-year period when there is not sufficient information to initiate an automated locate effort.

e. The noncustodial parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential. The child support recovery unit must have determined that no income or assets are available to the noncustodial parent which could be levied or attached for the payment of support.

f. The noncustodial parent is a citizen of, and lives in, a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets, and there is not a reciprocity agreement with that country.

g. There has been a finding of good cause or other exception in a public assistance case as specified in 441—subrules 41.22(8) through 41.22(12) and 441—subrule 75.14(3), including a determination that support enforcement may not proceed without risk or harm to the child or caretaker relative.

h. The child support recovery unit documents failure by the child support agency of another state which requested services to take an action which is essential for the next step in providing services.

95.14(2) *Notification.* In cases meeting the criteria of subrule 95.14(1), paragraphs *"a"* through *"f"* and *"h,"* the child support recovery unit shall send notification of its intent to close the case to the recipient of services or the child support agency in the state which requested services in writing 60 calendar days prior to case closure. The notice shall be sent to the recipient of services or the state requesting services at the last-known address stating the reason for denying or terminating services, the effective date, and an explanation of the right to request a hearing according to 441—Chapter 7. Closure of the case following notification is subject to the following:

a. If, in response to the notice, the recipient of services or the state requesting services supplies information which could lead to the establishment of paternity or a support order or enforcement of an order, the case shall be kept open.

b. The recipient of services may request that the case be reopened at a later date if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order by completing a new application and paying any applicable fee.

95.14(3) *Reasons for termination of services to nonpublic assistance recipients.* Services to a recipient of nonpublic assistance support services may be terminated when one of the case closure criteria of paragraphs 95.14(1)*"a"* through *"f"* or *"h"* is met or may occur for one or more of the following reasons:

a. A written or oral request is received from the recipient to close the case when there is no assignment to the state of arrearages which accrued under a support order.

b. The child support recovery unit is unable to contact the recipient of services within a 60-calendar-day period despite an attempt by letter sent by first-class mail to the last-known address.

c. The recipient of services has failed to cooperate with the child support recovery unit, the circumstances of the noncooperation have been documented, and an action by the recipient of services is essential for the next step in providing services. (See rule 441—95.19(252B).)

d. The child support recovery unit has provided location-only services.

e. The child support recovery unit has determined that it would not be in the best interest of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending.

95.14(4) *Notification in nonpublic assistance cases.* Notification shall be provided to nonpublic assistance cases in the manner and under the conditions stated in subrule 95.14(2), except for cases terminated for the reasons listed in paragraphs 95.14(3)*"a"* and *"d."* If the case was closed because the child support recovery unit was unable to contact the recipient of services as provided in paragraph 95.14(3)*"b,"* the case shall be kept open if contact is reestablished with the recipient of services prior to the effective date of the closure.

This rule is intended to implement Iowa Code sections 252B.4, 252B.5 and 252B.6.

441—95.15(252B) Child support recovery unit attorney.

95.15(1) *State's representative.* An assistant attorney general, assistant county attorney, or independent contract attorney employed by or under contract with the child support recovery unit represents only the state of Iowa. The sole attorney-client relationship for the child support recovery unit attorney is between the attorney and the state of Iowa. A private attorney acting under 1997 Iowa Acts, House File 612, section 35, is not a child support recovery unit attorney, and is not a party to the action.

95.15(2) *Provision of services.* The special role of the child support recovery unit attorney is limited by the attorney-client relationship between the attorney and the state of Iowa. The provision of legal services by the child support recovery unit attorney is limited as follows:

a. The child support recovery unit attorney shall not represent any person or entity other than the state of Iowa in the course of the attorney's employment by or contractual relationship with the child support recovery unit.

b. The child support recovery unit attorney shall issue written disclosure of the attorney-client relationship between the attorney and the state of Iowa to recipients of child support enforcement services and to all parties in a review and adjustment proceeding.

95.15(3) *Communication concerning case circumstances.*

a. The child support recovery unit shall provide case status information upon written request by any recipient of child support enforcement services or any party under the review and adjustment procedure, unless otherwise prohibited by state or federal statute or rules pertaining to confidentiality.

b. All communications with other parties will be directed to those parties personally, unless a licensed attorney has entered an appearance or notified the child support recovery unit in writing that the attorney is representing a party. If any party is represented by counsel, all communications shall be directed to counsel for that party.

c. When a party is receiving public assistance, the child support recovery unit shall refer any suspected fraud or questionable aid to dependent children expenditures to the appropriate governmental agencies.

This rule is intended to implement Iowa Code sections 252B.5 to 252B.7 and 598.21.

441—95.16(252B) Handling and use of federal 1099 information. Data from the collection and reporting system is matched with federal 1099 records for information on assets and income. Verified 1099 information may be used for: establishing support orders, modifying support orders under the review and adjustment process and enforcing payment of support debts.

95.16(1) *Security of 1099 information.* Information received from the federal source, 1099, shall be safeguarded in accordance with Internal Revenue Code Section 6103(p)(4). Information shall be kept in a secure section of the state computer system and not released until verified by a third party.

95.16(2) *Verification of 1099 information.* Prior to release of any information to the local child support recovery office, the information shall be verified by a third party as follows:

a. When information indicates there may be assets available from a financial institution, the child support recovery unit shall secure verification of these assets from the financial institution on Form 470-3170, Asset Verification Form.

b. When address information is received, the child support recovery unit shall secure verification of the address information from the post office on Form 470-0176, Address Information Request.

c. When employment information is received, the child support recovery unit shall secure verification of the employment from the employer on Form 470-0177, Employer Information Request.

This rule is intended to implement Iowa Code section 252B.9.

441—95.17(252B) Effective date of support. For all original orders established by the child support recovery unit, the effective date of the support obligation under the orders shall be the twentieth day following the date the order is prepared by the unit, unless otherwise specified.

441—95.18(252B) Continued services available to canceled family investment program (FIP) or Medicaid recipients. Support services shall automatically be provided to persons who were eligible to receive support services as recipients of FIP or Medicaid and who were canceled from FIP or Medicaid. Continued support services shall not be provided to a person who has been canceled from FIP or Medicaid when a claim of good cause, as defined at 441—subrule 41.22(8) or 441—subrule 75.14(3), as appropriate, was valid at the time assistance was canceled or when one of the reasons for termination of services, listed at rule 441—95.14(252B), applies to the case.

Support services shall be provided to eligible persons without application or application fee, but subject to applicable enforcement fees.

95.18(1) *Notice of services.* Within 45 days from the date FIP assistance is canceled or within 15 days from the date the unit is notified of the cancellation of assistance, the department shall forward Form CS-1113, Notice of Continued Support Services, to a person's last-known address to inform the person of eligibility for and duration of the continued services.

95.18(2) *Termination of services.* A person may request the department to terminate support services at any time by the completion and return of the appropriate portion of Form CS-1113, Notice of Continued Support Services, or in any other form of written communication, to the child support recovery unit.

Continued support services may be terminated at any time for any of the reasons listed in rule 441—95.14(252B).

95.18(3) *Reapplication for services.* A person whose services were denied or terminated may reapply for services under this chapter by completing the application process and paying the application fee described in subrule 95.2(4).

This rule is intended to implement Iowa Code section 252B.4.

441—95.19(252B) Cooperation of public assistance recipients in establishing and obtaining support. If a person who is a recipient of FIP or Medicaid is required to cooperate with the child support recovery unit in establishing paternity; in establishing, modifying, or enforcing child or medical support; or in enforcing spousal support, the following shall apply:

95.19(1) *Cooperation defined.* The person shall cooperate in good faith in obtaining support for persons whose needs are included in the assistance grant or Medicaid household, except when good cause or other exception as defined in 441—subrule 41.22(8) or 75.14(8) for refusal to cooperate, is established.

a. The person shall cooperate in the following areas:

(1) Identifying and locating the parent of the child for whom assistance or Medicaid is claimed.

(2) Establishing the paternity of a child born out of wedlock for whom assistance or Medicaid is claimed.

(3) Obtaining support payments for the person and the child for whom assistance is claimed, and obtaining medical support for the person and child for whom Medicaid is claimed.

b. Cooperation is defined as including the following actions by the person if the action is requested by the child support recovery unit:

(1) Providing the name of the noncustodial parent and additional necessary information.

(2) Appearing at the child support recovery unit to provide verbal or written information or documentary evidence known to, possessed by, or reasonably obtained by the person that is relevant to achieving the objectives of the child support recovery program.

(3) Appearing at judicial or other hearings, proceedings or interviews.

(4) Providing information or attesting to the lack of information, under penalty of perjury.

(5) If the paternity of the child has not been legally established, submitting to blood or genetic tests pursuant to a judicial or administrative order. The person may be requested to sign a voluntary affidavit of paternity after being given notice of the rights and consequences of signing such an affidavit as required by the statute in Iowa Code section 252A.3A. However, the person shall not be required to sign an affidavit or otherwise relinquish the right to blood or genetic tests.

c. The person shall cooperate with the child support recovery unit to the extent of supplying all known information and documents pertaining to the location of the noncustodial parent and taking action as may be necessary to secure or enforce a support obligation or establish paternity or to secure medical support. This includes completing and signing documents determined to be necessary by the state's attorney for any relevant judicial or administrative process.

95.19(2) *Failure to cooperate.* The local child support recovery unit shall make the determination of whether or not a person has cooperated with the unit. The child support recovery unit shall send notice of a determination of noncooperation to the person on Form 470-3400, Notice of Noncooperation, and notify the FIP and Medicaid programs, as appropriate, of the noncooperation determination and the reason for the determination. The FIP and Medicaid programs shall take appropriate sanctioning actions as provided in statute and rules.

95.19(3) *Good cause or other exception.*

a. A person who is a recipient of FIP assistance may claim a good cause or other exception for not cooperating, taking into consideration the best interests of the child as provided in 441—subrules 41.22(8) through 41.22(12).

b. A person who is a recipient of Medicaid may claim a good cause or other exception for not cooperating, taking into consideration the best interests of the child as provided in 441—subrule 75.14(3).

This rule is intended to implement Iowa Code section 252B.3.

441—95.20(252B) Cooperation of public assistance applicants in establishing and obtaining support. If a person who is an applicant of FIP or Medicaid is required to cooperate in establishing paternity, in establishing, modifying, or enforcing child or medical support, or in enforcing spousal support, the requirements in 441—subrule 41.22(6) and rule 441—75.14(249A) shall apply. The appropriate staff in the FIP and Medicaid programs are designees of the child support recovery unit to determine noncooperation and issue notices of that determination.

This rule is intended to implement Iowa Code section 252B.3.

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.

[Filed 2/19/76, Notice 1/12/76—published 3/8/76, effective 4/12/76]
[Filed emergency 11/21/80 after Notice 10/1/80—published 12/10/80, effective 11/21/80]
[Filed 10/23/81, Notice 9/2/81—published 11/11/81, effective 12/16/81]
[Filed 11/19/82, Notice 9/29/82—published 12/8/82, effective 1/12/83◊]
[Filed 11/18/83, Notice 9/28/83—published 12/7/83, effective 2/1/84]
[Filed 8/31/84, Notice 7/18/84—published 9/26/84, effective 11/1/84]
[Filed emergency 9/28/84—published 10/24/84, effective 10/1/84]
[Filed 4/29/85, Notice 10/24/84—published 5/22/85, effective 7/1/85]
[Filed 7/26/85, Notice 5/22/85—published 8/14/85, effective 10/1/85]
[Filed 5/28/86, Notice 3/26/86—published 6/18/86, effective 8/1/86]
[Filed 12/22/86, Notice 11/5/86—published 1/14/87, effective 3/1/87]
[Filed 12/11/86, Notice 11/5/86—published 1/14/87, effective 3/1/87]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed emergency 7/14/89 after Notice 5/31/89—published 8/9/89, effective 8/1/89]
[Filed 12/15/89, Notice 11/1/89—published 1/10/90, effective 3/1/90]
[Filed 8/16/90, Notice 6/27/90—published 9/5/90, effective 11/1/90]
[Filed 9/28/90, Notice 8/8/90—published 10/17/90, effective 12/1/90]
[Filed emergency 10/12/90 after Notice 8/22/90—published 10/31/90, effective 10/13/90]
[Filed 10/12/90, Notice 8/22/90—published 10/31/90, effective 1/1/91]
[Filed emergency 6/12/92—published 7/8/92, effective 7/1/92]
[Filed 8/14/92, Notice 7/8/92—published 9/2/92, effective 11/1/92]
[Filed 8/12/93, Notice 6/23/93—published 9/1/93, effective 11/1/93]
[Filed 6/7/95, Notice 4/26/95—published 7/5/95, effective 9/1/95]
[Filed 2/14/96, Notice 12/20/95—published 3/13/96, effective 5/1/96]
[Filed 10/9/96, Notice 8/14/96—published 11/6/96, effective 1/1/97]
[Filed emergency 6/12/97—published 7/2/97, effective 7/1/97]
[Filed 9/16/97, Notice 7/2/97—published 10/8/97, effective 12/1/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 8/1/99]
[Filed 7/14/99, Notice 5/19/99—published 8/11/99, effective 10/1/99*]
[Filed 12/8/99, Notice 10/20/99—published 12/29/99, effective 3/1/00]

◊Two ARCs
*Effective date of 95.1, definition of "Date of collection," and 95.3 delayed 70 days by the Administrative Rules Review Committee at its meeting held September 15, 1999; delayed until the end of the 2000 Session of the General Assembly at its meeting held October 11, 1999.

CHAPTER 177
IN-HOME HEALTH RELATED CARE

[Prior to 7/1/83, Social Services[770] Ch 148]
[Previously appeared as Ch 148—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services [498]]

441—177.1(249) In-home health related care. In-home health related care is a program of nursing care in an individual's own home to provide personal services to an individual because such individual's state of physical or mental health prevents independent self-care.

441—177.2(249) Own home. Own home means an individual's house, apartment, or other living arrangement intended for single or family residential use.

441—177.3(249) Service criteria. The client shall require health care services that would require the supervision of a professional registered nurse working under the certification of a physician.

177.3(1) Skilled services may include but not be limited to:

a. Gavage feedings of individuals unable to eat solid foods.

b. Intravenous therapy administered only by a registered nurse.

c. Intramuscular injections required more than once or twice a week, excluding diabetes.

d. Catheterizations, continuing care of indwelling catheters with supervision of irrigations and changing of Foley catheter when required.

e. Inhalation therapy.

f. Care of decubiti and other ulcerated areas, noting and reporting to physician.

g. Rehabilitation services including, but not limited to: bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activity of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation and behavior modification.

h. Tracheotomy care.

i. Colostomy care until the individual is capable of maintaining the colostomy personally.

j. Care of medical conditions out of control which includes brittle diabetes and terminal conditions.

k. Postsurgical nursing care, but only for short time periods, and primarily for individuals with complications following surgery, or with the need for frequent dressing changes.

l. Monitoring medications needed for close supervision of medications because of fluctuating physical or psychological conditions, i.e., hypertensives, digitalis preparations, narcotics.

m. Diets which are therapeutic and require evaluation at frequent intervals.

n. Vital signs which is the recording and reporting of change in vital signs to the attending physician.

177.3(2) Personal care services may include but not be limited to:

a. Supervision on a 24-hour basis for physical or emotional needs.

b. Helping client with bath, shampoo, oral hygiene.

c. Helping client with toileting.

d. Helping client in and out of bed and with ambulation.

e. Helping client to reestablish activities of daily living.

f. Assisting with oral medications ordinarily self-administered and ordered by the physician.

g. Performing incidental household services which are essential to the client's health care at home and are necessary to prevent or postpone institutionalization.

441—177.4(249) Eligibility.

177.4(1) *Eligible individual.*

a. The individual shall be eligible for supplemental security income in every respect except for income.

b. The physician's certification shall include a statement of the specific health care services and that the services can be provided in the individual's own home. The certification shall be given on Form SS-1719-0, Assessment of Functional Capacity of Client and Recommendation for Services, or on a similar plan of care form presently used by public health agencies.

c. The individual shall live in the individual's own home.

d. The client shall require and be receiving qualified health care services. Qualified health care services are health care services supervised by a registered nurse and approved by a physician.

177.4(2) *Relationship to other programs.* In-home health related care shall be provided only when other existing programs cannot meet the client's need.

177.4(3) *Maximum costs.* The maximum cost of service shall be $466.49. The provider shall accept the payment made and shall make no additional charges to the recipient or others.

177.4(4) *Service plan.* A complete service plan shall be prepared which includes the services needed, the plan for providing these services, and the health care plan defined in rule 177.6(249).

177.4(5) *Certification procedure.* The approval by the area office of the department of human services of the case plan shall constitute certification and approval for payment.

177.4(6) *Temporary absence from home.* The client will remain eligible and payment will be made for services for a period not to exceed 15 days in any calendar month when the client is absent from the home for a temporary period. Payment will not be authorized for over 15 days for any continuous absence whether or not the absence extends into a succeeding month or months.

177.4(7) *Income for adults.* The gross income of the individual and spouse, living in the home, shall be limited to $466.49 per month if one needs care or $932.98 if both need care, with the following disregards:

a. The amount of the basic supplemental security income standard for an individual or a couple, as applicable.

b. When income is earned, $65.00 plus one-half of any remaining income.

c. The amount of the supplemental security income standard for a dependent plus any established unmet medical needs, for each dependent living in the home. Any income of the dependent shall be applied to the dependent's needs before making this disregard.

d. The amount of the established medical needs of the ineligible spouse which are not otherwise met.

e. The amount of the established medical needs of the applicant or recipient which are not otherwise met and would not be met if the individual were eligible for the medical assistance program.

f. Rescinded, effective 7/1/84.

177.4(8) *Income for children.*

a. All income received by the parents in the home shall be deemed to the child with the following disregards:

(1) The amount of the basic supplemental security income standard for an individual when there is one parent in the home or for a couple when there are two parents in the home.

(2) The amount of the basic supplemental security income standard for a dependent for each ineligible child in the home.

(3) The amount of the unmet medical needs of the parents and ineligible dependents.

(4) When all income is earned, an additional basic supplemental security income standard for an individual in a one-parent home or for a couple in a two-parent home.

(5) When the income is both earned and unearned, $65.00 plus one-half of the remainder of the earned income.

b. The income of the child shall be limited to $466.49 per month with the following disregards:

(1) The amount of the basic supplemental security income standard for an individual.

(2) The amount of the established medical needs of the child which are not otherwise met and would not be met if the child were eligible for the medical assistance program.

(3) One-third of the child support payments received from an absent parent.

c. Rescinded, effective 7/1/84.

177.4(9) *Payment.* The client or the person legally designated to handle the client's finances shall be the sole payee for payments made under the program and shall be responsible for making payment to the provider except when the client payee becomes incapacitated or dies while receiving service.

a. The department shall have the authority to issue one payment to a provider on behalf of a client payee who becomes incapacitated or dies while receiving service.

b. When continuation of an incapacitated client payee in the program is appropriate, the department shall assist the client and the client's family to legally designate a person to handle the client's finances. Guardians, conservators, protective or representative payees, or persons holding power of attorney are considered to be legally designated.

c. Payment for the program shall be approved effective as of the date of application or the date all eligibility requirements are met and qualified health care services are provided, whichever is later, notwithstanding 42 U.S.C. 1382(c)(7).

177.4(10) *Application.* Application for in-home health related care shall be made on Form PA-1107-0, Application for Medical Assistance or State Supplementary Assistance. An eligibility determination shall be completed within 30 days from the date of the application, unless one or more of the following conditions exist:

a. An application has been filed and is pending for federal supplemental security income benefits.

b. The application is pending because the department has not received information, which is beyond the control of the client or the department.

c. The application is pending due to the disability determination process performed through the department.

d. The application is pending because the SS-1511-0, Provider Agreement, has not been completed and completion is beyond control of the client. When a Provider Agreement cannot be completed due to client's failure to locate a provider, applications shall not be held pending beyond 60 days from the date of application.

This rule is intended to implement Iowa Code section 249.3(2)*"a."*

441—177.5(249) Providers of health care services.

177.5(1) *Age.* The provider shall be at least 18 years of age.

177.5(2) *Physician's report.* The provider shall obtain a physician's report at the time service is initiated and annually thereafter. The report shall be on Form SS-1718-0, Provider Health Assessment Form.

177.5(3) *Qualifications.* The provider shall be qualified by training and experience to carry out the health care plan as specified in rule 177.4(4).

177.5(4) *Relative.* The provider may be related to the client, so long as the provider is not a member of the family as defined in rule 441—130.1(234).

177.5(5) Rescinded IAB 8/9/89, effective 10/1/89.

This rule is intended to implement Iowa Code section 249.3(2)*"a."*

441—177.6(249) Health care plan. The nurse shall complete the health care plan with the physician's approval. The health care plan shall include the specific types of services required, the method of providing those services, and the expected duration of services.

177.6(1) *Transfer from medical facility.* When the client is being transferred from a medical hospital or long-term care facility, the service worker shall obtain a transfer document describing the client's current care plan, to be provided to the nurse supervising the in-home care plan.

177.6(2) *Medical records.*

a. Medical records shall include, whenever appropriate, transfer forms, physician's certification and orders, interdisciplinary case plan, interdisciplinary progress notes, drug administration records, treatment records, and incident reports. The nurse shall be responsible for ensuring that record requirements are met.

b. Medical records shall be located in the nurse's case file, with a copy of the interdisciplinary plan of care and physician's plan of service in the service worker's file, and all other records available to the service worker. Upon termination of the in-home care plan, the records shall be maintained in the county office of the department of human services, or in the office of the public health nurse and available to the service worker, for five years or until completion of an audit.

c. The client or legal representative shall have the right to view the client's medical records.

177.6(3) *Review.* The continuing need for in-home health care services shall be reviewed:

a. At a minimum of every 60 days by the physician, including a written recertification of continuing appropriateness of the plan;

b. At a minimum of every three months by the service worker, including a review of the total care plan; and

c. At a minimum of every 60 days by the nurse who shall review the nursing plan.

More frequent reviews may be required by the physician, the service worker, or the nurse.

177.6(4) *Annual physical.* The client shall obtain a physical examination report annually and shall be under the regular supervision of a physician.

This rule is intended to implement Iowa Code section 249.3(2)*"a"*(2).

441—177.7(249) Client participation.

177.7(1) All income remaining after the disregards in 177.4(7) and 177.4(8) shall be considered income available for services and shall be used for service costs before payment for in-home health care begins.

177.7(2) First month. When the first month of service is less than a full month, there is no client participation for that month. Payment will be made for the actual days of service provided according to the agreed-upon rate.

This rule is intended to implement Iowa Code section 249.3(2)*"a"*(2).

441—177.8(249) Determination of reasonable charges. Payment will be made only for reasonable charges for in-home health care services as determined by the service worker. Reasonableness shall be determined by:

177.8(1) *Community standards.* The prevailing community standards for cost of care for similar services.

177.8(2) *Services at no charge.* The availability of service providers at no cost to the department.

This rule is intended to implement Iowa Code section 249.3(2)*"a"*(2).

441—177.9(249) Written agreements.

177.9(1) *Independent contractor.* The provider shall be an independent contractor and shall in no sense be an agent, employee or servant of the state of Iowa, the Iowa department of human services, any of its employees, or of its clients.

177.9(2) *Liability coverage.* All professional health care providers shall have adequate liability coverage consistent with their responsibilities, as the department of human services assumes no responsibility for, or liability for, individuals providing care.

177.9(3) *Provider agreement.* The client and the provider shall enter into an agreement, using Form SS-1511-0, Provider Agreement, prior to the provision of service. Any reduction to the state supplemental assistance program shall be applied to the maximum amount paid by the department of human services as stated in the Provider Agreement by using Form 470-1999, Amendment to Provider Agreement.

This rule is intended to implement Iowa Code section 249.3(2)*"a"*(2).

441—177.10(249) Emergency services. Written instructions for dealing with emergency situations shall be completed by the nurse and maintained in the client's home and in the county department of human services office. The instructions shall include:

177.10(1) *Persons to notify.* The name and telephone number of the client's physician, the nurse, responsible family members or other significant persons, and the service worker.

177.10(2) *Hospital.* Information as to which hospital to utilize.

177.10(3) *Ambulance.* Information as to which ambulance service or other emergency transportation to utilize.

This rule is intended to implement Iowa Code section 249.3(2)*"a"*(2).

441—177.11(249) Termination. Termination of in-home health related care shall occur under the following conditions.

177.11(1) *Request.* Upon the request of the client or legal representative. When termination of the program would result in an individual being unable to protect the individual's own interests, arrangements for guardianship, commitment, or protective placements shall be provided.

177.11(2) *Care unnecessary.* When the client becomes sufficiently self-sustaining to remain in the client's own home with services that can be provided by existing community agencies as determined by the service worker.

177.11(3) *Additional care necessary.* When the physical or mental condition of the client requires more care than can be provided in the client's own home as determined by the service worker.

177.11(4) *Excessive costs.* When the cost of care exceeds the maximum established in 177.4(3).

177.11(5) *Other services utilized.* When the service worker determines that other services can be utilized to better meet the client's needs.

177.11(6) *Terms of provider agreement not met.* When it has been determined by the service worker that the terms of the provider agreement have not been met by the client or the provider, the state supplementary assistance payment may be terminated.

This rule is intended to implement Iowa Code section 249.3(2)*"a"*(2).

441—177.12 Rescinded IAB 8/9/89, effective 10/1/89.

[Filed emergency 10/7/76—published 11/3/76, effective 11/1/76]
[Filed emergency 12/17/76—published 1/12/77, effective 12/17/76]
[Filed 2/25/77, Notice 11/3/76—published 3/23/77, effective 4/27/77]
[Filed emergency 5/24/77—published 6/15/77, effective 7/1/77]
[Filed 10/24/77, Notice 9/7/77—published 11/16/77, effective 12/21/77]
[Filed 5/24/78, Notice 3/22/78—published 6/14/78, effective 7/19/78]
[Filed 12/19/80, Notice 10/29/80—published 1/7/81, effective 2/11/81]
[Filed 6/30/81, Notice 4/29/81—published 7/22/81, effective 9/1/81]
[Filed emergency 10/7/83—published 10/26/83, effective 11/1/83]
[Filed without Notice 10/7/83—published 10/26/83, effective 12/1/83]
[Filed 11/18/83, Notice 10/12/83—published 12/7/83, effective 2/1/84]
[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]
[Filed emergency 6/15/84—published 7/4/84, effective 7/1/84]
[Filed emergency 8/31/84—published 9/26/84, effective 10/1/84]
[Filed emergency 10/1/85—published 10/23/85, effective 11/1/85]
[Filed without Notice 10/1/85—published 10/23/85, effective 12/1/85]
[Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 2/1/86]
[Filed emergency 6/26/86—published 7/16/86, effective 7/1/86]
[Filed 6/20/86, Notice 4/23/86—published 7/16/86, effective 9/1/86]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed emergency 6/9/88—published 6/29/88, effective 7/1/88]
[Filed emergency 6/9/89—published 6/28/89, effective 7/1/89]
[Filed 7/14/89, Notice 4/19/89—published 8/9/89, effective 10/1/89]
[Filed 8/17/89, Notice 6/28/89—published 9/6/89, effective 11/1/89]
[Filed emergency 6/20/90—published 7/11/90, effective 7/1/90]
[Filed 8/16/90, Notice 7/11/90—published 9/5/90, effective 11/1/90]
[Filed 12/11/91, Notice 10/16/91—published 1/8/92, effective 3/1/92]*
[Filed emergency 4/15/92—published 5/13/92, effective 4/16/92]
[Filed 5/14/92, Notice 3/18/92—published 6/10/92, effective 8/1/92]
[Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
[Filed 6/16/94, Notice 4/13/94—published 7/6/94, effective 9/1/94]
[Filed 8/12/94, Notice 7/6/94—published 8/31/94, effective 11/1/94]
[Filed emergency 6/7/95—published 7/5/95, effective 7/1/95]
[Filed 8/10/95, Notice 7/5/95—published 8/30/95, effective 11/1/95]
[Filed 3/13/96, Notice 1/17/96—published 4/10/96, effective 6/1/96]
[Filed emergency 6/13/96—published 7/3/96, effective 7/1/96]
[Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]
[Filed emergency 3/12/97—published 4/9/97, effective 4/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed 5/14/97, Notice 4/9/97—published 6/4/97, effective 8/1/97]
[Filed emergency 12/9/98—published 12/30/98, effective 1/1/99]
[Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/15/99]
[Filed emergency 12/8/99—published 12/29/99, effective 1/1/00]

*Effective date of 3/1/92 delayed until adjournment of the 1992 General Assembly by the Administrative Rules Review Committee at its meeting held February 3, 1992.

571—28.7(321G) Eligibility of projects. Only items listed in this chapter which can reasonably be utilized in the construction or maintenance of areas or trails for snowmobile or ATV riding shall be eligible for funding. Storage fees, shop or maintenance equipment such as tools, grease guns, and floor jacks will not be considered as eligible items for either program. Construction of permanent structures such as restrooms, storage areas, warming shelters or office/entry control facilities will also not be considered eligible for funding from the snowmobile program but may be funded from the ATV program.

571—28.8(321G) Land acquisition procedures.

28.8(1) Funding from the appropriate revenue source may be used for easement or fee title land acquisition as approved by the review and selection committee and director. All negotiation for property acquisition under the local cost-share portion of registration revenues must be done by the sponsor, unless otherwise approved by the DNR.

28.8(2) Title to property acquired using the local cost-share portion of registration revenues shall be in the name of the sponsor receiving the grant or subgrant unless otherwise approved by the DNR. All such property is to be available for use by the general public without fee except during special events or unless otherwise approved by the director.

28.8(3) Grants may be for prepayment or reimbursement of land acquisition expenses including appraisals, surveys and abstracts in addition to the property cost. The grant may pay the sale price or appraised value, whichever is less. Appraisals are required and must be approved by the DNR. Payments may be made directly to the landowner by the DNR.

28.8(4) The grant agreement may contain provisions in addition to those contained in this chapter for disposal of the property if it ceases to be managed and used for the purpose for which it was acquired.

571—28.9(321G) Use of funded items. Manufactured products or machinery purchased by sponsors with state assistance under these programs shall be used only for the purpose of establishing or maintaining riding areas, trails, or facilities and as emergency rescue equipment where applicable.

571—28.10(321G) Disposal of equipment, facilities or property.

28.10(1) Sponsors shall not dispose of any manufactured product valued over $50 or machinery, facilities or property in which the DNR paid all or a portion of the actual cost without the prior written consent of the DNR.

28.10(2) Sponsors shall, in the case of equipment or facilities, reimburse the DNR a percentage of the disposal price received, that percentage being the percent of the original purchase price paid by the snowmobile or all-terrain vehicle fund.

28.10(3) Real property shall be disposed of as stipulated in the grant agreement under which it was acquired.

28.10(4) Reimbursements received by the DNR shall be credited to the appropriate snowmobile or all-terrain vehicle registration account from which the funding originated.

571—28.11(321G) Record keeping. Sponsors receiving funds under these programs shall keep adequate records relating to the administration of the grant, particularly relating to all incurred costs. These records shall be available for audit by appropriate personnel of the DNR, the state auditor's office, and the Iowa State Snowmobile Association or Iowa All-Terrain Vehicle Association as appropriate.

571—28.12(321G) Sponsors bonded. All nonpublic project sponsors making application for prepayment funds from these programs must produce proof that their chair and treasurer are covered under a fidelity bond, personal or surety, to the sponsor in a sum no less than $10,000 for each office.

571—28.13(321G) Items eligible for funding.

28.13(1) *Facility and trail development.*

a. Land acquisition subject to the provisions of rule 28.8(321G).

b. Earthwork including necessary alterations to the existing land surface approved by the review and selection committee. If done by the sponsor, costs may include salary for labor at a maximum reimbursement rate of $5.50 per hour. Labor costs shall be documented on logs provided by the DNR and shall be accompanied by proof that the cost was paid by the sponsor. If contracted, reimbursement shall be at the amount specified in the contract approved by the review and selection committee and the DNR. The sponsor shall obtain any federal, state or local permits required for the project.

c. Actual material cost of fence openings—maximum $50/opening.

d. Actual material cost of gates up to $80/gate.

e. Actual material cost of temporary bridges and ditch crossings (culvert) up to $300 per bridge or crossing.

f. Actual material cost of permanent bridges including placement up to the amount approved by the review and selection committee. Permanent bridges are eligible only if placed on publicly owned property or on private property under a lease or easement for ten or more years.

g. Fencing of newly acquired fee title property. Fencing done with revenue-sharing funds shall be only that portion of boundary fence falling under the custom of "right-hand half" unless stipulated otherwise in the property purchase documents and approved by the review and selection committee.

28.13(2) *Operation and maintenance.*

a. Program and facility liability insurance. It shall be the sponsor's responsibility to obtain program and liability insurance including snowmobile trail groomer liability insurance. A certificate of insurance must be provided to the DNR. This insurance coverage may include liability insurance for the sponsoring organization, excluding the cost of insurance for special events and excluding liability insurance on snowmobiles or all-terrain vehicles owned by the sponsor. The total payment from the snowmobile fund for insurance shall be 100 percent of the cost but limited to $1,800 per approved grant application, unless otherwise approved by the director. The total payment from the all-terrain vehicle fund shall be 100 percent of the cost limited to $3,500 per developed riding area. All insurance paid under this paragraph must be furnished by companies licensed to do business in Iowa.

b. Diesel fuel, propane, gasoline, oil, parts replacement and repair bills for equipment used to groom or maintain riding areas as approved by the appropriate review and selection committee. The DNR may establish operational procedures to facilitate direct payment to vendors for emergency repairs of grooming equipment, the cost of which will exceed $500 per repair provided by a single vendor.

c. Purchase of equipment to be used in grooming or maintenance of riding areas or trails. Any equipment costing more than $500 funded by grant funds must be purchased through a competitive bid or quotation process. Documentation of such process must be submitted prior to funds being released by the state. Equipment purchase may be paid in advance, in full for items purchased through competitive bids or quotation. Items purchased by any other means shall be limited to 50 percent cost-share for items other than snowmobile trail groomers as provided in subrule 28.14(1).

d. Cost of security services for privately operated ATV areas funded through the ATV program, subject to approval of the review and selection committee.

e. Cost of leasing equipment used to groom snowmobile trails as approved by the snowmobile review and selection committee. The actual per hour cost for the machine up to $50 an hour may be reimbursed.

28.13(3) *Trail signs.* Signs shall be provided to the sponsor by the DNR. Only those signs approved by the DNR for use on funded areas or trails shall be used by the sponsor. Signs appropriate to each program shall be ordered on forms provided on request from the DNR. The sign order deadline for both snowmobile and all-terrain vehicle use shall be July 1 of each year. Posts for signs and installation costs are the responsibility of the sponsor.

28.13(4) *Sanitary facilities.* Rental of temporary approved portable restroom facilities may be prepaid by the department for a period of not more than six months' rental per calendar year.

28.13(5) *Other expenses.* Pursuant to an agreement between the department and the ATV or snowmobile association, miscellaneous personal expenses for association officers incurred in the review of grant applications and development of riding parks may be reimbursed.

571—28.14(321G) Items specific to the snowmobile cost-share program.

28.14(1) Grooming equipment.

a. A minimum of 50 miles of groomable snowmobile trail is necessary for approval of groomer and associated equipment purchase for that trail system.

b. The state shall acquire committee-approved groomers and drags using the standard state purchasing procedure.

c. Prior to being assigned state-purchased grooming equipment, the sponsor shall pay the local cost-share portion of the state snowmobile fund 10 percent of the purchase price or appraised value of a groomer or associated equipment as appropriate.

d. After approval of the DNR and upon trade-in to the DNR of a used groomer by a sponsor for replacement purposes, the trade-in value shall be applied to the new groomer purchase and the local cost-share portion of the snowmobile fund shall pay the balance. The sponsor is responsible for obtaining liability insurance, licensing the machine as needed and providing personnel for daily operation and maintenance.

e. Upon sale or trade-in of a used groomer with no replacement, the snowmobile fund shall refund to the sponsor the percentage of the trade-in value which matches the percent originally invested in the groomer. Groomers shall not be traded between sponsors without written prior approval from the DNR.

28.14(2) Rescinded IAB 3/11/98, effective 4/15/98.

28.14(3) Purchase of high-band radio equipment, portable or cellular telephones up to $675 per groomer. Monthly service charges shall be the sponsor's responsibility. This communication equipment is intended to be used in emergency breakdown situations only or to coordinate routes between groomers being operated on a contiguous trail system.

28.14(4) Groomer maintenance, repair and operation wages may be funded at a rate of $5.50 per hour when performed by the sponsor. If repair is done by professional shops, payment shall be in the amount billed for the repair. Costs for towing disabled grooming equipment shall be reimbursed as billed by the company doing the work.

571—28.15(321G) Prepayment for certain anticipated costs. Prepayment as used in this chapter shall mean payment to the sponsor as approved by the grant agreement prior to expenditure by the sponsor for approved items.

1. Program or facility insurance may be 100 percent prepaid to qualified sponsors.
2. Approved facility and development costs, except items given in 28.13(1)*"a,"* and approved operation and maintenance costs, except as given in 28.13(2)*"a,"* may be prepaid at the rate of 75 percent of the approved grant request for these items.
3. Except for land acquisition under 28.8(321G), timing of payments or reimbursements shall be provided for in the grant agreement.

571—28.16(321G) Expense documentation, balance payment or reimbursement.

28.16(1) Documentation of expenditures eligible for prepayment or reimbursement shall be on forms provided by the DNR and shall be accompanied by applicable receipts showing evidence the expense is chargeable to the program. The sponsoring organization shall sign a certification stating that all expenses for which reimbursement is requested are related to the program and have been paid by the sponsor prior to requesting reimbursement. If necessary, the DNR may request copies of canceled checks to verify expenditures.

28.16(2) The sponsor is responsible for maintaining auditable records of all expenditures of funds received whether by prepayment or on a reimbursement basis. This documentation shall include daily logs of groomer or other maintenance equipment, operation and repair. Work done under contract to the sponsor requires a copy of the contract and copies of canceled checks showing payment.

28.16(3) Documentation of expenditures under the snowmobile portion of the revenue-sharing program must be received by the DNR prior to May 1 of each year.

28.16(4) Documentation of expenditures under the all-terrain vehicle portion of the revenue-sharing program must be received by the DNR within the time period established in the grant agreement, but in no case shall it be later than 18 months from the date of the grant award letter unless an extension is approved by the director. Substantial progress must be made on projects covered by grant agreements within 12 months of the grant award in order for those projects to qualify for a grant extension.

28.16(5) Approved expenditures by the sponsor in excess of the prepayment amount received, up to the maximum approved amount, will be reimbursed by the DNR if appropriately documented. In instances where the sponsor has expended less than the amount prepaid, the sponsor shall reimburse the balance to the DNR to be credited back to the annual local share of the appropriate fund.

These rules are intended to implement Iowa Code section 321G.7.

[Filed 6/6/80, Notice 3/5/80—published 6/25/80, effective 8/14/80]
[Filed 5/4/84, Notice 2/29/84—published 5/23/84, effective 6/27/84]
[Filed 8/8/85, Notice 4/24/85—published 8/28/85, effective 10/2/85]
[Filed 7/10/86, Notice 4/23/86—published 7/30/86, effective 9/3/86]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 4/13/90, Notice 1/24/90—published 5/2/90, effective 6/6/90]
[Filed 5/15/95, Notice 3/1/95—published 6/7/95, effective 7/12/95]
[Filed emergency 2/9/96—published 2/28/96, effective 2/9/96]
[Filed 2/20/98, Notice 12/31/97—published 3/11/98, effective 4/15/98]
[Filed emergency 4/17/98—published 5/6/98, effective 4/17/98]
[Filed emergency 12/10/99—published 12/29/99, effective 12/10/99]

Fleming Woods	Poweshiek
Fort Atkinson	Winneshiek
Freda Haffner Kettlehole	Dickinson
Gitchie Manitou	Lyon
Hanging Bog	Linn
Hardin City Woodland	Hardin
Hartley Fort	Allamakee
Hayden Prairie	Howard
Hoffman Prairie	Cerro Gordo
Indian Bluffs Primitive Area	Jones
Indian Fish Trap	Iowa
Kalsow Prairie	Pocahontas
Kish-Ke-Kosh	Jasper
Lamson Woods	Jefferson
Liska-Stanek Prairie	Webster
Little Maquoketa River Mounds	Dubuque
Malanaphy Springs	Winneshiek
Malchow Mounds	Des Moines
Manikowski Prairie	Clinton
Mann Wilderness Area	Hardin
Marietta Sand Prairie	Marshall
Mericle Woods	Tama
Merrill A. Stainbrook	Johnson
Merritt Forest	Clayton
Montauk Historical Site	Fayette
Mossy Glen	Clayton
Mount Talbot	Woodbury and Plymouth
Mt. Pisgah Cemetery	Union
Nestor Stiles	Cherokee
Ocheyedan Mound	Osceola
Old State Quarry	Johnson
Palisades-Dows	Linn
Pecan Grove	Muscatine
Pellet Memorial Woods	Cass
Pilot Grove	Iowa
Pilot Knob	Hancock
Retz Memorial Woods	Clayton
Roberts Creek	Clayton
Rock Creek Island	Cedar
Rock Island Botanical	Linn
Roggman Boreal Slopes	Clayton
Rolling Thunder Prairie	Warren
Savage Memorial Woods	Henry
Searryl's Cave	Jones
Sheeder Prairie	Guthrie

Silver Lake Fen	Dickinson
Silvers-Smith Woods	Dallas
Slinde Mounds	Allamakee
St. James Lutheran Church	Winneshiek
Starr's Cave	Des Moines
Steele Prairie	Cherokee
Stinson Prairie	Kossuth
Strasser Woods	Polk
Sylvan Runkel	Monona
Toolesboro Mounds	Louisa
Turin Loess Hills	Monona
Turkey River Mounds	Clayton
White Pine Hollow	Dubuque
William's Prairie	Johnson
Wittrock Indian Village	O'Brien
Woodland Mounds	Warren
Woodman Hollow	Webster
Woodthrush Woods	Jefferson

Use and management of these areas is governed by rules established in this chapter as well as management plans adopted by the preserves advisory board.

"Swim" or *"swimming"* means to propel oneself in water by natural means such as movement of limbs including but not limited to wading and the use of inner tubes or beach toy-type swimming aids.

"Winter season" means from the second Saturday in October to the third Sunday in May.

"Yurt" means a one-room circular fabric structure built on a platform which is available for rental on a daily or weekly basis.

571—61.3(461A) Fees. The following are maximum fees for facility use in state parks and recreation areas. The fees may be reduced or waived by the director for department of natural resources sponsored special events or special promotional efforts. Special events or promotional efforts shall be conducted so as to give all park facility users equal opportunity to take advantage of reduced or waived fees. Reductions or waivers shall be on a statewide basis covering like facilities. In the case of promotional events, awarding of prizes shall be done on the basis of a drawing of registrations made available to all park visitors during the event.

61.3(1) *Camping.*

a. Except in the areas named in *"j,"* from the Monday before the national Memorial Day holiday through Monday, the national Labor Day holiday:

	Fee	Sales Tax	Total
Nonmodern area	$6.67	.33	$7.00
Modern areas	8.57	.43	9.00

b. Except in the areas named in *"j,"* from the Tuesday following the national Labor Day holiday through Sunday one week prior to the national Memorial Day holiday:

	Fee	Sales Tax	Total
Nonmodern area	$3.81	.19	$4.00
Modern areas	5.71	.29	6.00
c. Per person over the basic unit of six	.48	.02	.50

d.	Chaperoned, organized youth group per group	9.52	.48	10.00
e.	Electricity This fee will be charged in addition to the camping fee on sites where electricity is available (whether it is used or not)	2.85	.15	3.00
f.	Additional vehicle permitted under subrule 61.5(10)*"c"*	3.81	.19	4.00
g.	Cable television hookup	.95	.05	1.00
h.	Sewer and water hookup	1.90	.10	2.00
i.	Camping tickets (book of 14) Camping tickets shall be valid for the calendar year in which the book is purchased and the calendar year immediately following. In areas which are subject to local option sales tax, the fee shall be administratively adjusted so that persons camping in those areas will pay the same total cost applicable in other areas. *Sales tax on the fee stated in *"c"* will be figured on the applicable total dollar amount collected by the person in charge of the camp area.	120.00	6.00	126.00

j. Fees as given in paragraph *"a"* shall be in effect each year in the following areas during the time period shown below:

Backbone State Park, Delaware County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Elinor Bedell State Park, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the facilities at Elinor Bedell State Park are closed for the season, whichever comes first.

Elk Rock State Park, Marion County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Emerson Bay Campground, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Fairport Campground, Muscatine County—May 1 through Monday, the national Labor Day holiday.

Gull Point State Park, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Lake Manawa State Park, Pottawattamie County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Ledges State Park, Boone County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Maquoketa Caves State Park, Jackson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Marble Beach Campground, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Pikes Peak State Park, Clayton County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

Waubonsie State Park, Fremont County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.

k. Additional fee for campgrounds designated for equestrian use is $3.00. This fee is in addition to applicable fees listed above.

61.3(2) *Cabin rental.* This fee does not include tax.

	Per Day (Minimum two nights)	Per Week
Backbone State Park, Delaware County (renovated cabins)	$50	$300
Backbone State Park, Delaware County (new cabins)	85	510
Dolliver State Park, Webster County	35	210
Green Valley State Park, Union County	35	210
Lacey-Keosauqua, Van Buren County	30	175
Lake Darling State Recreation Area, Washington County	30	175
Lake of Three Fires State Park, Taylor County	22	120
Lake Wapello, Davis County (except Cabin No. 13)	30	175
Lake Wapello, Davis County, Cabin No. 13	35	200
Palisades-Kepler, Linn County	30	175
Pine Lake State Park, Hardin County		
Sleeping area cabins (four-person occupancy limit)	40	200
One-bedroom cabins	55	330
Pleasant Creek Recreation Area, Linn County	30	175
Springbrook State Recreation Area, Guthrie County	22	120
Wilson Island Recreation Area, Pottawattamie County (#1)	18	110
Extra cots, where available	1	

61.3(3) *Yurt rental.* This fee does not include tax.

	Per Day (Minimum two nights)	Per Week
McIntosh Woods State Park, Cerro Gordo County	$30	$175

61.3(4) *Shelter rental per reservation.* This fee does not include tax.

a. Enclosed shelters/lodges

	Per Day
A.A. Call State Park, Kossuth County	$70
Backbone State Park Auditorium, Delaware County**	40
Backbone State Park, Delaware County	100
Beeds Lake State Park, Franklin County	55
Bellevue State Park-Nelson Unit, Jackson County	80
Big Creek State Park, Polk County	175
Clear Lake State Park, Cerro Gordo County	80
Dolliver Memorial State Park-Central Lodge, Webster County**	40
Dolliver Memorial State Park-South Lodge, Webster County	55
Ft. Defiance State Park, Emmet County	40
George Wyth Recreation Area, Black Hawk County**	50
Gull Point State Park, Dickinson County	100
Lacey-Keosauqua State Park, Van Buren County	60
Lake Ahquabi State Park, Warren County	60
Lake Keomah State Park, Mahaska County	50
Lake Macbride State Park, Johnson County	55

**Do not contain kitchen facilities

Lake of Three Fires State Park, Taylor County	55
Lake Wapello State Park, Davis County	60
Lewis and Clark State Park, Monona County	40
Palisades-Kepler State Park, Linn County	100
Pine Lake State Park, Hardin County	60
Pleasant Creek Recreation Area, Linn County**	50
Stone State Park, Woodbury County	100
Walnut Woods State Park, Polk County	110
Wapsipinicon State Park, Jones County	
Heated year-round shelter	40
Unheated seasonal shelter	30

b. Open shelter reservation $20 plus applicable tax.

c. Beach house open shelter reservation $40 plus applicable tax.

Lake Ahquabi State Park, Warren County
Lake Wapello State Park, Davis County
Pine Lake State Park, Hardin County
Springbrook Recreation Area, Guthrie County

61.3(5) *Group camp rental.* This fee does not include tax.

a. Dolliver State Park, Webster County and Springbrook State Park, Guthrie County. Rental includes use of restroom/shower facility at Dolliver.

(1) Organized youth groups—$1.25 per day per person with a minimum charge per day of $55.

(2) Other groups—$15 per day per cabin plus $25 per day for the kitchen and dining facility.

(3) Springbrook dining hall—day use only $40.

b. Lake Keomah State Park, Mahaska County.

(1) Organized youth groups—$25 per day for the dining/restroom facility plus the applicable camping fee.

(2) Other groups—$25 per day for the dining/restroom facility plus the applicable camping fee.

61.3(6) *Miscellaneous fees.* This fee does not include tax.

	Maximum Fee
a. Vessel storage space (wet or dry)	
(1) Pontoon boats—eight months or less	$150
eight months or less (new docks)	$200
year-round	$200
year-round (new docks)	$250
(2) Other boats—eight months or less	$125
eight months or less (new docks)	$150
year-round	$150
year-round (new docks)	$200

b. Rescinded IAB 3/11/98, effective 4/15/98.

61.3(7) *Reservation and damage deposits for rental facilities.* Rescinded IAB 9/9/98, effective 10/14/98.

61.3(8) *Varying fees.* Fees charged for like services in state-owned areas under management by political subdivisions may vary from those established by this chapter.

This rule is intended to implement Iowa Code sections 422.43 and 461A.47.

**Do not contain kitchen facilities

571—61.4(461A) Procedures for registration and reservations.

61.4(1) *Camper registration.*

a. In most instances, registration of campers will be handled by a self-registration process. Registration forms will be provided by the department of natural resources.

Campers shall, within one-half hour of arrival at the campground, complete the registration form, place the appropriate fee or number of camping tickets in the envelope and place the envelope in the depository provided by the department of natural resources. One copy must then be placed in the holder provided at the campsite.

b. Campsites are considered occupied and registration for a campsite shall be considered complete when the requirements of 61.4(1)*"a,"* second paragraph, have been met; however, it shall be the responsibility of the registered camper to ensure that the site is visibly occupied, thereby secure from others registering into the site if the site appears not to be occupied.

c. Each camping ticket as provided in 61.3(1)*"i"* shall cover the cost of one night's camping in a modern area on a site where electricity is furnished. Persons camping on sites which also have sewer and water hookups or cable television hookups available must pay the additional charges for these services in addition to utilizing a camping ticket. Use of a camping ticket in an area or on a site which would require a lesser fee than an electrical site in a modern area will not entitle the user to a refund or credit of any nature.

d. Campsite registration must be in the name of a person 18 years of age or older who will occupy the camping unit on that site for the full term of the registration.

61.4(2) *Lodge, cabin, yurt, open shelter, group camp and designated organized youth camp site reservations and rental.*

a. Except for the year-round use cabins, reservations for the above-mentioned facilities are to be made only for the current calendar year. No reservations will be accepted prior to November 1 of each year for more than the first full week of January in the next subsequent year for the year-round use cabins. Procedures for winter season rentals of the heated cabins at Backbone State Park, Pine Lake State Park, and Wilson Island State Recreation Area shall be governed by paragraphs *"a," "b," "c," "d," "e," "k," "l," "m," "n,"* and *"o"* of this subrule and by the provisions of 61.4(3).

b. Telephone and walk-in reservations will not be accepted until the first business day following November 1 of each year for the heated cabins and the first business day after January 1 of each year for all other cabins, yurts, group camps, open and enclosed shelters, designated organized youth camp sites, or lodges.

c. Mail-in reservations for the subsequent calendar year received prior to January 1, or November 1 as applicable, will be placed in a box and processed through a random drawing system on the first business day following January 1 or November 1.

d. Walk-in and telephone requests on the first business day following January 1 or November 1 will be handled on a first-come, first-served basis after all mail-in requests have been handled. Walk-in and telephone requests after the first business day following January 1 or November 1 will be handled on a first-come, first-served basis.

e. All mail-in requests will be handled on a random drawing basis daily throughout the calendar year.

f. Except as provided in 61.4(2)*"m"* and *"n,"* cabin and group camp reservations must be for a minimum of one week (Saturday p.m. to Saturday a.m.). Reservations for more than a two-week stay will not be accepted for any facility. These facilities, if not reserved, may be rented for a minimum of two nights on a walk-in, first-come, first-served basis. No walk-in rentals will be permitted after 6 p.m. of the first night of the rental period.

g. Persons renting cabins, yurts or group camp facilities must check in at or after 4 p.m. on Saturday. Check-out time is 11 a.m. or earlier on Saturday.

h. Except by arrangement with the park ranger for late arrival, no cabin, yurt or group camp reservation will be held past 6 p.m. on the first night of the reservation period if the person reserving the facility does not appear. When late arrival arrangements have been made, the person must appear prior to the park closing time established by Iowa Code section 461A.46 and Iowa Administrative Code subrule 61.5(3) or access will not be permitted to the facility until 8 a.m. the following day. Arrangements must be made with the park ranger if next-day arrival is to be later than 9 a.m.

i. Except by arrangement with the park ranger in charge of the area, persons renting lodge facilities and all guests shall vacate the facility by 10 p.m.

j. Open shelters may be reserved using the procedures outlined in paragraphs *"a," "b," "c," "d,"* and *"e."* Shelters which are not reserved are available on a first-come, first-served basis.

k. The number of persons occupying rental cabins is limited to six in cabins which contain one bedroom or less and eight in cabins with two bedrooms. Occupancy of the sleeping area cabins located at Pine Lake State Park and Wilson Island State Recreation Area is limited to four persons. Occupancy of the yurts is limited to four persons.

l. Except at Wilson Island State Recreation Area and Dolliver State Park, no tents or other camping units are permitted for overnight occupancy in the designated cabin area. Tents or camping units placed in the cabin area are subject to the occupancy requirements of subrule 61.5(10), paragraph *"a."*

m. Prior to the Monday before the national Memorial Day holiday and after Labor Day week, two-night reservations may be made in advance for cabin use. Such reservations must be received by the Tuesday preceding the desired weekend.

n. The sleeping room cabin at Wilson Island State Recreation Area, the cabin and group camp at Dolliver, the cabins at Pleasant Creek, the yurts at McIntosh Woods, and the group camp at Springbrook State Recreation Area may be reserved for a minimum of two days throughout the rental season.

o. Reservations for all rental facilities must be in the name of a person 18 years of age or older who will be present at the facility for the full term of the reservation.

61.4(3) *Winter cabin rental—Backbone State Park, Pine Lake State Park and Wilson Island Recreation Area.* Procedures and conditions for winter season rental include the following:

a. All reservation requests must be for a minimum of two nights' stay.

b. All reservation requests must be received by the park ranger at least two weeks prior to the first night covered by the reservation in order to allow work schedule adjustments for park personnel.

c. Cabins, if not reserved, may be rented for a minimum of two nights on a walk-in, first-come, first-served basis. Check-in must occur during normal business hours (8 a.m. to 4:30 p.m.). Check-in will be subject to availability of staff.

d. Reservations may not be held past 9 p.m. on the first night of the reservation period if the person reserving the facility does not appear or make arrangements with the park ranger for late arrival. The cabin may be rented on a first-come, first-served basis to another person if the original renter has not arrived or made other arrangements prior to 12 noon of the next day.

61.4(4) *Reservations for handicapped-accessible cabins at Backbone and Pine Lake State Parks.*

a. Persons with physical disabilities may make reservations for the four year-round cabins at Backbone State Park and the handicapped-accessible cabin at Pine Lake State Park under the following procedures:

(1) Priority reservations for these facilities will be accepted from October 1 through 4:30 p.m., December 1 or the closest business day, for the following calendar year only. This may include the full week containing the New Year's Day holiday of that year.

(2) Application for reservations must be on forms furnished by the DNR.

(3) Mail-in reservations received between the dates given in subparagraph (1) shall be placed in a box and processed through a random drawing system on the first business day following December 1. Walk-in and telephone requests on December 1 or the closest business day will be handled on a first-come, first-served basis without priority considerations.

b. Reservation requests received outside of the above application period will be handled by the procedures given in 61.4(2)*"a"* through *"o."*

c. Procedures for rental of the handicapped-accessible cabins shall be governed by paragraphs *"g," "h," "k," "l," "m,"* and *"o"* of 61.4(2).

61.4(5) *Reservation and damage deposits for rental facilities.*

a. Reservation deposit.

(1) All cabin, yurt and group camp reservation requests must be accompanied by a reservation deposit equivalent to one day of the daily rate for that rental unit as provided in 61.3(2) and 61.3(4) (no sales tax shall be included). The deposit shall be required for each rental unit and rental period requested. The reservation deposit will be applied toward the total rental fee when the rental fee is due. Reservations made by telephone will be tentatively scheduled and held for seven working days. If written confirmation and reservation deposit are not received by the end of the seventh working day, the reservation will be canceled.

(2) Requests for enclosed shelter/lodge rental shall be accompanied by the full rental fee including tax with no reservation deposit required. Reservations made by telephone will be tentatively scheduled and held for seven working days. If written confirmation and reservation deposit are not received by the end of the seventh working day, the reservation will be canceled.

(3) Requests for open shelter rental shall be accompanied by the full rental fee including tax with no reservation deposit required.

b. Rental fee and damage deposit payment.

(1) Upon arrival for the cabin or yurt rental period, a damage deposit in the amount of $50 and the remainder of the applicable rental fee, including all sales tax, shall be paid in full. This damage deposit shall be paid by use of a separate financial instrument (e.g., check, money order, or cash) from the rental fee.

(2) Upon arrival for the group camp rental period, a damage deposit of $50 shall be paid in full. The remainder of the applicable rental fee, including all sales tax, shall be paid in full when the rental period is over and the area is ready to be vacated.

(3) Upon arrival for the enclosed shelter/lodge rental period, a damage deposit of $50 shall be paid in full.

(4) Damage deposits will be refunded only after inspection by authorized personnel to ensure the facility and furnishings are in satisfactory condition.

(5) If it is necessary for department personnel to clean up the facility or repair any damage beyond ordinary wear and tear, a log of the time spent in such cleanup or repair shall be kept. The damage deposit refund shall be reduced by an amount equivalent to the applicable hourly wage of the employees for the time necessary to clean the area or repair the damage and the cost of any furnishing repairs.

(6) The deposit is not to be construed as a limit of liability for damage to state property. The department may take legal action necessary to recover additional damage.

(7) Individuals wishing to cancel a reservation must do so at least 30 calendar days prior to the rental date in order to receive a full refund of the reservation deposit or any rental fees paid in advance. If it is necessary to cancel a reservation after the 30-day allowance, a refund may be made only under the following conditions:

1. Inclement weather prohibits arrival at or entrance to the state park cabin, yurt, group camp, open or enclosed shelter or lodge area.

2. Personal emergency prevents arrival or requires departure prior to the end of the rental period. Personal emergency is defined to include a death, serious illness or accident involving immediate family. Rental fees may be refunded on a prorated basis in the case of early departure due to personal emergency.

61.22(15) *Lake Manawa State Park, Pottawattamie County.* The west shoreline including both sides of the main park road, commencing at the north park entrance and continuing south 1.5 miles to the parking lot immediately north of the picnic area known as "Boy Scout Island."

61.22(16) *Viking Lake State Recreation Area, Montgomery County.* The embankment of the dam from the parking area located southeast of the dam area northwesterly across the dam structure to its intersection with the natural shoreline of the lake.

61.22(17) *Hattie Elston Access, Dickinson County.* The entire area including the parking lot shoreline and boat ramp facilities.

61.22(18) *Claire Wilson Park, Dickinson County.* The entire area including the parking lot, shoreline and fishing trestle facility.

61.22(19) *Mini-Wakan State Park, Dickinson County.* The entire area.

61.22(20) *Elinor Bedell State Park, Dickinson County.* The entire length of the shoreline within the state park boundaries.

571—61.23(461A) Vessels prohibited. Rule 571—61.22(461A) does not permit the use of vessels on the artificial lakes within state parks after the 10:30 p.m. park closing time. All fishing is to be done from the bank or shoreline of the permitted area.

571—61.24(461A) Campground fishing. Rule 571—61.22(461A) of these rules is not intended to prohibit fishing by registered campers from the shoreline within the camping area.

571—61.25(461A) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

571—61.26(461A) Restore the outdoors program. Funding provided through the appropriation made by 1997 Iowa Acts, chapter 215, and subsequent Acts, shall be used to renovate, replace or construct new vertical infrastructure and associated appurtenances in state parks and other public facilities managed by the department of natural resources.

The intended projects will be included in the department's annual five-year capital plan in priority order by year and approved by the natural resource commission for inclusion in its capital budget request.

The funds appropriated by 1997 Iowa Acts, chapter 215, section 37, and subsequent Acts, will be used to renovate, replace or construct new vertical infrastructure through construction contracts, agreements with local government entities responsible for managing state parks and other public facilities, and agreements with the department of corrections to use inmate labor where possible. Funds shall also be used to support site survey, design and construction contract management through consulting engineering and architectural firms and direct survey, design and construction management costs incurred by department engineering and architectural staff for restore the outdoors projects. Funds shall not be used to support general department oversight of the restore the outdoors program such as accounting, general administration or long-range planning.

These rules are intended to implement Iowa Code sections 422.43, 455A.4, 461A.3, 461A.35, 461A.38, 461A.43, 461A.45 to 461A.51, 461A.57, and 723.4 and Iowa Code Supplement section 461A.3A.

[Filed 9/14/65]
[Filed 5/5/78, Notice 3/8/78—published 5/31/78, effective 7/6/78]
[Filed 7/13/82, Notice 4/28/82—published 8/4/82, effective 9/8/82]
[Filed 4/7/83, Notice 2/2/83—published 4/27/83, effective 6/1/83]
[Filed 11/4/83, Notice 9/28/83—published 11/23/83, effective 12/28/83]
[Filed 2/6/84, Notice 12/21/83—published 2/29/84, effective 4/5/84]
[Filed 4/5/85, Notice 1/30/85◊—published 4/24/85, effective 5/30/85]
[Filed 5/8/85, Notice 1/30/85—published 6/5/85, effective 7/10/85]
[Filed emergency 5/31/85—published 6/19/85, effective 7/1/85]
[Filed emergency 6/11/86—published 7/2/86, effective 6/13/86]
[Filed 10/17/86, Notice 7/2/86—published 11/5/86, effective 12/10/86]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 3/20/87, Notice 1/28/87—published 4/8/87, effective 5/13/87]
[Filed 10/16/87, Notice 8/26/87—published 11/4/87, effective 2/3/88]
[Filed emergency 7/7/89—published 7/26/89, effective 7/7/89]
[Filed 3/15/91, Notices 10/3/90, 12/26/90—published 4/3/91, effective 5/8/91]
[Filed 6/7/91, Notice 4/3/91—published 6/26/91, effective 7/31/91]*
[Filed emergency 10/4/91 after Notice 8/7/91—published 10/30/91, effective 10/4/91]
[Filed 3/13/92, Notice 12/25/91—published 4/1/92, effective 5/6/92]
[Filed 5/8/92, Notice 4/1/92—published 5/27/92, effective 7/1/92]**
[Filed emergency 8/7/92—published 9/2/92, effective 8/7/92]
[Filed 12/4/92, Notice 9/30/92—published 12/23/92, effective 1/27/93]
[Filed 8/13/93, Notice 6/23/93—published 9/1/93, effective 1/1/94]***
[Filed 8/12/94, Notice 6/8/94—published 8/31/94, effective 10/5/94]
[Filed 9/9/94, Notice 7/6/94—published 9/28/94, effective 11/2/94]
[Filed emergency 10/27/94—published 11/23/94, effective 10/27/94]
[Filed emergency 2/9/95—published 3/1/95, effective 2/10/95]
[Filed 5/15/95, Notice 3/1/95—published 6/7/95, effective 7/12/95]
[Filed 10/20/95, Notice 8/30/95—published 11/8/95, effective 12/13/95]
[Filed 8/9/96, Notice 6/5/96—published 8/28/96, effective 10/2/96]
[Filed 8/9/96, Notice 7/3/96—published 8/28/96, effective 10/2/96]
[Filed without Notice 10/18/96—published 11/6/96, effective 1/1/97]
[Filed 2/21/97, Notice 1/1/97—published 3/12/97, effective 4/16/97]
[Filed 8/22/97, Notice 6/4/97—published 9/10/97, effective 10/15/97]
[Filed 2/20/98, Notice 12/31/97—published 3/11/98, effective 4/15/98]
[Filed emergency 5/29/98—published 6/17/98, effective 5/29/98]
[Filed 8/21/98, Notice 6/17/98—published 9/9/98, effective 10/14/98]
[Filed emergency 12/11/98 after Notice 11/4/98—published 12/30/98, effective 1/1/99]
[Filed 8/20/99, Notice 6/30/99—published 9/8/99, effective 10/13/99]
[Filed emergency 12/10/99 after Notice 11/3/99—published 12/29/99, effective 1/1/00]

*Effective date of subrule 61.6(2) and rule 61.7(7/31/91) delayed 70 days by the Administrative Rules Review Committee at its meeting held 7/12/91.
**Amendments to 61.4(2)"*f*" and 61.3(5)"*a*" effective January 1, 1993.
***Amendments to 61.4(2)"*a*" to "*d*" effective October 31, 1993.
◊Two ARCs

TITLE VIII
SEASONS, LIMITS, METHODS OF TAKE

CHAPTER 76
UNPROTECTED NONGAME

[Prior to 12/31/86, Conservation Commission[290] Ch 16]

571—76.1(481A) Species. Certain species of nongame shall not be protected.

76.1(1) *Birds.* The European starling and the house sparrow shall not be protected.

76.1(2) *Reptiles.* The common garter snake and the timber rattlesnake shall not be protected.

This rule is intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.42.

[Filed 1/5/84, Notice 11/23/83—published 2/1/84, effective 3/7/84]
[Filed 10/17/86, Notice 8/27/86—published 11/5/86, effective 1/1/87]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]

CHAPTER 77
ENDANGERED AND THREATENED PLANT AND ANIMAL SPECIES
[Prior to 12/31/86, Conservation Commission[290], Ch 19]

571—77.1(481B) Definitions. As used in this rule:

"Endangered species" means any species of fish, plant life, or wildlife which is in danger of extinction throughout all or a significant part of its range.

"Special concern species" means any species about which problems of status or distribution are suspected, but not documented, and for which no special protection is afforded under this rule.

"Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

571—77.2(481B) Endangered, threatened, and special concern animals. The natural resource commission, in consultation with scientists with specialized knowledge and experience, has determined the following animal species to be endangered, threatened or of special concern in Iowa:

77.2(1) *Endangered animal species:*

Mammals

Indiana Bat	Myotis sodalis
Plains Pocket Mouse	Perognathus flavescens
Red-backed Vole	Clethrionomys gapperi
Bobcat	Felis rufus

Birds

Red-shouldered Hawk	Buteo lineatus
Northern Harrier	Circus cyaneus
Peregrine Falcon	Falco peregrinus
Piping Plover	Charadrius melodus
Common Barn Owl	Tyto alba
Least Tern	Sterna antillarum
Bald Eagle	Haliaeetus leucocephalus
King Rail	Rallus elegans
Short-eared Owl	Asio flammeus

Fish

Lake Sturgeon	Acipenser fulvescens
Pallid Sturgeon	Scaphirhynchus albus
Pugnose Shiner	Notropis anogenus
Weed Shiner	Notropis texanus
Pearl Dace	Semotilus margarita
Freckled Madtom	Noturus nocturnus
Bluntnose Darter	Etheostoma chlorosomum
Least Darter	Etheostoma microperca

Reptiles

Yellow Mud Turtle	Kinosternon flavescens
Wood Turtle	Clemmys insculpta

Great Plains Skink	Eumeces obsoletus
Slender Glass Lizard	Ophisaurus attenuatus
Yellowbelly Water Snake	Nerodia erythrogaster
Western Hognose Snake	Heterodon nasicus
Speckled Kingsnake	Lampropeltis getulus
Copperhead	Agkistrodon contortrix
Prairie Rattlesnake	Crotalus viridis
Massasauga Rattlesnake	Sistrurus catenatus

Amphibians

Blue-spotted Salamander	Ambystoma laterale
Mudpuppy	Necturus maculosus
Crawfish Frog	Rana areolata

Butterflies

Dakota Skipper	Hesperia dacotae
Ringlet	Coenonympha tullia

Land Snails

Iowa Pleistocene Snail	Discus macclintocki
Minnesota Pleistocene Ambersnail	Novisuccinea new species A
Iowa Pleistocene Ambersnail	Novisuccinea new species B
Frigid Ambersnail	Catinella gelida
Briarton Pleistocene Vertigo	Vertigo briarensis
Bluff Vertigo	Vertigo meramecensis
Iowa Pleistocene Vertigo	Vertigo new species

Fresh Water Mussels

Spectacle Case	Cumberlandia monodonta
Slippershell	Alasmidonta viridis
Buckhorn	Tritogonia verrucosa
Ozark Pigtoe	Fusconaia ozarkensis
Bullhead	Plethobasus cyphyus
Ohio River Pigtoe	Pleurobema sintoxia
Slough Sandshell	Lampsilis teres teres
Yellow Sandshell	Lampsilis teres anodontoides
Higgin's-eye Pearly Mussel	Lampsilis higginsi

77.2(2) *Threatened animal species:*

Mammals

Least Shrew	Cryptotis parva
Grasshopper Mouse	Onychomys leucogaster
Spotted Skunk	Spilogale putorius
River Otter	Lutra canadensis

Birds	
Long-eared Owl	Asio otus
Henslow's Sparrow	Ammodramus henslowii
Fish	
Chestnut Lamprey	Ichthyomyzon castaneus
American Brook Lamprey	Lampetra appendix
Grass Pickerel	Esox americanus
Blacknose Shiner	Notropis heterolepis
Topeka Shiner	Notropis topeka
Western Sand Darter	Ammocrypta clara
Black Redhorse	Moxostoma duquesnei
Burbot	Lota lota
Orangethroat Darter	Etheostoma spectabile
Reptiles	
Stinkpot	Sternotherus odoratus
Ornate Box Turtle	Terrapene ornata
Diamondback Water Snake	Nerodia rhombifera
Western Worm Snake	Carphophis amoneus
Smooth Green Snake	Opheodrys vernalis
Amphibians	
Central Newt	Notophthalmus viridescens
Butterflies	
Powesheik Skipperling	Oarisma powesheik
Byssus Skipper	Problema byssus
Mulberry Wing	Poanes massasoit
Silvery Blue	Glaucopsyche lygdamus
Baltimore	Euphydryas phaeton
Snails	
Midwest Pleistocene Vertigo	Vertigo hubrichti
Occult Vertigo	Vertigo occulta
Fresh Water Mussels	
Cylinder	Anodontoides ferussacianus
Strange Floater	Strophitus undulatus
Creek Heelsplitter	Lasmigona compressa
Purple Pimpleback	Cyclonaias tuberculata
Butterfly	Ellipsaria lineolata
Ellipse	Venustaconcha ellipsiformis

77.2(3) *Special concern animal species:*

Mammals	
Southern Bog Lemming	Synaptomys cooperi
Birds	
Forester's Tern	Sterna forsteri
Black Tern	Chlidonias niger
Fish	
Pugnose Minnow	Notropis emiliae
Pirate Perch	Aphredoderus sayanus
Butterflies	
Dreamy Duskywing	Erynnis icelus
Sleepy Duskywing	Erynnis brizo
Columbine Duskywing	Erynnis lucilius
Wild Indigo Duskywing	Erynnis baptisiae
Ottoe Skipper	Hesperia ottoe
Leonardus Skipper	Hesperia l. leonardus
Pawnee Skipper	Hesperia leonardus pawnee
Beardgrass Skipper	Atrytone arogos
Zabulon Skipper	Poanes zabulon
Broad-winged Skipper	Poanes viator
Sedge Skipper	Euphyes dion
Two-spotted Skipper	Euphyes bimacula
Dusted Skipper	Atrytonopsis hianna
Salt-and-pepper Skipper	Amblyscirtes hegon
Pipevine Swallowtail	Battus philenor
Zebra Swallowtail	Eurytides marcellus
Olympia White	Euchloe olympia
Purplish Copper	Lycaena helloides
Acadian Hairstreak	Satyrium acadicum
Edward's Hairstreak	Satyrium edwardsii
Hickory Hairstreak	Satyrium caryaevorum
Striped Hairstreak	Satyrium liparops
Swamp Metalmark	Calephelis mutica
Regal Fritillary	Speyeria idalia
Baltimore	Euphydryas phaeton ozarkae

571—77.3(481B) Endangered, threatened, and special concern plants. The natural resource commission, in consultation with scientists with special knowledge and experience, determined the following plant species to be endangered, threatened, or of special concern in Iowa.

77.3(1) *Endangered plant species:*

COMMON NAME	SCIENTIFIC NAME
Pale false foxglove	Agalinus skinneriana
Blue giant-hyssop	Agastache foeniculum
Bearberry	Arctostaphylos uva-ursi
Black chokeberry	Aronia melanocarpa
Eared milkweed	Asclepias engelmanniana
Mead's milkweed	Asclepias meadii
Narrow-leaved milkweed	Asclepias stenophylla
Ricebutton aster	Aster dumosus
Large-leaved aster	Aster macrophyllus
Schreber's aster	Aster schreberi
Fern-leaved false foxglove	Aureolaria pedicularia
Matricary grape fern	Botrychium matricariifolium
Poppy mallow	Callirhoe triangulata
Cordroot sedge	Carex chordorrhiza
Large-bracted corydalis	Corydalis curvisiliqua
Silky prairie-clover	Dalea villosa
Swamp-loosestrife	Decodon verticillatus
Northern panic-grass	Dichanthelium boreale
Roundleaved sundew	Drosera rotundifolia
False mermaid	Floerkea proserpinacoides
Bog bedstraw	Galium labradoricum
Povertygrass	Hudsonia tomentosa
Northern St. Johnswort	Hypericum boreale
Pineweed	Hypericum gentianoides
Winterberry	Ilex verticillata
Black-based quillwort	Isoetes melanopoda
Water-willow	Justicia americana
Dwarf dandelion	Krigia virginica
Cleft conobea	Leucospora multifida
Whiskbroom parsley	Lomatium foeniculaceum
Running clubmoss	Lycopodium clavatum
Bog clubmoss	Lycopodium inundatum
Annual skeletonweed	Lygodesmia rostrata
Water marigold	Megalodonta beckii
Northern lungwort	Mertensia paniculata
Bigroot pricklypear	Opuntia macrorhiza
Clustered broomrape	Orobanche fasciculata
Ricegrass	Oryzopsis pungens
Cinnamon fern	Osmunda cinnamomea
Purple cliffbrake	Pellaea atropurpurea

Arrow arum	Peltandra virginica
Pale green orchid	Platanthera flava
Eastern prairie fringed orchid	Platanthera leucophaea
Clammyweed	Polansia jamesii
Crossleaf milkwort	Polygala cruciata
Purple milkwort	Polygala polygama
Jointweed	Polygonella articulata
Douglas' knotweed	Polygonum douglasii
Three-toothed cinquefoil	Potentilla tridentata
Canada plum	Prunus nigra
Frenchgrass	Psoralea onobrychis
Pink shinleaf	Pyrola asarifolia
Prickly rose	Rosa acicularis
Meadow spikemoss	Selaginella eclipes
Rough-leaved goldenrod	Solidago patula
Bog goldenrod	Solidago uliginosa
Yellow-lipped ladies-tresses	Spiranthes lucida
Pickering morning-glory	Stylisma pickeringii
Rough-seeded fameflower	Talinum rugospermum
Waxy meadowrue	Thalictrum revolutum
Long beechfern	Thelypteris phegopteris
Large-leaved violet	Viola incognita
Rusty woodsia	Woodsia ilvensis
Yellow-eyed grass	Xyris torta

77.3(2) *Threatened plant species:*

Northern wild monkshood	Aconitum noveboracense
Round-stemmed false foxglove	Agalinus gattingerii
Nodding wild onion	Allium cernuum
Fragrant false indigo	Amorpha nana
Virginia snakeroot	Aristolochia serpentaria
Woolly milkweed	Asclepias lanuginosa
Showy milkweed	Asclepias speciosa
Forked aster	Aster furcatus
Rush aster	Aster junciformis
Flax-leaved aster	Aster linariifolius
Water parsnip	Berula erecta
Kittentails	Besseya bullii
Bog birch	Betula pumila
Pagoda plant	Blephilia ciliata
Leathery grapefern	Botrychium multifidum
Little grapefern	Botrychium simplex
Sweet Indian-plantain	Cacalia suaveolens
Poppy mallow	Callirhoe alcaeoides
Pipsissewa	Chimaphila umbellata

Golden saxifrage	Chrysosplenium iowense
Dayflower	Commelina erecta
Spotted coralroot	Corallorhiza maculata
Bunchberry	Cornus canadensis
Golden corydalis	Corydalis aurea
Pink corydalis	Corydalis sempervirens
Showy lady's-slipper	Cypripedium reginae
Slim-leaved panic-grass	Dichanthelium linearifolium
Jeweled shooting star	Dodecatheon amethystinum
Glandular wood fern	Dryopteris intermedia
Marginal shield fern	Dryopteris marginalis
Woodland horsetail	Equisetum sylvaticum
Slender cottongrass	Eriophorum gracile
Yellow trout lily	Erythronium americanum
Queen of the prairie	Filipendula rubra
Blue ash	Fraxinus quadrangulata
Black huckleberry	Gaylussacia baccata
Oak fern	Gymnocarpium dryopteris
Green violet	Hybanthus concolor
Twinleaf	Jeffersonia diphylla
Creeping juniper	Juniperus horizontalis
Intermediate pinweed	Lechea intermedia
Hairy pinweed	Lechea villosa
Prairie bush clover	Lespedeza leptostachya
Twinflower	Linnaea borealis
Western parsley	Lomatium orientale
Wild lupine	Lupinus perennis
Tree clubmoss	Lycopodium dendroideum
Rock clubmoss	Lycopodium porophilum
Hairy waterclover	Marsilea vestita
Bog buckbean	Menyanthes trifoliata
Winged monkeyflower	Mimulus alatus
Yellow monkeyflower	Mimulus glabratus
Partridge berry	Mitchella repens
Pinesap	Monotropa hypopithys
Small sundrops	Oenothera perennis
Little pricklypear	Opuntia fragilis
Royal fern	Osmunda regalis
Philadelphia panic-grass	Panicum philadelphicum
Slender beardtongue	Penstemon gracilis
Hooker's orchid	Platanthera hookeri
Northern bog orchid	Platanthera hyperborea
Western prairie fringed orchid	Platanthera praeclara
Purple fringed orchid	Platanthera psycodes
Pink milkwort	Polygala incarnata

Silverweed	Potentilla anserina
Shrubby cinquefoil	Potentilla fruticosa
Pennsylvania cinquefoil	Potentilla pensylvanica
One-sided shinleaf	Pyrola secunda
Meadow beauty	Rhexia virginica
Beaked rush	Rhynchospora capillacea
Northern currant	Ribes hudsonianum
Shining willow	Salix lucida
Bog willow	Salix pedicellaris
Low nutrush	Scleria verticillata
Buffaloberry	Sheperdia argentea
Scarlet globemallow	Sphaeralcea coccinea
Slender ladies-tresses	Spiranthes lacera
Oval ladies-tresses	Spiranthes ovalis
Hooded ladies-tresses	Spiranthes romanzoffiana
Spring ladies-tresses	Spiranthes vernalis
Rosy twisted-stalk	Streptopus roseus
Fameflower	Talinum parviflorum
Large arrowgrass	Triglochin maritimum
Small arrowgrass	Triglochin palustre
Low sweet blueberry	Vaccinium angustifolium
Velvetleaf blueberry	Vaccinium myrtilloides
False hellebore	Veratrum woodii
Kidney-leaved violet	Viola renifolia
Oregon woodsia	Woodsia oregana

77.3(3) *Special concern plant species:*

Balsam fir	Abies balsamea
Three-seeded mercury	Acalypha gracilens
Three-seeded mercury	Acalypha ostryifolia
Mountain maple	Acer spicatum
Moschatel	Adoxa moschatellina
Water plantain	Alisma gramineum
Wild onion	Allium mutabile
Amaranth	Amaranthus arenicola
Lanceleaf ragweed	Ambrosia bidentata
Saskatoon serviceberry	Amelanchier alnifolia
Low serviceberry	Amelanchier sanguinea
Raccoon grape	Ampelopsis cordata
Pearly everlasting	Anaphalis margaritacea
Sand bluestem	Andropogon hallii
Broomsedge	Andropogon virginicus
Purple angelica	Angelica atropurpurea
Purple rockcress	Arabis divaricarpa
Green rockcress	Arabis missouriensis

Lakecress	Armoracia lacustris
Fringed sagewort	Artemisia frigida
Common mugwort	Artemisia vulgaris
Pawpaw	Asimina triloba
Curved aster	Aster falcatus
Hairy aster	Aster pubentior
Prairie aster	Aster turbinellus
Standing milkvetch	Astragalus adsurgens
Bent milkvetch	Astragalus distortus
Missouri milkvetch	Astragalus missouriensis
Blue wild indigo	Baptisia australis
Yellow wild indigo	Baptisia tinctoria
Prairie moonwort	Botrychium campestre
Watershield	Brasenia schreberi
Buffalograss	Buchloe dactyloides
Poppy mallow	Callirhoe papaver
Water-starwort	Callitriche heterophylla
Grass pink	Calopogon tuberosus
Low bindweed	Calystegia spithamaea
Clustered sedge	Carex aggregata
Back's sedge	Carex backii
Bush's sedge	Carex bushii
Carey's sedge	Carex careyana
Flowerhead sedge	Carex cephalantha
Field sedge	Carex conoidea
Crawe's sedge	Carex crawei
Fringed sedge	Carex crinita
Double sedge	Carex diandra
Douglas' sedge	Carex douglasii
Dry sedge	Carex foena
Thin sedge	Carex gracilescens
Delicate sedge	Carex leptalea
Mud sedge	Carex limosa
Hoplike sedge	Carex lupuliformis
Yellow sedge	Carex lurida
Intermediate sedge	Carex media
Backward sedge	Carex retroflexa
Richardson's sedge	Carex richardsonii
Rocky Mountain sedge	Carex saximontana
Sterile sedge	Carex sterilis
Soft sedge	Carex tenera
Deep green sedge	Carex tonsa
Tuckerman's sedge	Carex tuckermanii
Umbrella sedge	Carex umbellata
Wild oats	Chasmanthium latifolium

Pink turtlehead	Chelone obliqua
Fogg's goosefoot	Chenopodium foggii
Missouri goosefoot	Chenopodium missouriensis
Coast blite	Chenopodium rubrum
Bugbane	Cimicifuga racemosa
Hill's thistle	Cirsium hillii
Swamp thistle	Cirsium muticum
Wavy-leaved thistle	Cirsium undulatum
Western clematis	Clematis occidentalis
Blue-eyed Mary	Collinsia verna
Cancer-root	Conopholis americana
Fireberry hawthorn	Crataegus chrysocarpa
Red hawthorn	Crataegus coccinea
Two-fruited hawthorn	Crataegus disperma
Hawthorn	Crataegus pruinosa
Hawksbeard	Crepis runcinata
Prairie tea	Croton monanthogynus
Crotonopsis	Crotonopsis elliptica
Waxweed	Cuphea viscosissima
Dodder	Cuscuta indecora
Small white lady's-slipper	Cypripedium candidum
Carolina larkspur	Delphinium carolinianum
Sessile-leaved tick trefoil	Desmodium sessilifolium
Fingergrass	Digitaria filiformis
Buttonweed	Diodia teres
Purple coneflower	Echinacea purpurea
Waterwort	Elatine triandra
Purple spikerush	Eleocharis atropurpurea
Green spikerush	Eleocharis olivacea
Oval spikerush	Eleocharis ovata
Dwarf spikerush	Eleocharis parvula
Few-flowered spikerush	Eleocharis pauciflora
Wolf's spikerush	Eleocharis wolfii
Interrupted wildrye	Elymus interruptus
Dwarf scouring rush	Equisetum scirpoides
Ponygrass	Eragrostis reptans
Tall cottongrass	Eriophorum angustifolium
Tawny cottongrass	Eriophorum virginicum
Upland boneset	Eupatorium sessilifolium
Spurge	Euphorbia commutata
Missouri spurge	Euphorbia missurica
Slender fimbristylis	Fimbristylis autumnalis
Umbrella grass	Fuirena simplex
Rough bedstraw	Galium asprellum
Small fringed gentian	Gentianopsis procera

Northern cranesbill	Geranium bicknellii
Spring avens	Geum vernum
Early cudweed	Gnaphalium purpureum
Limestone oak fern	Gymnocarpium robertianum
Bitterweed	Helenium amarum
Mud plantain	Heteranthera limosa
Water stargrass	Heteranthera reniformis
Hairy goldenaster	Heterotheca villosa
Common mare's-tail	Hippuris vulgaris
Canadian St. Johnswort	Hypericum canadense
Drummond St. Johnswort	Hypericum drummondii
White morning glory	Ipomoea lacunosa
Sumpweed	Iva annua
Alpine rush	Juncus alpinus
Toad rush	Juncus bufonius
Soft rush	Juncus effusus
Green rush	Juncus greenii
Edged rush	Juncus marginatus
Vasey's rush	Juncus vaseyi
Potato dandelion	Krigia dandelion
Pinweed	Lechea racemulosa
Duckweed	Lemna perpusilla
Creeping bush clover	Lespedeza repens
Silvery bladder-pod	Lesquerella ludoviciana
Wild flax	Linum medium
Brook lobelia	Lobelia kalmii
False loosestrife	Ludwigia peploides
Crowfoot clubmoss	Lycopodium digitatum
Adder's-mouth orchid	Malaxis unifolia
Globe mallow	Malvastrum hispidum
Two-flowered melic-grass	Melica mutica
Ten-petaled blazingstar	Mentzelia decapetala
Millet grass	Milium effusum
Rock sandwort	Minuartia michauxii
Naked mitrewort	Mitella nuda
Scratchgrass	Muhlenbergia asperifolia
Water milfoil	Myriophyllum heterophyllum
Rough water milfoil	Myriophyllum pinnatum
Water milfoil	Myriophyllum verticillatum
Glade mallow	Napaea dioica
Showy evening primrose	Oenothera speciosa
Northern adders-tongue fern	Ophioglossum vulgatum
Louisiana broomrape	Orobanche ludoviciana
Mountain ricegrass	Oryzopsis asperifolia
Gattinger's panic-grass	Panicum gattingeri

White beardtongue	Penstemon albidus
Cobaea penstemon	Penstemon cobaea
Tube penstemon	Penstemon tubiflorus
Cleft phlox	Phlox bifida
Annual ground cherry	Physalis pubescens
Heart-leaved plantain	Plantago cordata
Wood orchid	Platanthera clavellata
Green fringed orchid	Platanthera lacera
Plains bluegrass	Poa arida
Chapman's bluegrass	Poa chapmaniana
Weak bluegrass	Poa languida
Bog bluegrass	Poa paludigena
Meadow bluegrass	Poa wolfii
Hairy Solomon's-seal	Polygonatum pubescens
Large-leaved pondweed	Potamogeton amplifolius
Ribbonleaf pondweed	Potamogeton epihydrus
White-stemmed pondweed	Potamogeton praelongus
Spiralled pondweed	Potamogeton spirillus
Tussock pondweed	Potamogeton strictifolius
Vasey's pondweed	Potamogeton vaseyi
Bird's-eye primrose	Primula mistassinica
Prionopsis	Prionopsis ciliata
Mermaid weed	Proserpinaca palustris
Dwarf cherry	Prunus besseyi
Hortulan plum	Prunus hortulana
Sand cherry	Prunus pumila
Lemon scurfpea	Psoralea lanceolata
Crowfoot	Ranunculus circinatus
Gmelin's crowfoot	Ranunculus gmelinii
Buckthorn	Rhamnus alnifolia
Dwarf sumac	Rhus copallina
Northern gooseberry	Ribes hirtellum
Yellow cress	Rorippa sinuata
Swamp rose	Rosa palustris
Tooth-cup	Rotala ramosior
Dewberry	Rubus hispidus
Western dock	Rumex occidentalis
Widgeon grass	Ruppia maritima
Prairie rose gentian	Sabatia campestris
Sage willow	Salix candida
Sassafras	Sassafras albidum
Tumblegrass	Schedonnardus paniculatus
Scheuchzeria	Scheuchzeria palustris
Sensitive briar	Schrankia nuttallii
Hall's bulrush	Scirpus hallii

Prairie bulrush	Scirpus maritimus
Pedicelled bulrush	Scirpus pedicellatus
Smith's bulrush	Scirpus smithii
Torrey's bulrush	Scirpus torreyi
Veiny skullcap	Scutellaria nervosa
Wild stonecrop	Sedum ternatum
Rock spikemoss	Selaginella rupestris
Butterweed	Senecio glabellus
False golden ragwort	Senecio pseudaureus
Knotweed bristlegrass	Setaria geniculata
Virginia rockcress	Sibara virginica
Prairie dock	Silphium terebinthinaceum
Burreed	Sparganium androcladum
Great plains ladies-tresses	Spiranthes magnicamporum
Clandestine dropseed	Sporobolus clandestinus
Rough hedge-nettle	Stachys aspera
Needle-and-thread	Stipa comata
White coralberry	Symphoriocarpos albus
Eared false foxglove	Tomanthera auriculata
Spiderwort	Tradescantia virginiana
Humped bladderwort	Utricularia gibba
Flat-leaved bladderwort	Utricularia intermedia
Small bladderwort	Utricularia minor
Valerian	Valeriana edulis
American brookline	Veronica americana
Marsh speedwell	Veronica scutellata
Maple-leaved arrowwood	Viburnum acerifolium
Black arrowwood	Viburnum molle
Black haw	Viburnum prunifolium
Spurred violet	Viola adunca
Lance-leaved violet	Viola lanceolata
Macloskey's violet	Viola macloskeyi
Pale violet	Viola striata
Summer grape	Vitis aestivalis
Frost grape	Vitis vulpina

571—77.4(481B) Exemptions. Notwithstanding the foregoing list and the prohibitions in Iowa Code chapter 481B, a person may import, export, possess, transport, purchase, barter, buy, sell, offer to sell, hold for processing or process a species of animal or plant which is listed as endangered or threatened on the state list or as listed in the Code of Federal Regulations, Title 50, part 17, as amended to December 30, 1991, according to the following rules:

77.4(1) Trophies lawfully taken by persons licensed to hunt or fish (not including trapping or commercial harvest licenses) in another state, country or territory may be brought into this state and possessed, held for processing and processed but may not be sold or offered for sale.

77.4(2) Furs or skins of wildlife species appearing on the state list of endangered and threatened species which were lawfully taken or purchased in another state, country or territory may be imported, exported, purchased, possessed, bartered, offered for sale, sold, held for processing, or processed in this state if they are tagged or permanently marked by the state, country, or territory of origin.

77.4(3) Species of live animals appearing on the state list of endangered and threatened species may be imported, exported, possessed, purchased, bartered, offered for sale, or sold under the terms of a scientific collecting permit or educational project permit issued pursuant to Iowa Code section 481A.6 and administrative rules adopted by the department.

77.4(4) Plants, seeds, roots, and other parts of plants which appear on the state list of endangered and threatened plants which were lawfully taken or purchased in another state, country or territory may be imported, exported, purchased, possessed, offered for sale or sold in this state.

77.4(5) A part or product of a species of fish or wildlife appearing on the state list of endangered or threatened species which enters the state from another state or from a point outside the territorial limits of the United States may enter, be transported, exported, possessed, sold, offered for sale, held for processing or processed in accordance with the terms of a permit issued by the agency of jurisdiction in the state of origin or, if entering from outside the United States, a federal permit issued by the United States government. If proper documentation is available, a person may buy or offer to buy a part or product of a species of fish or wildlife appearing on the state or federal lists as long as it is imported from a legal source outside this state and proper documentation is provided.

77.4(6) If a person possesses a species of fish or wildlife or a part, product or offspring of such a species, proper documentation such as receipt of purchase and the permit from the state of origin or the U.S. government must be presented upon request of any conservation officer. Failure to produce such documentation is a violation of this chapter and will constitute grounds for forfeiture to the Iowa DNR.

77.4(7) A species of plant, fish or wildlife appearing on the state list of endangered and threatened species may be collected, held, salvaged and possessed under the terms of a scientific collecting permit issued pursuant to Iowa Code section 481A.6 and administrative rules adopted by the department.

77.4(8) Drainage district repairs and improvements to existing open ditch facilities are excluded from the department's protection efforts for the Topeka shiner. This includes facilities of levee and drainage districts established and maintained under Iowa Code chapter 468. This exclusion does not apply to new channelization, deepening, or leveeing of existing streams and rivers with permanent flow or existing streams with off-channel water areas capable of supporting fish.

This rule is intended to implement Iowa Code chapter 481B.

[Filed 8/31/77, Notice 7/27/77—published 9/21/77, effective 10/26/77]
[Filed 11/2/84, Notice 8/1/84—published 11/21/84, effective 1/1/85]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 11/10/88, Notice 8/24/88—published 11/30/88, effective 1/4/89]
[Filed 2/11/94, Notice 10/27/93—published 3/2/94, effective 4/6/94]
[Filed 12/10/99, Notice 6/2/99—published 12/29/99, effective 2/2/00]

260.7(2) At least two months prior to the expiration of the license, the board office shall mail a renewal application and continuing education report form to the licensee. Failure to receive the notice shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

a. The licensee shall submit to the board office, 30 days before licensure expiration, the application and continuing education report form with the renewal fee as specified in rule 260.11(152B).

b. When the licensee has satisfactorily completed the requirements for renewal 30 days in advance of the expiration of the previous license, a renewal license shall be issued and mailed to the licensee before expiration of the previous license.

260.7(3) When the licensee has not satisfactorily completed the requirements for renewal before the previous license expired and prior to its becoming delinquent, the licensee shall be assessed a late fee, as specified in rule 260.11(152B).

260.7(4) If the renewal fees are not received by the board within 60 days after the end of the last month of the renewal period, an application for reinstatement must be filed with the board with a reinstatement fee in addition to the renewal fee and the penalty fee outlined in subrule 260.7(1) and rule 260.11(152B).

645—260.8(152B) Inactive license. Licensees who do not practice respiratory care may be granted a waiver of compliance with continuing education requirements. The licensees shall apply in writing to the board requesting such status. The request shall contain a statement that the licensees will not hold themselves out to the public as being licensed respiratory care practitioners or practice respiratory care during the time the waiver is in effect. Inactive licensees shall pay the reinstatement fees as provided in subrule 260.11(5).

645—260.9(152B) Reinstatement of an inactive license.

260.9(1) *Inactive licensure reinstatement.* Inactive practitioners who have been granted a waiver of compliance as provided in rule 260.8(152B) shall, prior to practicing respiratory care in the state of Iowa, satisfy the following requirements for reinstatement.

a. Submit written application for reinstatement on a form provided by the board.

b. Furnish, in addition to the application, evidence of one of the following:

(1) The full-time practice of respiratory care in another state of the United States or District of Columbia and completion of continuing education for each year of inactive status substantially equivalent as determined by the board to that required under these rules; or

(2) Completion of a total number of hours of approved continuing education computed by multiplying 15 by the number of years the inactive status has been in effect not to exceed 75 hours; or

(3) Successful completion of the approved entry level examination conducted within one year prior to filing of the application for reinstatement; or

(4) Successful completion of a minimum 75-hour refresher course from a school accredited by the Joint Review Committee for Respiratory Care Education within one year prior to filing of the application for reinstatement.

c. Payment of the current biennial license renewal fee and reinstatement fee when applying for reinstatement of an inactive license as provided in rule 260.11(152B).

260.9(2) Reserved.

645—260.10(152B) Reinstatement of lapsed licenses.

260.10(1) A license shall be considered lapsed if not renewed within 30 days of the renewal date.

260.10(2) A licensee who wishes to reinstate a lapsed license shall pay past due renewal fees to a maximum of four years, a reinstatement fee and penalty fees.

260.10(3) Continuing education requirements for the period of time the license was lapsed are not waived.

260.10(4) Application for reinstatement shall be made on a form provided by the board.

645—260.11(152B) Fees.

260.11(1) Application fee for a license to practice as a respiratory care practitioner is $75.

260.11(2) Biennial renewal fee for a license to practice as a respiratory care practitioner is $50.

260.11(3) Penalty fee for late payment of renewal fee is $25.

260.11(4) Penalty fee for earning continuing education late is $25.

260.11(5) Reinstatement fee is $25.

260.11(6) Fee for duplicate license is $10.

260.11(7) Fee for verification of licensure is $10.

260.11(8) All fees are nonrefundable.

645—260.12(152B) Students/graduates.

260.12(1) A student enrolled in a respiratory therapy training program who is employed in an organized training program in an organized health care system may render services defined in Iowa Code sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for a limited period as follows:

1. For the duration of the respiratory therapist program, not to exceed four years.
2. For the duration of the respiratory technician program, not to exceed two years.

260.12(2) A graduate of an approved respiratory care training program employed in an organized health care system may render services as defined in Iowa Code sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for one year. The graduate shall be identified as a "respiratory care practitioner-license applicant."

260.12(3) Direct and immediate supervision of a respiratory care student or graduate practitioner means that the licensed respiratory practitioner shall:

1. Be continuously on site and present in the department or facility where the student or graduate is performing care;
2. Be immediately available to assist the person being supervised in the care being performed; and
3. Be responsible for care provided by students and graduates.

645—260.13(152B) Continuing education requirements for licensees.

260.13(1) The biennial compliance period shall extend from April 1 of each even-numbered year to March 31 of the next even-numbered year. Compliance with the requirement of continuing education is a prerequisite for license renewal to practice as a respiratory care practitioner in each subsequent licensee renewal period.

260.13(2) Thirty continuing education hours shall be required for renewal of a license.

260.13(3) Continuing education hours shall be completed in the license period for which the license was issued. Hours of continuing education shall not be carried over into the next continuing education compliance period. Credit will not be accepted for a duplication of continuing education activities within a license period.

260.13(4) It is the responsibility of licensees to finance their own costs of continuing education.

26. Failure to report a license revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country, within 30 days of the final action by the licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

27. Failure of a licensee or an applicant for licensure in this state to report any voluntary agreement to restrict the practice of respiratory care entered into in another state, district, territory, or country.

28. Knowingly submitting a false report of continuing education or failure to submit the annual report of continuing education.

29. Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

30. Failure to report a change of name or address to the office of the board within 30 days after occurrence.

31. Failure to comply with a subpoena issued by the board.

32. Rescinded IAB 7/14/99, effective 8/18/99.

33. Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings initiated under this subrule shall follow the procedures set forth in Iowa Code chapter 252J.

645—260.29(152B,272C) Code of ethics.

260.29(1) The respiratory care practitioner shall practice acceptable methods of treatment, and shall not practice beyond the competence or exceed the authority vested in the practitioner by physicians.

260.29(2) The respiratory care practitioner shall continually strive to increase and improve knowledge and skill, and render to each patient the full measure of the practitioner's ability. All services shall be provided with respect to the dignity of the patient, regardless of social or economic status, personal attributes or the nature of the patient's health problems.

260.29(3) The respiratory care practitioner shall be responsible for the competent and efficient performance of assigned duties, and shall expose incompetent, illegal or unethical conduct of members of the profession.

260.29(4) The respiratory care practitioner shall hold in confidence all privileged information concerning the patient and refer all inquiries regarding the patient to the patient's physician.

260.29(5) The respiratory care practitioner shall not accept gratuities and shall guard against conflict of interest.

260.29(6) The respiratory care practitioner shall uphold the dignity and honor of the profession and abide by its ethical principles.

260.29(7) The respiratory care practitioner shall have knowledge of existing state and federal laws governing the practice of respiratory therapy and shall comply with those laws.

260.29(8) The respiratory care practitioner shall cooperate with other health care professionals and participate in activities to promote community, state, and national efforts to meet the health needs of the public.

645—260.30(152B,272C) Reporting of judgments or settlements. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.31(152B,272C) Investigation of reports of judgments and settlements. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.32(152B,272C) Reporting of acts or omissions. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.33(152B,272C) Failure to report licensee. Rescinded IAB 7/14/99, effective 8/18/99.

645—260.34(152B,272C) Immunities. Rescinded IAB 7/14/99, effective 8/18/99.

These rules are intended to implement Iowa Code chapters 17A and 152B.

[Filed 7/20/88, Notice 6/1/88—published 8/10/88, effective 9/14/88]
[Filed 11/9/89, Notice 5/31/89—published 11/29/89, effective 1/3/90]
[Filed emergency 7/12/90—published 8/8/90, effective 7/12/90]
[Filed 5/10/91, Notice 11/14/90—published 5/29/91, effective 7/3/91]
[Filed 11/22/91, Notice 8/7/91—published 12/11/91, effective 1/15/92]
[Filed 3/10/93, Notice 9/16/92—published 3/31/93, effective 5/5/93]
[Filed 9/17/93, Notice 6/9/93—published 10/13/93, effective 11/17/93]
[Filed 6/12/97, Notice 5/7/97—published 7/2/97, effective 8/6/97]
[Filed 9/19/97, Notice 7/16/97—published 10/8/97, effective 11/12/97]
[Filed 6/25/99, Notice 4/7/99—published 7/14/99, effective 8/18/99]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

CHAPTER 261
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTER 262
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTERS 263 to 268
Reserved

CHAPTER 269
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 7/14/99, effective 8/18/99

CHAPTERS 270 to 279
Reserved

b. Completion of a total number of hours of accredited continuing education computed by multiplying 20 by the number of years a certificate of exemption shall have been in effect for such applicant; or

c. Successful completion of an approved examination conducted within one year immediately prior to the submission of such application for reinstatement.

653—11.19(272C) Exemptions for active practitioners. A physician licensed under this rule shall be exempt from the continuing education requirements for:

11.19(1) Periods that the licensee serves honorably on active duty in the military;

11.19(2) Periods that the licensee is a resident of another state or district having a continuing education requirement for the profession and the licensee meets all requirements of that state or district for practice therein;

11.19(3) Periods that the licensee is a government employee working in the licensee's specialty and assigned to duty outside the United States; or

11.19(4) For other periods of active practice and absence from the state approved by the board.

653—11.20(272C) Physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and attending physician. Waiver of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion of all of the minimum educational requirements waived by such methods as may be prescribed by the board.

653—11.21(272C) Noncompliance. A licensee who in the opinion of the board does not satisfy the requirements for license renewal stated in this chapter will be placed on probationary status and notified of the fact within 30 days after the renewal date. Within 90 days after such notification, the licensee must submit evidence to the board demonstrating that the deficiencies have been satisfied. If the deficiencies are not made up within the specified period of time, the licensee's license will be classified as lapsed without further hearing.

653—11.22(147) Licenses. When the board issues a license to practice, it shall record the licensee's name, license number and other identifying information in the board's computer records, in keeping with the intent of Iowa Code section 147.5. These computer files shall be backed up weekly with off-site storage of the backup files. Computer record keeping will be done in lieu of prior technology, a handwritten record book and cross-referenced licenses.

653—11.23 to **11.29** Reserved.

653—11.30(147) License renewal. A permanent license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy shall expire biennially on the first day of the birth month of the licensee and may be renewed as determined by the board without examination upon application of the licensee. Licenses of persons born in even-numbered years shall expire in even-numbered years, and licenses of persons born in odd-numbered years shall expire in odd-numbered years. Application for license renewal shall be made in writing accompanied by the required fee not later than the expiration date. Renewal certificates shall be displayed along with the original license in the primary location of practice.

11.30(1) Each licensee shall be sent a renewal notice by mail at least 60 days prior to the expiration date of the license. A penalty of $50 per calendar month shall be assessed by the board after the expiration date of the license. The penalty, however, shall not exceed $200. Failure of a licensee to renew a license within four months following its expiration date shall cause the license to lapse and shall invalidate it. A licensee whose license has lapsed and become invalid is prohibited from the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy until the license is reinstated in accordance with rule 11.32(147).

11.30(2) An issued permanent license shall be valid for a period not to exceed two years and two months as determined by the board in accordance with the physician's birth month and year.

11.30(3) The renewal fee for a permanent license issued during a calendar year shall be prorated on a monthly basis according to the date of issue and the physician's month and year of birth.

11.30(4) Licensees shall notify the board of any change in their home address or the address of their place of practice, within 30 days of making an address change.

653—11.31(147) Fees. The following fees shall be collected by the board and shall not be refunded except by board action in unusual instances such as documented illness of the applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of the application provided such withdrawal is received in writing by the cancellation date specified by the board. Examination fees shall be nontransferable from one examination to another. Refunds of examination fees shall be subject to a nonrefundable administrative fee of $75 per application. The administrative fee shall be deducted by the board or its designated testing service prior to actual refund.

11.31(1) For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board prior to January 1, 1987, $350. For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board between January 1, 1987, and May 31, 1991, $525. For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board subsequent to May 31, 1991, $300.

11.31(2) For a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy issued by endorsement, $300.

11.31(3) For a renewal of an active license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, $325 per biennial period or a prorated portion thereof for a period of less than two years as determined by the board to facilitate biennial renewal according to month and year of birth.

11.31(4) Upon written request, the board may provide the following information about the status of licensees or examinees for the designated fees:

a. Written verification that a licensee in this state is licensed.

(1) For a certified statement verifying licensure including the board seal or a letter of good standing, $40;

(2) For verification of licensure status not requiring certified statements or letters of up to ten licensees, $15;

(3) For an unlimited number of verifications of licensure status in a 12-month period, an annual subscription fee of $2000.

b. Written certification of scores of an examination given by the board in this state as permitted under Iowa Code section 147.21 and 653 IAC 1.13(2)*"f"* and *"g."*

(1) For a certified statement of grades attained by examination, $45.

(2) For a certified statement of grades attained by examination including examination history or other additional documentation, $55.

c. Documentation of public board actions subsequent to 653—subrule 1.3(7).

(1) For a certified copy of original documents affecting the licensure status of licensees including final orders and consent agreements, $35.

(2) For a copy of public documents related to board actions, rulings or procedures on licensure and disciplinary matters, $20.

d. Mailing lists.

(1) For printed mailing list of physicians, $65.

(2) For a mailing list on diskette, $40.

(3) For a mailing list in an electronic file, $35.

e. Returned checks. For a check returned for any reason, $25. If a license had been issued by the board office based on a check which is later returned by the bank, the board shall request payment by certified check or money order. If the fees are not paid within two weeks of notification by certified mail of the returned check, the licensee shall be subject to disciplinary action for noncompliance with board rules.

f. Copies of the Iowa Code chapters that pertain to the practice of medicine, $10.

g. Copies of the Medical Examiners Board[653] rules in the Iowa Administrative Code, $10.

11.31(5) For a duplicate license, which shall be so designated on its face, upon satisfactory proof that the original license issued by the Iowa department of public health has been destroyed or lost, $25.

11.31(6) For license to practice as a resident physician, $50.

11.31(7) For the renewal of a license to practice as a resident physician, $25.

11.31(8) For a temporary license, $200.

11.31(9) For the renewal of a temporary license, $200.

11.31(10) For a license to be placed on inactive status, $325.

11.31(11) For the reinstatement of a revoked or suspended license as outlined in subrule 12.50(36), and in addition to all other applicable fees, an application fee of $150.

11.31(12) For reinstatement of a lapsed license, in addition to the penalties as outlined in 11.30(1) and the renewal fees as outlined in 11.32(1)*"b,"* an application fee of $150.

11.31(13) For a special license to practice medicine and surgery or osteopathic medicine and surgery, an annual fee of $200.

11.31(14) For taking Step 3 of the United States Medical Licensing Examination (USMLE) administered by the board or its designated testing service subsequent to January 1, 1998, $505.

11.31(15) For taking the Federation Special Purpose Examination administered by the board subsequent to May 31, 1991, $350.

653—11.32(147) Reinstatement of lapsed license. Application for reinstatement of a lapsed license may not preclude other disciplinary actions by the board as provided in this chapter.

11.32(1) Licensees who allow their licenses to lapse by failing to renew such license may be reinstated without examination by submitting the following.

a. A completed application for reinstatement of a license to practice medicine and surgery or osteopathic medicine and surgery.

b. Payment of the renewal fees due provided that such fees shall not exceed $650 as computed by the board.

c. Evidence of 20 category 1 hours of continuing medical education for each lapsed year in accordance with rule 11.11(272C). Such hours shall not exceed 80 for reinstatement except when there is a demonstrated need for specialized education as determined by the board through a personal interview with the applicant.

1. The board may grant an extension of time of up to one year to allow compliance with continuing education requirements for reinstatement.

2. An exemption from the required reporting of continuing medical education for the purpose of reinstatement of an active practitioner may be granted by the board in accordance with rule 11.19(272C).

11.32(2) The board may require a licensee applying for reinstatement to successfully complete Step 3 of the USMLE with a passing score of 75 percent or better or the special purpose examination (SPEX) with a passing score of 75 percent or better in lieu of 11.32(1)*"c"* when the board finds reason to doubt the licensee's ability to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy with reasonable skill and safety.

11.32(3) When the board finds that a practitioner applying for reinstatement is or has been subject to disciplinary action taken against a license held by the applicant in another state of the United States, District of Columbia, territory, or foreign country and the violations which resulted in such actions would also be grounds for discipline in Iowa in accordance with rule 12.4(272C), the board may deny reinstatement of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy in Iowa or may impose any applicable disciplinary sanction as specified in rule 12.2(272C) as a condition of reinstatement.

11.32(4) For reactivation of an application for license to practice medicine and surgery, osteopathy or osteopathic medicine and surgery, issued either upon the basis of board examination or endorsement, as specified in 11.2(3), $150.

653—11.33(17A) Forms. All applications for examinations, certificates and licenses shall be on forms prescribed by the board. These forms may include, but not be limited to, the following, and where practicable, any one or more of the following forms may be consolidated into a single form.

Board Form	Form Title
1.	Application for permanent Iowa medical license.
2.	Resident physician's application for licensure.
3.	Application for a temporary Iowa medical license.
4.	Application for supervising physician for physician assistants.
5.	Application for reinstatement of a lapsed Iowa medical license.
6.	Application for renewal of a medicine and surgery license.
7.	Application for renewal of an osteopathic medicine and surgery license.
8.	Application for renewal of an osteopathic license.
9.	Application for renewal of a resident physician's license.
10.	Complaint form.
11.	Report of continuing medical education.
12.	Certificate of exemption from continuing education requirements.
13.	Application for waiver of minimum education requirements due to disability or illness.
14.	Application for a special Iowa medical license.

11.33(1) Whenever the board denies licensure to an applicant, the board shall by U.S. first-class certified mail, return receipt requested, or in the manner of service of an original notice notify the applicant of the licensure denial in writing, citing the reasons for which the application was denied, and the date upon which the denial took place.

11.33(2) Reserved.

653—11.34(147,148,150) Licensure denied—appeal procedure. An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of the appeal and request for hearing upon the executive director not more than 30 days following the date of the mailing of the notification of licensure denial to the applicant or, not more than 30 days following the date upon which the applicant was served notice if notification was made in the manner of service of an original notice. The request for hearing as outlined herein shall specifically delineate the facts to be contested and determined at the hearing.

653—11.35(147,148,150) Licensure denied—hearing. If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to 11.34(147,148,150), the hearing and subsequent procedures shall be pursuant to the process outlined in 653—subrules 12.50(13) to 12.50(32) inclusive.

These rules are intended to implement Iowa Code chapters 147, 148, 150, 150A and 272C.

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed 2/27/81, Notice 1/7/81—published 3/18/81, effective 4/22/81]
[Filed 4/9/82, Notice 2/3/82—published 4/28/82, effective 6/2/82]
[Filed 6/14/82, Notice 4/28/82—published 7/7/82, effective 8/11/82]
[Filed 11/5/82, Notice 9/29/82—published 11/24/82, effective 12/29/82]
[Filed emergency after Notice 4/28/83, Notice 2/2/83—published 5/25/83, effective 4/28/83]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]
[Filed emergency 3/8/85—published 3/27/85, effective 3/8/85]
[Filed emergency 8/9/85—published 8/28/85, effective 8/9/85]
[Filed 5/30/86, Notice 3/26/86—published 6/18/86, effective 7/23/86]
[Filed emergency 7/25/86—published 8/13/86, effective 7/25/86]
[Filed 9/3/86, Notice 7/16/86—published 9/24/86, effective 10/29/86]
[Filed 10/1/86, Notice 8/13/86—published 10/22/86, effective 11/26/86]
[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]
[Filed 9/2/87, Notice 7/29/87—published 9/23/87, effective 10/28/87]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 4/25/89, Notice 2/22/89—published 5/17/89, effective 6/21/89]
[Filed 5/11/90, Notice 3/7/90—published 5/30/90, effective 6/6/90]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 1/2/91, Notice 11/14/90—published 1/23/91, effective 2/27/91]
[Filed 6/7/91, Notice 5/1/91—published 6/26/91, effective 7/31/91]
[Filed 4/24/92, Notice 2/19/92—published 5/13/92, effective 6/17/92]
[Filed 11/19/93, Notice 10/13/93—published 12/8/93, effective 1/12/94]
[Filed 1/10/94, Notice 11/24/93—published 2/2/94, effective 3/9/94]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 2/23/96, Notice 9/27/95—published 3/13/96, effective 4/17/96]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]
[Filed 10/4/96, Notice 4/24/96—published 10/23/96, effective 11/27/96]
[Filed 12/13/96, Notice 10/23/96—published 1/1/97, effective 2/5/97]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 12/1/97, Notice 9/24/97—published 12/17/97, effective 1/21/98]
[Filed 6/12/98, Notice 4/8/98—published 7/1/98, effective 8/5/98]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]
[Filed emergency 12/8/99 after Notice 11/3/99—published 12/29/99, effective 12/8/99]

b. The head of the nursing program is responsible for the following:

(1) Submission to the board of a list of the students/number of students who are anticipated to complete the program, at least twice a year.

(2) Distribution of the board application form and NCLEX registration materials.

(3) Submission to the board of a list of persons who have failed to complete the program.

c. The applicant is responsible for the following:

(1) Submission of a completed board application form. The applicant may obtain the board application form and the NCLEX registration materials from the head of the nursing program or the board office.

(2) Submission of the original license fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C), is not refundable.

(3) Submission to NCLEX of a completed NCLEX registration and registration fee.

(4) Having the nursing program forward an official nursing transcript denoting the date of entry and date of graduation.

(5) Informing the board of the applicant's current mailing address.

(6) Self-scheduling the NCLEX examination at an approved testing center. Applicants who do not test within 95 days of NCLEX authorization shall be required to submit a new application for licensure and license fee.

(7) Completion of NCLEX registration within 12 months of receipt of the application for licensure and license fee. The board reserves the right to destroy the documents after 12 months.

3.4(4) *Application—out-of-state graduates.* Application for the examination to practice as a registered nurse/licensed practical nurse in Iowa shall be made according to the following process:

a. The board is responsible for the following:

(1) Upon request, application forms and instructions for filing shall be sent to the out-of-state applicant.

(2) The board shall confirm or deny the eligibility of each applicant upon receipt of the following materials:

Completed application form (submitted by the applicant).

Original license fee (submitted by the applicant).

Notification of completion of the NCLEX registration process (confirmed by NCLEX).

Official nursing transcript denoting the date of entry and date of graduation from an approved nursing education program.

b. The out-of-state applicant is responsible for the following:

(1) Submission of a completed board application form.

(2) Submission of the original license fee, made payable to the Iowa Board of Nursing. The fee, as outlined in rule 3.1(17A,147,152,272C), is not refundable.

(3) Submission to NCLEX of a completed NCLEX registration and registration fee.

(4) Having the nursing program forward an official nursing transcript denoting the date of entry and date of graduation.

(5) Informing the board of the applicant's current mailing address.

(6) Self-scheduling the NCLEX examination at an approved testing center. Applicants who do not test within 95 days of NCLEX authorization shall be required to submit a new application for licensure and license fee.

(7) Completion of NCLEX registration within 12 months of receipt of the application for licensure and license fee. The board reserves the right to destroy the documents after 12 months.

3.4(5) *Application—individuals enrolled in an academic course of study for registered nurses on June 30, 1995.* Rescinded IAB 12/29/99, effective 2/2/00.

(2) An inactive licensee shall have completed 15 contact hours of continuing education as specified in 655—Chapter 5. The continuing education shall have been earned within the 12 months prior to reactivation.

(3) The reactivation fee is specified in rule 3.1(17A,147,152,272C).

(4) Upon receipt of the completed application, required continuing education materials, and fee, the board shall issue a current license to practice in Iowa. The license shall be issued for more than 24 months up to 36 months until the license can be placed in the three-year renewal cycle based on birth month. Expiration shall be on the fifteenth day of the birth month.

3.7(7) *Duplicate license or certificate.* The board shall issue a duplicate of a current license or original certificate upon written request of the licensee and payment of the fee specified in rule 3.1(17A,147,152,272C). If the current license is destroyed, lost, or stolen, a duplicate license is required as replacement.

3.7(8) *Reissue of a license.* If there is an error on the license or certificate made by the board office, no fee shall be charged for a reissued corrected license or certificate. A license may be reissued if a licensee desires to have a current name or address printed on the current license prior to renewal. Reissuance is optional; however, written notification to the board office of name or address change is mandatory as outlined in subrule 3.7(1). The board shall reissue a license per written request of the licensee and payment of the fee as specified in rule 3.1(17A,147,152,272C) or at the direction of the executive director.

655—3.8(17A,147,152,272C) Verification. Upon written request from the licensee or other state and payment of the verification fee as specified in rule 3.1(17A,147,152,272C), the board shall provide a certified statement to another state that a registered nurse/licensed practical nurse is licensed, inactive, or lapsed in Iowa.

These rules are intended to implement Iowa Code chapters 17A, 152, and 272C and Iowa Code sections 147.2, 147.10, 147.11, 147.36, 147.76, 147.80, 147.100, 152.1, 152.5, 152.9, and 152.10.

[Filed 5/12/70]
[Filed 5/12/70; amended 8/11/70]◊
[Filed 2/20/76, Notice 12/29/75—published 3/8/76, effective 4/12/76]◊
[Filed 5/3/76, Notices 1/12/76, 3/22/76—published 5/17/76, effective 6/21/76]◊
[Filed 5/24/76, Notice 4/19/76—published 6/14/76, effective 7/19/76]◊
[Filed 12/3/76, Notice 8/9/76—published 12/29/76, effective 2/2/77]◊
[Filed 3/9/77, Notice 12/29/76—published 4/6/77, effective 5/11/77]◊
[Filed 3/18/77, Notice 8/9/76—published 4/6/77, effective 5/11/77]
[Filed 6/24/77, Notices 12/15/76, 4/20/77—published 7/13/77, effective 8/17/77]◊
[Filed 10/3/77, Notice 8/24/77—published 10/19/77, effective 11/23/77]
[Filed emergency 1/23/78—published 2/8/78, effective 1/23/78]
[Filed 4/21/78, Notice 2/22/78—published 5/17/78, effective 6/21/78]
[Filed 4/21/78, Notice 3/8/78—published 5/1/78, effective 6/21/78]◊
[Filed 7/17/80, Notice 5/14/80—published 8/6/80, effective 9/10/80]◊

◊History relating also to "Licensure to Practice—Licensed Practical Nurse," Ch 4 prior to IAC 5/23/84.

[Filed emergency after Notice 6/21/82, Notice 5/12/82—published 7/7/82, effective 6/21/82]
[Filed emergency after Notice 2/10/83, Notice 1/5/83—published 3/2/83, effective 2/10/83]◊
[Filed 5/2/84, Notice 2/29/84—published 5/23/84, effective 6/27/84]
[Filed 10/17/84, Notice 8/29/84—published 11/7/84, effective 12/12/84]
[Filed without Notice 7/19/85—published 8/14/85, effective 9/18/85]
[Filed 7/19/85, Notice 5/22/85—published 8/14/85, effective 9/18/85]
[Filed 9/20/85, Notice 8/14/85—published 10/9/85, effective 11/13/85]
[Filed emergency after Notice 4/15/86, Notice 2/26/86—published 5/7/86, effective 4/18/86]
[Filed 9/22/86, Notice 8/13/86—published 10/8/86, effective 11/12/86]
[Filed 4/30/87, Notice 2/25/87—published 5/20/87, effective 6/24/87]
[Filed emergency 7/29/87—published 8/26/87, effective 7/29/87]
[Filed 10/2/87, Notice 7/15/87—published 10/21/87, effective 11/25/87]
[Filed 2/17/88, Notice 12/16/87—published 3/9/88, effective 4/13/88]
[Filed 3/10/88, Notice 9/9/87—published 4/6/88, effective 7/1/88]
[Filed emergency 4/15/88 after Notice 2/24/88—published 5/4/88, effective 4/15/88]
[Filed 8/4/88, Notice 4/20/88—published 8/24/88, effective 9/28/88]
[Filed 8/4/88, Notice 6/15/88—published 8/24/88, effective 9/28/88]
[Filed 9/12/88, Notice 6/29/88—published 10/5/88, effective 11/9/88]*
[Filed 10/6/88, Notice 8/24/88—published 11/2/88, effective 12/7/88]
[Filed 5/26/89, Notice 2/22/89—published 6/14/89, effective 7/19/89]
[Filed 3/15/90, Notice 1/10/90—published 4/4/90, effective 5/9/90]
[Filed 12/20/91, Notice 10/16/91—published 1/8/92, effective 2/12/92]
[Filed emergency 2/10/93 after Notice 1/6/93—published 3/3/93, effective 2/10/93]
[Filed 12/8/93, Notice 10/13/93—published 1/5/94, effective 2/9/94]
[Filed 6/16/94, Notice 4/13/94—published 7/6/94, effective 8/10/94]
[Filed 9/30/94, Notice 7/6/94—published 10/26/94, effective 11/30/94]
[Filed 6/15/95, Notice 4/12/95—published 7/5/95, effective 8/9/95]
[Filed 10/5/95, Notice 7/5/95—published 10/25/95, effective 11/29/95]
[Filed 12/14/95, Notice 10/25/95—published 1/3/96, effective 2/7/96]
[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]
[Filed 8/17/99, Notice 6/30/99—published 9/8/99, effective 10/13/99]
[Filed 9/28/99, Notice 8/25/99—published 10/20/99, effective 11/24/99]
[Filed 12/10/99, Notice 10/20/99—published 12/29/99, effective 2/2/00]

◊History relating also to "Licensure to Practice—Licensed Practical Nurse," Ch 4 prior to IAC 5/23/84.
*Effective date of 11/9/88 delayed 70 days by the Administrative Rules Review Committee at its October meeting.
Delay lifted by ARRC 11/16/88.

CHAPTER 7
ADVANCED REGISTERED NURSE PRACTITIONERS
[Prior to 8/26/87, Nursing Board[590] Ch 7]

655—7.1(152) Definitions.

"Advanced registered nurse practitioner (ARNP)" is a nurse with current licensure as a registered nurse in Iowa who is registered in Iowa to practice in an advanced role. The ARNP is prepared for an advanced role by virtue of additional knowledge and skills gained through a formal advanced practice education program of nursing in a specialty area approved by the board. In the advanced role, the nurse practices nursing assessment, intervention, and management within the boundaries of the nurse-client relationship. Advanced nursing practice occurs in a variety of settings within an interdisciplinary health care team which provide for consultation, collaborative management, or referral. The ARNP may perform selected medically delegated functions when a collaborative practice agreement exists.

"Basic nursing education" as used in this chapter is a nursing program that prepares a person for initial licensure to practice nursing as a registered nurse.

"Board" as used in this chapter means Iowa board of nursing.

"Certified clinical nurse specialist" is an ARNP prepared at the master's level who possesses evidence of current advanced level certification as a clinical specialist in an area of nursing practice by a national professional nursing certifying body as approved by the board.

"Certified nurse-midwife" is an ARNP educated in the disciplines of nursing and midwifery who possesses evidence of current advanced level certification by a national professional nursing certifying body approved by the board. The certified nurse-midwife is authorized to manage the care of normal newborns and women, antepartally, intrapartally, postpartally or gynecologically.

"Certified nurse practitioner" is an ARNP educated in the disciplines of nursing who has advanced knowledge of nursing, physical and psychosocial assessment, appropriate interventions, and management of health care, and who possesses evidence of current certification by a national professional nursing certifying body approved by the board.

"Certified registered nurse anesthetist" is an ARNP educated in the disciplines of nursing and anesthesia who possesses evidence of current advanced level certification or recertification, as applicable, by a national professional nursing certifying body approved by the board.

"Collaboration" is the process whereby an ARNP and physician jointly manage the care of a client.

"Collaborative practice agreement" means an ARNP and physician practicing together within the framework of their respective professional scopes of practice. This collaborative agreement reflects both independent and cooperative decision making and is based on the preparation and ability of each practitioner.

"Consultation" is the process whereby an ARNP seeks the advice or opinion of a physician, pharmacist, or another member of the health care team. ARNPs practicing in a noninstitutional setting as sole practitioners, or in small clinical practice groups, shall regularly consult with a licensed physician or pharmacist regarding the distribution, storage, and appropriate use of controlled substances.

"Controlled substance" is a drug, substance, or immediate precursor in Schedules I through V of division II, Iowa Code chapter 124.

"National professional nursing certifying body" is a professional nursing certifying body approved by the board. Agencies approved by the board include the American Nurses Credentialing Center, the American Academy of Nurse Practitioners, the American College of Nurse-Midwives Certification Council, the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, the National Certification Board of Pediatric Nurse Practitioners and Nurses, the National Certification Corporation for the Obstetric, Gynecologic, and Neonatal Nursing Specialties, the Oncology Nursing Certification Organization, and the American Association of Critical Care Nurses Certification Corporation.

"Physician" means a medical doctor licensed under Iowa Code chapter 148 or osteopathic physician and surgeon licensed under Iowa Code chapter 150A.

"Prescriptive authority" is the authority granted to an ARNP registered in Iowa in a recognized nursing specialty to prescribe, deliver, distribute, or dispense prescription drugs, devices, and medical gases when the nurse is engaged in the practice of that nursing specialty. Registration as a practitioner with the Federal Drug Enforcement Administration and the Iowa board of pharmacy examiners extends this authority to controlled substances. ARNPs shall obtain a copy of the Iowa Pharmacy Law and Informational Manual. ARNPs are encouraged to subscribe to the Iowa Board of Pharmacy Newsletter.

"Referral" is the process whereby the ARNP directs the client to a physician or another health care professional for management of a particular problem or aspect of the client's care.

655—7.2(152) General requirements for the advanced registered nurse practitioner.

7.2(1) *Specialty areas of nursing practice for the advanced registered nurse practitioner.* The board derives its authority to define the educational and clinical experience that is necessary to practice at an advanced registered nurse practitioner level under the provisions of Iowa Code section 152.1(6)*"d."* The specialty areas of nursing practice for the advanced registered nurse practitioner which shall be considered as legally authorized by the board are as follows:

a. Certified clinical nurse specialist.

b. Certified nurse-midwife.

c. Certified nurse practitioner.

d. Certified registered nurse anesthetist.

7.2(2) *Titles and abbreviations.* A registered nurse who has completed all requirements to practice as an advanced registered nurse practitioner and who is registered with the board to practice shall use the title advanced registered nurse practitioner (ARNP). Utilization of the title which denotes the specialty area is at the discretion of the advanced registered nurse practitioner.

a. No person shall practice or advertise as or use the title of advanced registered nurse practitioner for any of the defined specialty areas unless the name, title and specialty area appear on the official record of the board and on the current license.

b. No person shall use the abbreviation ARNP for any of the defined specialty areas or any other words, letters, signs or figures to indicate that the person is an advanced registered nurse practitioner unless the name, title and specialty area appears on the official record of the board and on the current license.

c. Any person found to be practicing under the title of advanced registered nurse practitioner or using the abbreviation ARNP without being registered as defined in this subrule shall be subject to disciplinary action.

7.2(3) *General education and clinical requirements.*

a. The general educational and clinical requirements necessary for recognition by the board as a specialty area of nursing practice are as follows:

(1) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills as approved by the board; or

(2) Satisfactory completion of a formal advanced practice educational program of study in a nursing specialty area approved by the board and appropriate clinical experience as approved by the board.

b. Additional requirements. Nothing in this rule shall be construed to mean that additional general educational or clinical requirements cannot be defined in a specialty area.

7.2(4) *Application process.* A registered nurse who wishes to practice as an advanced registered nurse practitioner shall submit the following to the office of the board:

a. An advanced registered nurse practitioner application form which may be obtained from the office of the board.

b. A registration fee as established by the board.

c. A copy of the time-dated, advanced level certification by appropriate national certifying body evidencing that the applicant holds current certification in good standing; copy of official transcript directly from the formal advanced practice educational program maintaining the records necessary to document that all requirements have been met in one of the specialty areas of nursing practice as listed in subrule 7.2(1). The transcript shall verify the date of completion of the program/graduation and the degree conferred. A registered nurse may make application to practice in more than one specialty area of nursing practice.

7.2(5) *Initial registration.* The executive director or a designee shall have the authority to determine if all requirements have been met for registration as an advanced registered nurse practitioner. If it has been determined that all requirements have been met:

a. Official licensure records of the registered nurse shall denote registration as an advanced registered nurse practitioner as well as the specialty area(s) of nursing practice.

b. The registered nurse shall be issued a registration card and a certificate to practice as an ARNP which clearly denotes the name, title, specialty area(s) of nursing practice, and expiration date of registration. The expiration date shall be based on the same period of licensure to practice as a registered nurse.

7.2(6) *Registration completion.* The registered nurse shall complete the registration process within 12 months of receipt of the application materials. The board reserves the right to destroy the documents after 12 months.

7.2(7) *Denial of registration.* If it has been determined that all requirements have not been met, the registered nurse shall be notified in writing of the reason(s) for the decision. The applicant shall have the right of appeal to the Iowa board of nursing within 30 days of denial by the executive director or designee.

7.2(8) *Application process for renewal of registration.* Renewal of registration for the advanced registered nurse practitioner shall be for the same period of licensure to practice as a registered nurse. The executive director or a designee shall have the authority to determine if all requirements have been met for renewal as an advanced registered nurse practitioner. A registered nurse who wishes to continue practice as an advanced registered nurse practitioner shall submit the following at least 30 days prior to the license expiration to the office of the Iowa board of nursing:

a. Completed renewal application form.

b. Renewal fee as outlined in rule 655—3.1(17A,147,152,272C), definition of "fees."

c. Copy of current time-dated, advanced level certification by appropriate national certifying body.

7.2(9) *Continuing education requirements.* Continuing education shall be met as required for certification by the relevant national certifying body, as outlined in 655—subrule 5.2(3), paragraph *"e."*

7.2(10) *Denial of renewal registration.* If it has been determined that all requirements have not been met, the applicant shall be notified in writing of the reason(s) for the decision. Failure to obtain the renewal will result in termination of registration and of the right to practice in the advanced registered nurse practitioner specialty area(s). The applicant shall have the right of appeal to the Iowa board of nursing within 30 days of denial of the executive director or designee.

7.2(11) *Registration to practice as an advanced registered nurse practitioner restricted, revoked, or suspended.* Rescinded IAB 12/29/99, effective 2/2/00.

These rules are intended to implement Iowa Code sections 17A.3, 147.10, 147.53, 147.76, 147.107(6) and 152.1.

[Filed 2/11/83, Notice 9/1/82—published 3/2/83, effective 4/6/83]
[Filed emergency 3/25/83—published 4/13/83, effective 4/6/83]
[Filed 5/18/83, Notice 4/13/83—published 6/8/83, effective 7/13/83]
[Filed emergency 5/31/83—published 6/22/83, effective 7/13/83]
[Filed 7/29/83, Notice 5/11/83—published 8/17/83, effective 9/21/83]
[Filed 4/20/84, Notice 2/29/84—published 5/9/84, effective 6/13/84]
[Filed 7/26/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
[Filed 10/17/84, Notice 8/29/84—published 11/7/84, effective 12/12/84]
[Filed 12/8/86, Notice 10/22/86—published 12/31/86, effective 2/4/87]
[Filed emergency 7/29/87—published 8/26/87, effective 7/29/87]
[Filed 7/7/89, Notice 4/5/89—published 7/26/89, effective 8/30/89]
[Filed 3/12/91, Notice 1/9/91—published 4/3/91, effective 5/8/91]
[Filed emergency 2/20/92—published 3/18/92, effective 2/20/92]
[Filed 12/9/92, Notice 10/14/92—published 1/6/93, effective 2/10/93]
[Filed emergency 1/14/93—published 2/3/93, effective 2/10/93]
[Filed emergency 2/10/93 after Notice 1/6/93—published 3/3/93, effective 2/10/93]
[Filed 11/16/94, Notice 7/6/94—published 12/7/94, effective 1/11/95]
[Filed 12/19/97, Notice 10/22/97—published 1/14/98, effective 2/18/98]
[Filed 9/28/99, Notice 8/25/99—published 10/20/99, effective 11/24/99]
[Filed 12/10/99, Notice 10/6/99—published 12/29/99, effective 2/2/00]

CHAPTER 13
PERMITS

13.1(422) Retail sales tax permit required
13.2(422) Application for permit
13.3(422) Permit not transferable—sale of business
13.4(422) Permit—consolidated return optional
13.5(422) Retailers operating a temporary business
13.6(422) Reinstatement of canceled permit
13.7(422) Reinstatement of revoked permit
13.8(422) Withdrawal of permit
13.9(422) Loss or destruction of permit
13.10(422) Change of location
13.11(422) Change of ownership
13.12(422) Permit posting
13.13(422) Trustees, receivers, executors and administrators
13.14(422) Vending machines and other coin-operated devices
13.15(422) Other amusements
13.16(422) Substantially delinquent tax—denial of permit
13.17(422) Substantially delinquent tax—revocation of permit

CHAPTER 14
COMPUTATION OF TAX

14.1(422) Tax not to be included in price
14.2(422,423,77GA,ch1130) Retail bracket system for state sales and local option sales and service tax
14.3(422,423) Taxation of transactions due to rate change

CHAPTER 15
DETERMINATION OF A SALE AND SALE PRICE

15.1(422) Conditional sales to be included in gross sales
15.2(422,423) Repossessed goods
15.3(422,423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers
15.4(422,423) Bad debts
15.5(422,423) Recovery of bad debts by collection agency or attorney
15.6(422,423) Discounts, rebates and coupons
15.7(422,423) Trading stamps are not a discount
15.8(422,423) Returned merchandise
15.9(422) Goods damaged in transit
15.10(422) Consignment sales
15.11(422,423) Leased departments
15.12(422,423) Excise tax included in and excluded from gross receipts
15.13(422,423) Freight, other transportation charges, and exclusions from the exemption applicable to these services
15.14(422,423) Installation charges when tangible personal property is sold at retail
15.15(422) Premiums and gifts
15.16(422) Gift certificates
15.17(422,423) Finance charge
15.18(422,423) Coins and other currency exchanged at greater than face value
15.19(422,423) Trade-ins
15.20(422,423) Corporate mergers which do not involve taxable sales of tangible personal property or services

CHAPTER 16
TAXABLE SALES

16.1(422) Tax imposed
16.2(422) Used or secondhand tangible personal property
16.3(422,423) Tangible personal property used or consumed by the manufacturer thereof
16.4(422,423) Patterns, dies, jigs, tools, and manufacturing or printing aids
16.5(422,423) Explosives used in mines, quarries and elsewhere
16.6(422,423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates and wood mounts
16.7 Reserved
16.8(422,423) Wholesalers and jobbers selling at retail
16.9(422,423) Materials and supplies sold to retail stores
16.10(422,423) Sales to certain corporations organized under federal statutes

CHAPTER 18
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD OF TRANSACTION OR USAGE

CHAPTER 19
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

TITLE V
INDIVIDUAL

CHAPTER 38
ADMINISTRATION

CHAPTER 39
FILING RETURN AND PAYMENT OF TAX

CHAPTER 40
DETERMINATION OF NET INCOME

CHAPTER 77
DETERMINATION OF VALUE OF UTILITY COMPANIES

77.1(428,433,437,438) Definition of terms
77.2(428,433,437,438) Filing of annual reports
77.3(428,433,437,438) Comparable sales
77.4(428,433,437,438) Stock and debt approach to unit value
77.5(428,433,437,438) Income capitalization approach to unit value
77.6(428,433,437,438) Cost approach to unit value
77.7(428,433,437,438) Correlation
77.8(428,433,437,438) Allocation of unit value to state

CHAPTER 78
PROPERTY TAX EXEMPTIONS

78.1(427,441) Responsibility of local assessors
78.2(441) Responsibility of local boards of review
78.3(427) Responsibility of director of revenue and finance
78.4(427) Application for exemption
78.5(427) Partial exemptions
78.6(427,441) Taxable status of property

CHAPTER 79
REAL ESTATE TRANSFER TAX AND DECLARATIONS OF VALUE

79.1(428A) Real estate transfer tax: Responsibility of county recorders
79.2(428A) Taxable status of real estate transfers
79.3(428A) Declarations of value: Responsibility of county recorders and city and county assessors
79.4(428A) Certain transfers of agricultural realty
79.5(428A) Form completion and filing requirements
79.6(428A) Public access to declarations of value

CHAPTER 80
PROPERTY TAX CREDITS AND EXEMPTIONS

80.1(425) Homestead tax credit
80.2(426A,427) Military service tax exemption
80.3(427) Pollution control and recycling property tax exemption
80.4(427) Low-rent housing for the elderly and persons with disabilities
80.5(427) Speculative shell buildings
80.6(427B) Industrial property tax exemption
80.7(427B) Assessment of computers and industrial machinery and equipment
80.8(404) Urban revitalization partial exemption
80.9(427C,441) Forest and fruit-tree reservations
80.10(427B) Underground storage tanks
80.11(425A) Family farm tax credit
80.12(427) Methane gas conversion property
80.13(427B) Wind energy conversion property

TITLE X
CIGARETTES AND TOBACCO

CHAPTER 81
ADMINISTRATION

81.1(453A) Definitions
81.2(453A) Credentials and receipts
81.3(453A) Examination of records
81.4(453A) Records
81.5(453A) Form of invoice
81.6(453A) Audit of records—cost, supplemental assessments and refund adjustments
81.7(453A) Bonds
81.8 to 81.10 Reserved
81.11(453A) Appeal—practice and procedure before the department
81.12(453A) Permit—license revocation
81.13(453A) Permit applications and denials
81.14(453A) Confidential information
81.15 Reserved
81.16(453A) Inventory tax

CHAPTER 82
CIGARETTE TAX

CHAPTER 83
TOBACCO TAX

CHAPTER 84
UNFAIR CIGARETTE SALES

CHAPTER 85
Reserved

TITLE XI
INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAX

CHAPTER 86
INHERITANCE TAX

CHAPTER 87
IOWA ESTATE TAX

CHAPTER 88
GENERATION SKIPPING TRANSFER TAX

10.2(4) *Calendar year 1985.* The rate of interest upon all unpaid taxes which are due as of January 1, 1985, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1985. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1985. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1985.

10.2(5) *Calendar year 1986.* The interest upon all unpaid taxes which are due as of January 1, 1986, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1986. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1986. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1986.

10.2(6) *Calendar year 1987.* The interest upon all unpaid taxes which are due as of January 1, 1987, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1987. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1987. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1987.

10.2(7) *Calendar year 1988.* The interest upon all unpaid taxes which are due as of January 1, 1988, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1988. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1988. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1988.

10.2(8) *Calendar year 1989.* The interest upon all unpaid taxes which are due as of January 1, 1989, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1989. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1989. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1989.

10.2(9) *Calendar year 1990.* The interest upon all unpaid taxes which are due as of January 1, 1990, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1990. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1990. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1990.

10.2(10) *Calendar year 1991.* The interest upon all unpaid taxes which are due as of January 1, 1991, will be 12 percent per annum (1.0% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1991. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1991. This interest rate of 12 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1991.

10.2(11) *Calendar year 1992.* The interest upon all unpaid taxes which are due as of January 1, 1992, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1992. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1992. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1992.

10.2(12) *Calendar year 1993.* The interest upon all unpaid taxes which are due as of January 1, 1993, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1993. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1993. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1993.

10.2(13) *Calendar year 1994.* The interest upon all unpaid taxes which are due as of January 1, 1994, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1994. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1994. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1994.

10.2(14) *Calendar year 1995.* The interest upon all unpaid taxes which are due as of January 1, 1995, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1995. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1995. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1995.

10.2(15) *Calendar year 1996.* The interest upon all unpaid taxes which are due as of January 1, 1996, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1996. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1996. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1996.

10.2(16) *Calendar year 1997.* The interest rate upon all unpaid taxes which are due as of January 1, 1997, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1997. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1997. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1997.

10.2(17) *Calendar year 1998.* The interest rate upon all unpaid taxes which are due as of January 1, 1998, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1998. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1998. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1998.

10.2(18) *Calendar year 1999.* The interest rate upon all unpaid taxes which are due as of January 1, 1999, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1999. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1999. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1999.

10.2(19) *Calendar year 2000.* The interest rate upon all unpaid taxes which are due as of January 1, 2000, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2000. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2000. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2000.

This rule is intended to implement Iowa Code section 421.7.

701—10.3(422,450,452A) Interest on refunds. For those taxes on which interest accrues on refunds under Iowa Code sections 422.25(3), 422.28, 450.94, and 452A.65, interest shall accrue through the month in which the refund is mailed to the taxpayer and no further interest will accrue unless the department did not use the most current address as shown on the latest return or refund claim filed with the department.

This rule is intended to implement Iowa Code sections 422.25(3), 422.28, 450.94 and 452A.65.

701—10.4(421) Frivolous return penalty. A $500 civil penalty is imposed on the return of a taxpayer that is considered to be a "frivolous return." A "frivolous return" is: (1) A return which lacks sufficient information from which the substantial correctness of the amount of tax liability can be determined or contains information that on its face indicates that the amount of tax shown is substantially incorrect, or (2) a return which reflects a position of law which is frivolous or is intended to delay or impede the administration of the tax laws of this state.

If the frivolous return penalty is applicable, the penalty will be imposed in addition to any other penalty which has been assessed. If the frivolous return penalty is relevant, the penalty may be imposed even under circumstances when it is determined that there is no tax liability on the return.

The frivolous return penalty is virtually identical to the penalty for frivolous income tax returns which is authorized in Section 6702 of the Internal Revenue Code. The department will follow federal guidelines and court cases when determining whether or not the frivolous return penalty should be imposed.

The frivolous return penalty may be imposed on all returns filed with the department and not just individual income tax returns. The penalty may be imposed on an amended return as well as an original return. The penalty may be imposed on each return filed with the department.

10.4(1) *Nonexclusive examples of circumstances under which the frivolous return penalty may be imposed.* The following are examples of returns filed in circumstances under which the frivolous return penalty may be imposed:

a. A return claiming a deduction against income or a credit against tax liability which is clearly not allowed such as a "war," "religious," "conscientious objector" deduction or tax credit.

b. A blank or partially completed return that was prepared on the theory that filing a complete return and providing required financial data would violate the Fifth Amendment privilege against self-incrimination or other rights guaranteed by the Constitution.

c. An unsigned return where the taxpayer refused to sign because the signature requirement was "incomprehensible or unconstitutional" or the taxpayer was not liable for state tax since the taxpayer had not signed the return.

d. A return which contained personal and financial information on the proper lines but where the words "true, correct and complete" were crossed out above the taxpayer's signature and where the taxpayer claimed the taxpayer's income was not legal tender and was exempt from tax.

e. A return where the taxpayer claimed that income was not "constructively received" and the taxpayer was the nominee-agent for a trust.

f. A return with clearly inconsistent information such as when 99 exemptions were claimed but only several dependents were shown.

g. A document filed for refund of taxes erroneously collected with the contention that the document was not a return and that no wage income was earned. This was inconsistent with attached W-2 Forms reporting wages.

10.4(2) *Nonexclusive examples where the frivolous return penalty is not applicable.* The following examples illustrate situations where the frivolous return penalty would not be applicable:

a. A return which includes a deduction, credit, or other item which may constitute a valid item of dispute between the taxpayer and the department.

b. A return which includes innocent or inadvertent mathematical or clerical errors, such as an error in addition, subtraction, multiplication, or division or the incorrect use of a table provided by the department.

c. A return which includes a statement of protest or objection, provided the return contains all required information.

d. A return which shows the correct amount of tax due, but the tax due is not paid.

This rule is intended to implement Iowa Code section 421.7.

701—10.5(421) Exceptions from penalty provisions for taxes due and payable on or after January 1, 1987, and for tax periods ending on or before December 31, 1990. The penalty provided for failure to remit at least 90 percent of the tax due or of the tax due with the filing of the deposit form or return or to pay at least 90 percent of the tax required to be shown as due on the return under Iowa Code sections 422.16, 422.25, 422.58, 422.66, 423.18, 424.17, 435.5, 450.63, 450A.12, 451.12, 452A.65, 453A.28 or 453A.46 shall not be assessed by the department or paid by the taxpayer under any of the following conditions:

1. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department.

If upon audit of the original and amended returns, additional tax is found to be due and payments made with the original and amended return after application of the payments to penalty, interest, and then tax due, do not equal at least 90 percent of the tax required to be shown due, penalty will be assessed.

Payments made with the original return include any amounts refunded or credited to a subsequent tax liability.

The term "any contact by the department" means any written correspondence from the department including a notice of adjustment or assessment regarding a return or the scheduling in writing of an audit of a return or commencement of an audit without prior notification.

2. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return within 60 days of the final disposition of the federal government's audit and pays all tax shown to be due on the return. A copy of the written notification to the department should be attached to the amended return when it is filed.

3. The return or deposit is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service or another state agency and the taxpayer provides proof of timely mailing with adequate postage. See Iowa Code sections 622.105 and 622.106 for proof of timely mailing.

4. The return or deposit is timely mailed with adequate postage to the department and the taxpayer provides proof of timely mailing with adequate postage. See Iowa Code sections 622.105 and 622.106 for proof of timely mailing.

5. The taxpayer presents proof that the taxpayer relied upon documented written erroneous advice relating to the tax deficiency from the department, county treasurer, or federal Internal Revenue Service, whichever is appropriate.

This rule is intended to implement Iowa Code section 421.27.

701—10.72(452A) Interest. Interest at the rate of three-fourths of one percent per month, based on the tax due, shall be assessed against the taxpayer for each month such tax remains unpaid prior to January 1, 1982. The interest shall accrue from the date the return was required to be filed. Interest shall not apply to penalty. Each fraction of a month shall be considered a full month for the computation of interest. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

Refunds on reports or returns filed on or after July 1, 1986, but before July 1, 1997, will accrue interest beginning on the first day of the third calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later, at the rate in effect under Iowa Code section 421.7, counting each fraction of a month as an entire month. Refunds on reports or returns filed on or after July 1, 1997, will accrue interest beginning on the first day of the second calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later. Claims for refund filed under Iowa Code sections 452A.17 and 452A.21 will accrue interest beginning with the first day of the second calendar month following the date the refund claim is received by the department. See rule 10.3(422,450,452A).

This rule is intended to implement Iowa Code section 452A.65 as amended by 1997 Iowa Acts, House File 266.

701—10.73 to **10.75** Reserved.

CIGARETTES AND TOBACCO
[Prior to 1/23/91, see 701—81.8(98), 81.9(98), and 81.15(98)]

701—10.76(453A) Penalties.

10.76(1) *Cigarettes.* The following is a list of offenses which subject the violator to a penalty:

1. The failure of a permit holder to maintain proper records;
2. The sale of taxable cigarettes without a permit;
3. The filing of a late, false or incomplete report with the intent to evade tax by a cigarette distributor, distributing agent or wholesaler;
4. Acting as a distributing agent without a valid permit; and
5. A violation of any provision of Iowa Code chapter 453A or these rules.

Penalties for these offenses are as follows:

- A $200 penalty for the first violation.
- A $500 penalty for a second violation within two years of the first violation.
- A $1,000 penalty for a third or subsequent violation within two years of the first violation.

Penalties for possession of unstamped cigarettes are as follows:

- A $200 penalty for the first violation if a person is in possession of more than 40 but not more than 400 unstamped cigarettes.
- A $500 penalty for the first violation if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes.
- A $1,000 penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes.
- For a second violation within two years of the first violation, the penalty is $400 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; $1,000 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and $2,000 if a person is in possession of more than 2,000 unstamped cigarettes.
- For a third or subsequent violation within two years of the first violation, the penalty is $600 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; $1,500 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and $3,000 if a person is in possession of more than 2,000 unstamped cigarettes.

a. Rescinded IAB 1/23/91.

b. For tax due on or after January 1, 1985. If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 5 percent of the tax deficiency shall be imposed. This penalty is not subject to waiver for reasonable cause.

c. For tax due on or after January 1, 1987. If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 7.5 percent of the tax deficiency is imposed. This penalty is not subject to waiver.

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

10.76(2) *Tobacco.*

a. Rescinded IAB 1/23/91.

b. For tax due on or after January 1, 1985, but before January 1, 1987.

(1) *Deficient return—payment.* If a return is filed and it is determined to be deficient as to reporting tax due or remitting the tax due, the department shall issue a proposed assessment or billing including a proposed penalty. If the taxpayer pays the proposed assessment or appeals the decision, as per rule 701—81.11(453A) within 20 days, the penalty shall not accrue. A final assessment is issued at the termination of the appeals process or if the taxpayer does not appeal and does not pay the proposed assessment within 20 days. The penalty attaches and becomes effective upon issuance of the final assessment. The penalty upon final assessment is 5 percent of the unpaid tax if less than 90 percent of the tax has been paid by the due date. If the deficiency was the result of a false or fraudulent return made with the intent to evade the tax, the penalty shall be 50 percent of the tax required to be shown due.

(2) *Failure to file a return.* If any person fails to file a tax return required by Iowa Code chapter 453A, division II, or these rules, the director shall make written demand upon said person to file the return. If the return is not filed within 20 days, the director shall assess the tax due based upon an estimated return and included therein shall be a penalty of 50 percent of the unpaid tax. If the return is filed within the 20-day period, the penalty does not accrue.

The penalty imposed under subrule 10.76(2), paragraph *"b,"* is not subject to waiver for reasonable cause.

c. For tax due on or after January 1, 1987. If it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division II, which failure was not the result of an intent to evade the tax, a penalty of 7.5 percent of the tax deficiency is imposed. This penalty is not subject to waiver.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due and payable on or after January 1, 1987. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 453A.28, 453A.31 and 453A.46 as amended by 1999 Iowa Acts, chapter 151.

701—10.77(453A) Interest.

10.77(1) *For tax due on or after January 1, 1985, but before January 1, 1991.*

a. Cigarettes. There shall be assessed interest at the rate established by rule 701—10.2(421) from the due date of the tax to the date of payment counting each fraction of a month as an entire month. For the purpose of computing the due date of any unpaid tax, a FIFO inventory method shall be used for cigarettes and stamps. See subrule 10.41(4) for examples of penalty and interest.

b. Tobacco. The interest rate on delinquent tobacco tax is the rate established by rule 701—10.2(421) counting each fraction of a month as an entire month. If an assessment for taxes due is not allocated to any given month, the interest shall accrue from the date of assessment. See subrule 10.41(4) for examples of penalty and interest.

10.77(2) Reserved.

This rule is intended to implement Iowa Code sections 453A.28 and 453A.46.

701—10.78(453A) Waiver of penalty or interest. For tax due on or after January 1, 1985, but for tax periods ending before January 1, 1991.

10.78(1) *Cigarettes.* The director has the power to waive or reduce the penalty imposed by Iowa Code section 453A.31 if a violation of that statute is due to reasonable cause. See rule 10.79(453A). The penalty imposed by Iowa Code section 453A.28 is not subject to waiver for reasonable cause.

KNOW ALL PERSONS BY THESE PRESENTS:

That we ____(taxpayer)____ as principal, and ____(surety)____, as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue and Finance for the use of the State of Iowa, in the sum of $ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above-named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue and Finance, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated this _____ day of _____, 19 ____.

_____
Principal

_____
Surety

_____
Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA)
ss.
COUNTY OF)

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts," and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution."

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____ Surety (type name)	$ _____	$ _____
_____ Surety (type name)	$ _____	$ _____

Subscribed and sworn to before me the undersigned Notary Public this _____ day of _____, 19 ____.

(Seal)

_____
Notary Public in and
for the State of Iowa

701—10.125(422,453B) Duration of the bond. The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated as provided by law.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—10.126(422,453B) Exoneration of the bond. Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the director when any of the following events occur: upon full payment of the tax, penalty, interest, costs or fees found to be due; upon filing a bond for the purposes of judicial review which bond is sufficient to secure the unpaid tax penalty, interest, costs and fees; or if no additional tax, penalty, interest, costs or fees are found to be due that have not been previously paid, upon entry of a final unappealable order which resolves the underlying protest.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]
[Filed 12/17/82, Notice 11/10/82—published 1/5/83, effective 2/9/83]
[Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]
[Filed 12/14/84, Notice 11/7/84—published 1/2/85, effective 2/6/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 1/22/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 11/26/86, Notice 10/22/86—published 12/17/86, effective 1/21/87]
[Filed 12/11/87, Notice 11/4/87—published 12/30/87, effective 2/3/88]
[Filed 12/9/88, Notice 11/2/88—published 12/28/88, effective 2/1/89]
[Filed without Notice 6/12/89—published 6/28/89, effective 8/2/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 11/21/90, Notice 10/17/90—published 12/12/90, effective 1/16/91]
[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]
[Filed 12/4/92, Notice 10/28/92—published 12/23/92, effective 1/27/93]
[Filed 12/3/93, Notice 10/27/93—published 12/22/93, effective 1/26/94]
[Filed 11/18/94, Notice 10/12/94—published 12/7/94, effective 1/11/95]
[Filed 12/2/94, Notice 10/26/94—published 12/21/94, effective 1/25/95]
[Filed 11/3/95, Notice 9/27/95—published 11/22/95, effective 12/27/95]
[Filed 12/1/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]*
[Filed emergency 3/11/96—published 3/27/96, effective 3/11/96]
[Filed 12/13/96, Notice 11/6/96—published 1/1/97, effective 2/5/97]
[Filed 9/5/97, Notice 7/30/97—published 9/24/97, effective 10/29/97]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]
[Filed 12/11/98, Notice 11/4/98—published 12/30/98, effective 2/3/99]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]
[Filed 9/3/99, Notice 7/28/99—published 9/22/99, effective 10/27/99]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]◊

*Inadvertently omitted IAC 12/20/95; inserted 2/14/96.
◊Two ARCs

TITLE II
EXCISE

CHAPTER 11
ADMINISTRATION
[Prior to 12/17/86, Revenue Department[730]]

701—11.1(422,423) Definitions. When the word "department" appears in this chapter it means the "Iowa Department of Revenue and Finance"; the word "director" means the "director of revenue and finance"; the word "tax" means the "tax upon retail sales or use of tangible personal property or taxable services."

This rule is intended to implement Iowa Code sections 422.3 and 422.68(1).

701—11.2(422,423) Statute of limitations. On and after July 1, 1987, the period for the department's examination and determination of the correct amount of tax is unlimited in the following circumstances:

1. When a return has been filed, if the return was false or fraudulent and made with the intent to evade tax, or
2. If there has been a failure to file a return.

11.2(1) *Varying periods of limitation.* In all circumstances other than those described in the introductory paragraph of this rule, the department has the following limited amounts of time to exaine a return, determine sales or use tax due, and give notice of assessment to the taxpayer:

a. For returns filed for quarterly periods beginning before January 1, 2000, five years.

b. For returns filed for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, four years.

c. For returns filed for quarterly periods beginning on or after January 1, 2001, three years.

For agreements entered into on and after July 1, 1992, the applicable period of limitation can be extended by the taxpayer's signing a waiver on a form provided by the department.

11.2(2) *One-year statute of limitations.* Whenever books and records are examined by an employee designated by the director of the department of revenue and finance, whether to verify a return or claim for refund or in making an audit, then an assessment must be issued within one year from the date of the completion of the examination. If not, the period for which the books and records were examined becomes closed and no assessment can be made. In no case is the one-year period of limitation an extension of or in addition to the periods of limitation described in subrule 11.2(1) above. *The Maytag Company v. Iowa State Tax Commission,* Equity No. 76-130-26112, Jasper County District Court, March 1, 1966.

EXAMPLE: An employee of the department examines the books and records of the taxpayer for the period of taxpayer's returns filed on April 30, 1973, to April 30, 1977. The examination is completed on February 3, 1978. The notice of assessment must be given on or before April 30, 1978, in order to include the earliest tax return period above. If the notice of assessment is given on February 2, 1979, it is within the one-year period, but it would not be timely for purposes of the periods April 30, 1973, to December 31, 1973, although the subsequent periods beginning January 1, 1974, to April 30, 1977, could be included.

EXAMPLE: An employee of the department examines a taxpayer's books and records located in Davenport for the returns filed on April 30, 1974, to April 30, 1977. The examination is completed on February 2, 1978. However, the taxpayer's books and records for the same period located in Des Moines have not been examined. The one-year limitation period with reference to the Davenport books and records commences on February 2, 1978. However, the one-year period concerning the Des Moines books and records has not commenced.

This rule is intended to implement Iowa Code subsections 422.54(1), 422.54(2), and 422.70(1) as amended by 1999 Iowa Acts, chapter 156.

701—11.3(422,423) Credentials and receipts. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer's name, address and permit number; the purpose for the payment; and the amount of the payment. The taxpayer should retain all receipts, and only official receipts for payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 422.68(1), 422.71 and 423.23.

701—11.4(422,423) Retailers required to keep records.

11.4(1) *Records required.* The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include the normal books of account ordinarily maintained by a person engaged in the activity in question and include all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of tax returns. In addition to the above, the following more specific records requirements apply:

a. A daily record of the amount of all cash and time payments and credit sales.

b. A record of the amount of all merchandise purchased and of all services performed for a retailer, including all bills of lading, invoices and copies of purchase orders.

c. A record of all deductions and exemptions taken in filing a sales or use tax return.

d. A true and complete inventory of the value of the stock on hand taken at least once a year. This includes an inventory of merchandise accepted as partial payment of the sales price on new merchandise.

e. An accurate record of all services performed, including materials purchased for use in performing these services.

f. Exemption certificates which are evidence of exempt sales must be executed or be in effect at or near (within 30 days of sale) the time of the sale. See 701—subrule 15.3(2).

11.4(2) *Microfilm and related record systems.* Microfilm, microfiche, COM (computer on machine), and other related reduction in storage systems will be referred to as "microfilm" in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those maintained as specified by the Internal Revenue Service under Revenue Procedure 81-46, Section 5. Microfilm reproductions of supporting records of detail, i.e., sales invoices, purchase invoices, credit memoranda, etc., may be allowed providing all the following conditions are met and accepted by the taxpayer.

a. Appropriate facilities are provided to ensure the preservation and readability of the films for periods required.

b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.

11.10(3) *Amount of bond or security.* When it is determined that a permit holder or applicant for a sales tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the permit holder or applicant will be or is a semimonthly depositor, a bond or securities in an amount sufficient to cover three months' sales tax liability will be required. If the permit holder or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months' sales tax liability will be required. If the applicant or permit holder will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability. If the applicant or permit holder will be or is an annual filer, the bond or securities which will be required would be in the amount of one year's tax liability. The department does not accept bonds for less than $100. If the bond amount is calculated to be less than $100, a $100 bond is required.

This rule is intended to implement Iowa Code section 422.52.

701—11.11(422) Retailers newly liable, as of July 1, 1988, for collection of sales tax. Rescinded IAB 10/13/93, effective 11/17/93.

[Filed December 12, 1974]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed emergency 4/28/78—published 5/17/78, effective 4/28/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 5/8/81, Notice 4/1/81—published 5/27/81, effective 7/1/81]
[Filed 7/2/81, Notice 5/27/81—published 7/22/81, effective 8/26/81]
[Filed 5/7/82, Notice 3/31/82—published 5/26/82, effective 6/30/82]
[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]
[Filed 2/10/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 10/30/87, Notice 9/23/87—published 11/18/87, effective 12/23/87]
[Filed 9/30/88, Notice 8/24/88—published 10/19/88, effective 11/23/88]◊
[Filed 2/17/89, Notice 1/11/89—published 3/8/89, effective 4/12/89]
[Filed 11/9/89, Notice 10/4/89—published 11/29/89, effective 1/3/90]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 3/30/90, Notice 2/21/90—published 4/18/90, effective 5/23/90]
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]
[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

◊Two ARCs

CHAPTER 13
PERMITS
[Prior to 12/17/86, Revenue Department[730]]

701—13.1(422) Retail sales tax permit required. When used in this chapter or any other chapter relating to retail sales, the word "permit" shall mean "a retail sales tax permit."

A person shall not engage in any Iowa business subject to tax until the person has procured a permit except as provided in 13.5(422). There is no charge for a retail sales tax permit. If a person makes retail sales from more than one location, each location from which taxable sales of tangible personal property or services will occur shall be required to hold a permit. Retail sales tax permits are issued to retailers for the purpose of making retail sales of tangible personal property or taxable services. Persons shall not make application for a permit for any other purpose. For details regarding direct pay permits, see rule 701—12.3(422).

This rule is intended to implement Iowa Code section 422.53 as amended by 1999 Iowa Acts, chapter 152.

701—13.2(422) Application for permit. An application for a permanent permit shall be made upon a form provided by the department, and the applicant shall furnish all information requested on such form.

An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner's name, in the case of a sole ownership by an individual; or, the trade name and the name of all partners, in the case of a partnership.

The application shall be signed by the owner, in the case of an individual business; by a partner, in the case of a partnership, although all partners' names shall appear on the application; and by the president, vice president, treasurer or other principal officer of a corporation or association, unless written authorization is given by the officers for another person to sign the application.

The application shall state the date when the applicant will begin selling tangible personal property or taxable services at retail in Iowa from the location for which the application is made.

This rule is intended to implement Iowa Code section 422.53.

701—13.3(422) Permit not transferable—sale of business. Permits shall not be transferable. A permit holder selling the business shall cancel the permit, and the purchaser of the business shall apply for a new permit in the purchaser's own name.

This rule is intended to implement Iowa Code section 422.53.

701—13.4(422) Permit—consolidated return optional. Two types of permit holders have the option of filing a consolidated return. The first is a permit holder with multiple locations from which taxable sales are made and the second is certain affiliated corporations.

13.4(1) *Permit holders with multiple locations.* A permit holder procuring more than one permit may file a separate return for each permit; or, if arrangements have been made with the department, the permit holder may file one consolidated return reporting sales made at all locations for which a permit is held.

13.4(2) *Affiliated corporations.* Any group consisting of a parent and its affiliates, which is entitled to file a consolidated return for federal income tax purposes and which makes retail sales of tangible personal property or taxable enumerated services, may make application to the director for permission to make deposits and file a consolidated Iowa sales tax return. An application for consolidation can be made for any tax period beginning on or after January 1, 2000.

The application shall be in writing and shall be signed by an officer of the parent corporation. It shall contain the business name, address, federal identification number, and Iowa sales tax identification number of every corporation seeking the right to file a consolidated return. The application shall state the initial tax period for which the right to file a consolidated return is sought and shall be filed no later than 90 days prior to the beginning of that period. The application shall also contain any additional relevant information which the director may, in individual instances, require.

A parent corporation and each affiliate corporation that file a consolidated return are jointly and severally liable for all tax, penalty, and interest found due for the tax period for which a consolidated return is filed or required to be filed.

13.4(3) *Requirements common to returns filed under subrules 13.4(1) and 13.4(2).* Taxpayers shall file consolidated returns only on forms provided by the department. All working papers used in the preparation of the information required to complete the returns must be available for examination by the department. Undercollections of sales tax at one or more locations or by one or more affiliates may not be offset by overcollections at other locations or by other affiliates.

This rule is intended to implement Iowa Code section 422.51 as amended by 1999 Iowa Acts, chapter 156, and Iowa Code section 422.53.

701—13.5(422) Retailers operating a temporary business. A person not regularly engaged in selling at retail and not having a permanent place of business but is temporarily selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like shall not be required to hold a permit. These retailers shall request an identification card from the department. The card shall be in a form prescribed by the director and shall be completed and displayed by the retailer to show authorization to collect tax. The issuance of the card by the department shall be dependent upon the frequency of sales and other conditions as each individual case may warrant.

This rule is intended to implement Iowa Code section 422.53(6).

701—13.6(422) Reinstatement of canceled permit. A person who previously held and canceled a permit and wishes to reengage in business in the same county shall apply to the department for reinstatement of the permit. Upon receipt of the proper clearance for previous tax returns, a new permit shall be issued.

This rule is intended to implement Iowa Code section 422.53.

701—13.7(422) Reinstatement of revoked permit. A revoked permit shall be reinstated only on such terms and conditions as the case may warrant. Terms and conditions include payment of any tax liability which may be due to the department. See rule 13.17(422) for a description of the circumstances under which nonpayment of taxes may lead to revocation of a permit.

Pursuant to the director's statutory authority in Iowa Code section 422.53(5) to restore licenses after a revocation, the director has determined that upon the revocation of a sales tax permit the initial time, the permit holder will be required to pay all delinquent sales tax liabilities, to file returns, and to post a bond and to refrain from taxable occurrences under Iowa Code section 422.43 as required by the director prior to the reinstatement or issuance of a new sales tax permit.

As set forth above, the director may impose a waiting period during which the permit holder must refrain from taxable occurrences pursuant to the penalties of Iowa Code section 422.58(2), not to exceed 90 days to restore a permit or issue a new permit after a revocation. The department may require a sworn affidavit, subject to the penalties of perjury, stating that the permit holder has fulfilled all requirements of said order of revocation, and stating the dates on which the permit holder refrained from taxable occurrences.

Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a revoked permit or issue a new permit after a revocation unless otherwise noted.

Failure to post a bond as required.

Failure to file a quarterly return or monthly deposit timely.

Failure to pay tax timely (including unhonored checks, failure to pay, and late payments).

Failure to file a quarterly return or a monthly deposit and pay tax shown on the return or deposit timely (counts as two offenses).

The administrative law judge or director of revenue and finance may order a waiting period after the revocation not to exceed:

Five days for one through five offenses.

Seven days for six through seven offenses.

Ten days for eight through nine offenses.

Thirty days for ten offenses or more.

The administrative law judge or director of revenue and finance may order a waiting period not to exceed:

Forty-five days if the second revocation occurs within 24 months of the first revocation.

Sixty days if the second revocation occurs within 18 months of the first revocation.

Ninety days if the second revocation occurs within 12 months of the first revocation.

Ninety days if the third revocation occurs within 36 months of the second revocation.

A revoked permit will not be reinstated if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder, who is an individual requesting reinstatement, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 422.53 and 422.58(2) and 1995 Iowa Acts, chapter 115.

701—13.8(422) Withdrawal of permit. After investigation, the department will withdraw a permit under the following conditions:

13.8(1) Upon a determination that the permit holder cannot be located in the state of Iowa and upon failure to obtain service of an order to appear and show cause, after sending the notice by registered certified mail or an attempt to personally serve the notice of the order.

13.8(2) Upon a determination that the permit holder cannot be located in the state of Iowa and upon a determination by the department that a business has been terminated or abandoned by the permit holder, without a request for cancellation signed by the permit holder.

13.8(3) The permit holder has become incapacitated or unable to respond or is deceased and has no duly appointed trustee, guardian or individual holding a power of attorney, executor or administrator.

The withdrawal shall not constitute a revocation of said license, nor shall any penalties imposed for revocation be applicable. A permit so withdrawn shall be reissued in its prior status at such time as any affected permit holder so requests. The proceedings for withdrawal will be in conformity with Iowa Code section 17A.18.

This rule is intended to implement Iowa Code section 17A.18.

701—13.9(422) Loss or destruction of permit. When it becomes necessary to replace an active permit by reason of loss or destruction, the department will furnish a duplicate permit.

This rule is intended to implement Iowa Code section 422.53.

701—13.10(422) Change of location. When a retailer changes business location, the permit shall be canceled and an application shall be made for another permit at the new location.

This rule is intended to implement Iowa Code section 422.53.

701—13.11(422) Change of ownership. A retailer changing its business entity shall apply for a new permit under the name of the new entity. This is required but not limited to such entity changes as proprietorship to partnership, partnership to corporation or any combination thereof.

This rule is intended to implement Iowa Code section 422.53.

701—13.12(422) Permit posting. The permit need not be posted for public view at the taxpayer's place of business. However, the taxpayer must, at all times, keep the permit available for inspection upon request by any department representative.

This rule is intended to implement Iowa Code section 422.53(3).

701—13.13(422) Trustees, receivers, executors and administrators. By virtue of their appointment, trustees, receivers, executors and administrators who continue to operate, manage or control a business involving the sale of tangible personal property or taxable services or engage in liquidating the assets of a business by means of sales made in the usual course of trade shall collect and remit tax on inventory and noninventory items. In Re *Hubs Repair Shop, Inc.* 28 B.R. 858 (Bkrtcy 1983).

A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust.

This rule is intended to implement Iowa Code sections 422.42(1) and 422.53.

701—13.14(422) Vending machines and other coin-operated devices. An operator who places machines on location shall hold one permit for the principal place of business, whether the same is located in the state of Iowa or outside the state of Iowa.

This rule is intended to implement Iowa Code sections 422.43 and 422.53 as amended by 1986 Iowa Acts, House File 2471, and Iowa Code section 422.42.

701—13.15(422) Other amusements. Billiard and pool tables, shooting galleries and other similar undertakings operated in a regular place of business owned and managed by the operator shall not come within the provisions of the rule with respect to holding one permit for the entire state. The provision requiring a permit shall not include devices operated at fairs, circuses and carnivals which are temporarily located within the state of Iowa.

This rule is intended to implement Iowa Code chapter 422.

701—13.16(422) Substantially delinquent tax—denial of permit. The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit 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 permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership.

The local option sales and service tax is a tax administered by the department. Local vehicle, property, whether imposed on centrally assessed property or not, beer and liquor, and insurance premium taxes are nonexclusive examples of taxes which are not administered by the department.

The amount of tax delinquent, the number of filing periods for which a tax remains due and unpaid, and the length of time a tax has been unpaid are the principal, but nonexclusive circumstances, which the department will use to determine whether an applicant is "substantially" or insubstantially delinquent in paying a tax. The department may deny a permit for substantial delinquency. Nonexclusive factors which the department will consider in determining whether substantial delinquency will or will not result in the denial of an application for a permit are the following: whether the delinquency was inadvertent, negligent, or intentional; the amount of tax, interest, or penalty owed in relation to the applicant's total financial resources; and whether the applicant's business is likely to survive over the long term if a license or permit is granted. This rule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department will deny a permit to any applicant, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code subsection 422.53(2) and 1995 Iowa Acts, chapter 115.

701—13.17(422) Substantially delinquent tax—revocation of permit. The department may revoke a permit if the permit holder has become substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the person holding a permit is a corporation, the department may revoke the permit 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 permit-holding corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner's failure to pay a tax which is not a liability of the partnership. This is in contrast to the situation regarding an application for a permit. See rule 13.16(422). Also, see rule 13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" and for a description of some of the factors which the department will use in determining whether substantial delinquency will or will not result in the revocation of a permit. This rule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

A revoked permit will not be reinstated if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder who is an individual requesting reinstatement, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code subsection 422.53(5) and 1995 Iowa Acts, chapter 115.

[Filed December 12, 1974]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/4/81, Notice 10/28/81—published 12/23/81, effective 1/27/82]
[Filed 5/7/82, Notice 3/31/82—published 5/26/82, effective 6/30/82]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
[Filed 10/31/86, Notice 9/24/86—published 11/19/86, effective 12/24/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 10/20/95, Notice 9/13/95—published 11/8/95, effective 12/13/95]
[Filed 11/14/97, Notice 10/8/97—published 12/3/97, effective 1/7/98]
[Filed 10/30/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

CHAPTER 15
DETERMINATION OF A SALE AND SALE PRICE
[Prior to 12/17/86, Revenue Department[730]]

701—15.1(422) Conditional sales to be included in gross sales. When a conditional sale agreement exists the seller shall bill the purchaser for the full amount of tax due. The purchaser is obligated to pay sales tax upon delivery of the property which is the subject of the conditional sale agreement. *Harold D. Sturtz v. Iowa Department of Revenue,* 373 N.W.2d 131 (Iowa 1985). The gross receipts shall be computed on the entire contract price except interest and finance charges when separately stated and reasonable in amount, and the seller shall remit the tax to the department at the close of the period during which delivery under the contract for the sale was made.

This rule is intended to implement Iowa Code sections 422.42(2) and 422.42(3).

701—15.2(422,423) Repossessed goods. When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the gross receipts from those sales are subject to tax.

A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer who has paid tax to the department upon gross receipts which ultimately constitute bad debts. See rule 15.4(422,423) for a description of the circumstances under which bad debts are and are not allowed as a credit on tax paid.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—15.3(422,423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.

15.3(1) *General provision.* The gross receipts from the sale of tangible personal property to a purchaser for any exempt purpose are not subject to tax as provided by the Iowa sales and use tax statutes. In addition, a seller of tangible personal property need not collect Iowa sales or use tax from a purchaser that possesses a valid direct pay permit issued by the department of revenue and finance. However, the following are requirements for the exemption and noncollection of tax by a seller when a direct pay permit is involved:

a. The sales tax liability for all sales of tangible personal property is upon the seller (and on and after March 13, 1986, the purchaser as well) unless the seller takes in good faith from the purchaser a valid exemption certificate stating that the purchase is for an exempt purpose or the tax will be remitted directly to the department by the purchaser under a valid direct pay permit issued by the department. In addition to the provisions and requirements set forth in subrule 15.3(2), to be valid an exemption certificate issued by a purchaser to a seller in good faith under a direct pay permit must include the purchaser's name, direct pay permit number, and date the direct pay permit was issued by the department. A seller who has taken a valid exemption certificate under a direct pay permit must keep records of sales made in accordance with rule 701—11.4(422,423). For more information regarding direct pay permits, see rule 701—12.3(422). Where tangible personal property or services are purchased tax-free pursuant to a valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, or the purchaser fails to pay tax to the department under a direct pay permit issued by the department, the purchaser is solely liable for the taxes and must remit the taxes directly to the department.

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for its own taxable use or consumption, the tax shall be reported in the period when the tangible personal property was withdrawn from inventory.

b. The director is required to provide exemption certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to buyers for exempt purposes. These exemption certificates must be completed as to the information required on the form in order to be valid.

15.3(2) *Retailer-provided exemption certificates.* Retailers may provide their own exemption certificates. Those exemption certificates must contain information required by the department, including, but not limited to: the seller's name, the buyer's name and address, the buyer's nature of business (wholesaler, retailer, manufacturer, lessor, other), the reason for purchasing tax-exempt (e.g., resale or processing), the general description of the products purchased, and state sales tax or I.D. registration number. The certificate must be signed and dated by the buyer.

a. An exemption certificate or blanket exemption certificate as referred to in paragraph *"b"* cannot be used to make a tax-free purchase of any tangible personal property or service not covered by the certificate. For example, the certificate used to purchase a chemical consumed in processing cannot be used to purchase a generator which is going to become an integral part of other tangible personal property which will be ultimately sold at retail.

b. Any person repeatedly selling the same type of property or service to the same purchaser for resale, processing, or for any other exempt purpose may accept a blanket certificate covering more than one transaction. A seller who accepts a blanket certificate is required periodically to inquire of the purchaser to determine if the information on the blanket certificate is accurate and complete. Such an inquiry by the seller shall be deemed evidence of good faith on the part of the seller.

c. When due to extraordinary circumstances in the nature of fire, flood, or other cases of destruction beyond the taxpayer's control, a seller does not have an exemption certificate on file, the seller may show by other evidence, such as a signed affidavit by the purchaser, that the property or service was purchased for an exempt purpose.

d. The liability for the tax does not shift from the seller to the purchaser if the seller has not accepted a valid exemption certificate in good faith. If the seller has actual knowledge of information or circumstances indicating that it is unlikely that the property or services will be used by the purchaser in an exempt manner, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the exemption certificate. In addition, if the nature of the business of the purchaser, as shown by the exemption certificate, indicates that it is unlikely that the property or services will be used in an exempt manner, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the exemption certificate.

EXAMPLE 1. A seller is expected to inquire to discover the facts supporting the claimed exemption if the seller knows that the property or services will not be, or it is unlikely that the property or services will be, resold or used in processing by that purchaser. This further inquiry is expected even when there is nothing in the nature of the business as shown on the valid exemption certificate to cause the seller to make further inquiry.

EXAMPLE 2. A seller is expected to inquire to discover the facts supporting the claimed exemption of the sale of sawdust or a tool chest purchased by a gas station since such items are rarely resold by a gas station.

EXAMPLE 3. A seller is not expected to make further inquiry, in the absence of actual knowledge, to determine which light bulbs bought by a hardware store are for use in the store or those purchased for resale.

If the seller has met the requirements set forth above in accepting a valid exemption certificate, the seller shall be deemed to have acted in good faith and the liability for the tax shifts to the purchaser who becomes solely liable for the taxes.

e. A seller is relieved from liability for sales tax if (1) a purchaser deletes the tax reimbursement from the payment to the seller or if the purchaser makes a notation on an invoice such as "not subject to tax" or "resale" and (2) if the seller can produce written evidence to show that an attempt was made to obtain an exemption certificate to show that the transaction was exempt from tax but was unable to obtain said certificate from the purchaser.

f. The failure of a permit holder to act in good faith while giving or receiving exemption certificates may result in the revocation of the sales tax permit. Revocation is authorized under the provisions of Iowa Code section 422.53(5).

g. The purchase of tangible personal property or services which are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support these transactions, they do not relieve the seller of the responsibility for tax if at some later time the transaction is determined to be taxable.

h. A person who is selling tangible personal property or services, but who is not making taxable sales at retail, shall not be required to hold a permit. When this person purchases tangible personal property or services for resale, the person shall furnish a certificate in accordance with these rules to the supplier stating that the property or services was purchased for the purpose of resale.

i. For information regarding the use of exemption certificates for contractors, see 701—Chapter 19.

15.3(3) *Fuel exemption certificates.*

a. Definitions.

"Fuel" includes, but is not limited to, heat, steam, electricity, gas, water, or any other tangible personal property consumed in creating heat, power, or steam.

"Fuel consumed in processing" includes fuel used in grain drying, providing heat or cooling for livestock buildings, fuel used for generating electric current, fuel consumed in implements of husbandry engaged in agricultural production, as well as fuel used in "processing" as defined in rules 701—18.29(422,423) and 701—18.58(422,423). See rule 701—17.2(422) for a detailed description of "fuel used in processing." See rule 701—17.3(422,423) for extensive discussion regarding electricity and steam used in processing.

"Fuel exemption certificate" is a certificate given by a purchaser and signed under penalty of perjury to assist a seller in properly accounting for nontaxable sales of fuel consumed in processing. The fuel exemption certificate must contain information required by the department, including, but not limited to: the seller's name and address; the purchaser's name and address; the type of fuel purchased, e.g., electricity, propane; a description of the purchaser's business, e.g., farmer, manufacturer of steel products, food processor; a general description of the type of processing in which the fuel is consumed, e.g., grain drying, raising livestock, generating electricity, or manufacture of tangible personal property; and the percentage exemption claimed. The fuel exemption certificate must be signed under penalty of perjury by the purchaser and dated. The seller may demand from the purchaser additional documentation attached to the fuel exemption certificate which is reasonably necessary to support the claim of exemption for fuel consumed in processing. In the absence of separate metering, documentation reasonably necessary to support a claim for exemption will consist of either an electrical consultant's survey or of a document prepared by the purchaser in accordance with the requirements of subrule 15.3(4). Attachment of documentation is not necessary if the purchaser has furnished the seller with documentation when filing an earlier exemption certificate and a substantial change in the purchaser's operation had not occurred since the documentation was furnished or if fuel consumed by the purchaser in processing is separately metered and billed by the seller.

"Substantial change" means a change in the purchaser's use or disposition of tangible personal property and services such that the purchaser pays less than 90 percent of the purchaser's actual sales tax liability.

b. If fuel is purchased tax-free pursuant to a fuel exemption certificate which has been accepted by the seller and the purchaser uses or disposes of the fuel in a nonexempt manner, the purchaser is solely liable for sales tax and shall remit that tax directly to the department. A seller can, however, rely upon a fuel exemption certificate for sales occurring within five years subsequent to the date of the certificate only. For later sales, the seller must secure a new certificate of exemption from the purchaser.

c. A purchaser may apply to the department for review of any fuel exemption certificate. The department shall review the certificate and determine the correct amount of exemption within 12 months from the date of application. The department shall notify a purchaser of any determination that is different from the purchaser's claim of exemption. Failure to determine the correct amount of exemption within 12 months from the date of application shall constitute a determination on the department's part that the claim of exemption on the fuel certificate is correct as submitted. A determination regarding an exemption certificate is final unless the purchaser appeals to the director for a revision of the determination within 60 days from the date of the notice of determination. The director shall grant a hearing and upon the hearing, the director shall determine the correct exemption and notify the purchaser of the decision by mail. The decision is final unless the purchaser seeks judicial review of the director's decision under Iowa Code section 422.55 within 60 days from the date of the notice of the director's decision. The purchaser must notify the seller of any change in percentage.

d. The effective date of the legislation allowing use of an exemption certificate for fuel used in processing is January 1, 1988. However, a certificate which is complete and correct according to subrule 15.3(3), paragraph *"a,"* and any other requirement of the director, which is signed and dated prior to January 1, 1988, shall, if accepted by a seller in good faith, protect the seller to the extent described in subrule 15.3(3), paragraph *"b,"* for energy consumed on or after January 1, 1988. Exemption certificates filed with the seller prior to January 1, 1988, also expire five years from date of acceptance.

15.3(4) *Determining percentage of electricity used in processing.* When electricity is purchased for consumption both for processing and for taxable uses, and the use of the electricity is recorded on a single meter, the purchaser must allocate the use of the electricity according to taxable and nontaxable consumption if an exemption for nontaxable use is to be claimed. The calculations which support the allocation, if properly performed, can serve as the documentation reasonably necessary to support a claim of exemption for fuel used in processing. The following method with its alternative table may be used to determine the percentage of electricity used on the farm or in a factory which is exempt by virtue of its being used in processing. See subrule 15.3(4), paragraph *"e,"* for alternative methods of computing exempt use, including exempt use by a new business. First, the base period for the calculations must be selected.

a. Ordinarily, the 12 months previous to the date upon which the exemption is calculated are used as the base period for determining the percentage of electricity exempt as used in processing. This immediately previous 12-month period is used because it is a span of time which is (1) recent enough to accurately reflect future electric usage; (2) extended enough to take into account variations in electrical usage resulting from changes in temperature occurring with the seasons; and (3) is not so long as to require unduly burdensome calculations. However, individual circumstances can dictate that a shorter or longer period than 12 months will be used or that some 12-month period other than that immediately previous to the date upon which the exemption certificate is filed, will be used.

701—15.12(422,423) Excise tax included in and excluded from gross receipts.

15.12(1) An excise tax which is not an Iowa sales or use tax may be excluded from the gross receipts or purchase price of the sale or use of property or taxable services only if all of the following conditions exist:

a. The excise tax is imposed upon the identical sale which the Iowa sales tax is imposed upon or upon the sale which measures the taxable use or upon a use identical to the Iowa taxable use and not upon some event or activity which precedes or occurs after the sale or use.

b. The legal incidence of the excise tax falls upon the purchaser who is responsible for payment of the Iowa sales tax. The purchaser must be obligated to pay the excise tax either directly to the government in question or to another person (e.g., the retailer) who acts as a collector of the tax. See *Gurley v. Rhoden,* 421 U.S. 200, 95 S. Ct. 1605, 44 L.Ed.2d 110 (1975) for a description of the circumstances under which the legal, as opposed to the economic, burden of an excise tax falls upon the purchaser.

c. The name of the tax is specifically stated and the amount of the tax separately set out on the invoice, bill of sale, or upon another document which embodies a record of the sale.

EXAMPLE 1. The federal government imposes an excise tax upon the act of manufacturing tangible personal property within the United States. The amount of the tax is measured as a percentage of the price for the first sale of the property, which is usually to a wholesaler. However, one particular manufacturer sells its manufactured goods at retail in Iowa. Even if this tax meets the requirements for exclusion of paragraphs *"b"* and *"c"* above, it is not excludable because it does not meet the requirements of paragraph *"a."* The tax is not imposed upon the act of sale but upon the prior act of manufacture. The tax is merely measured by the amount of the proceeds of the sale.

EXAMPLE 2. The federal government imposes an excise tax of 4 percent on a retailer's gross receipts from sales of tangible personal property. The law allows the retailer to separately identify and bill a customer for the tax. However, if a retailer fails to pay the tax, the government cannot collect it from a purchaser and if the government assesses tax against the retailer and secures a judgment requiring the retailer to pay the tax, the retailer who has failed to collect the tax from a purchaser on the initial sale has no right of reimbursement from the purchaser. This tax is not excludable from Iowa excise tax. Its economic burden falls upon the purchaser. However, since neither the government nor the retailer has any legal right to demand payment of the tax from a purchaser, the legal incidence of the tax is not upon the purchaser; and the tax would not meet the requirements of paragraph *"b"* above.

15.12(2) As of January 1, 1988, the following federal excise taxes are includable in the gross receipts of Iowa sales tax:

a. The federal gallonage taxes on distilled spirits, wines, and beer imposed by 26 U.S.C. Sections 5001, 5041, and 5051.

b. The tax imposed by 26 U.S.C. Section 5701 with regard to cigars, cigarettes, and cigarette papers and tubes.

c. The federal tax on gasoline imposed under 26 U.S.C. Section 4081.

d. The federal tax on tires, inner tubes, and tread rubber imposed by 26 U.S.C. Section 4071.

e. The federal manufacturer's excise tax imposed by 26 U.S.C. Section 4061 has been repealed.

15.12(3) The following excise taxes are excluded from the amount of gross receipts:

a. The federal tax imposed by 26 U.S.C. Section 4251(a) on the communication services of local telephone service, toll telephone service, and teletypewriter exchange service.

b. The federal tax imposed by 26 U.S.C. Section 4051 upon the first retail sale of automobile and truck chassis and bodies; truck trailer and semitrailer chassis and bodies and tractors of the kind chiefly used for highway transportation in combination with trailers or semitrailers.

This rule is intended to implement Iowa Code sections 422.42(6), 422.43, 423.1, and 423.2.

701—15.13(422,423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges shall be subject to sales or use tax is dependent upon the terms of the sale agreement.

When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the gross receipts derived from the freight or transportation charges shall not be subject to tax. As of May 20, 1999, this exemption does not apply to the service of transporting electrical energy. As of April 1, 2000, this exemption does not apply to the service of transporting natural gas.

When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the gross receipts from the freight or transportation charges become a part of the gross receipts from the sale of tangible personal property or a taxable service and are subject to tax. Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such charge, tax is due on the full contract price with no deduction for transportation charge, regardless of whether or not such transportation charges are itemized separately on the invoice. *Clarion Ready Mixed Concrete Company v. Iowa State Tax Commission,* 252 Iowa 500, 107 N.W.2d 553(1961); *Schemmer v. Iowa State Tax Commission,* 254 Iowa 315, 117 N.W.2d 420(1962); *City of Ames v. Iowa State Tax Commission,* 246 Iowa 1016, 71 N.W.2d 15(1959); *Dain Mfg. Company v. Iowa State Tax Commission,* 237 Iowa 531, 22 N.W.2d 786(1946).

The exclusions from this exemption relating to the transportation of natural gas and electricity are not applicable to all contracts for the delivery of these products. Below are examples which explain some of the principal circumstances in which the transport of natural gas or electricity is or is not a service subject to tax.

EXAMPLE 1. Consumer ABC, located in Des Moines, purchases energy (electricity or gas) from supplier DEF, located in Waterloo. Ownership of the energy passes from DEF to ABC in Waterloo. ABC then contracts with utility GHI to transport the energy over GHI's network (of pipes or wires) from Waterloo to ABC's facility in Des Moines. GHI's transport of ABC's energy is not a taxable service. Gross receipts earned from transporting goods owned by another party for hire (e.g., cartage or freight hauling) have never been taxable under Iowa law (see Dain Manufacturing, above, at 22 N.W.2d p. 792), and this principle is as applicable to the transport or movement of energy as it is to the transport of any other product. Thus, the exemption and exclusion from exemption are not applicable to GHI's transport of ABC's energy because no tax is imposed, initially, on the performance of the service.

EXAMPLE 2. Consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for delivery of electricity as well. Under the contract, ownership of the electricity passes to ABC in Cedar Rapids. In these circumstances, amounts which ABC pays DEF for delivery of the electricity are taxable gross receipts. The amounts are taxable, initially, as part of DEF's sales of electricity to ABC. They would ordinarily then be excluded from tax under the exemption set out in this rule; however, transportation charges for electricity are excluded from the exemption (as of April 1, 2000, and are thereafter taxable).

EXAMPLE 3. As in Example 2, consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids, ownership of the electricity to pass to ABC in Cedar Rapids. Also, as in Example 2, the contract between ABC and DEF states varying prices to be paid for the purchase and delivery of varying amounts of electricity. Transport of the electricity will be by way of GHI's transmission lines. DEF contracts with GHI for the transport of the electricity to ABC's plant in Cedar Rapids. At the time the contract is signed, GHI asks DEF for an exemption certificate stating that DEF will resell GHI's transportation service to ABC. This is not necessary. The service which GHI provides to DEF is not taxable in the initial instance since DEF is the owner of the electricity which GHI is transporting. See Example 1. Since no tax is imposed initially, there is no need to claim an exemption. However, because of the nature of the contract between ABC and DEF, DEF's transport of the electricity is taxable to ABC. See Example 2.

EXAMPLE 4. In this example, the same contract exists between ABC and DEF as exists in Example 3. However, in this example, a breakdown at DEF's plant in Mason City prevents DEF from generating the electricity which it is contractually obligated to provide to ABC. DEF is forced to purchase both electricity and its transport from JKL. The contract between DEF and JKL states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for the delivery of this electricity as well. JKL asks DEF for an exemption certificate stating that DEF has purchased the electricity and its transport for resale to ABC. In this case, because JKL's transport of the electricity on behalf of DEF is taxable in the initial instance (see Example 2), JKL must secure an exemption certificate from DEF to avoid collecting tax on its sale and transport of the electricity for DEF.

EXAMPLE 5. Again, ABC and DEF have contracted, as they did in Example 2, for DEF to deliver electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount which ABC pays to DEF is taxable because there is no separate contract for the transport of the electricity. See Clarion Ready Mix and Schemmer, generally, above.

EXAMPLE 6. Manufacturer EFG contracts with utility DEF for the purchase of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Osceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas which is transported to its plant in processing the goods manufactured there. The receipts which EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing.

This rule is intended to implement Iowa Code sections 422.43 and 423.2 and Iowa Code section 422.45(2) as amended by 1999 Iowa Acts, chapter 151.

701—15.14(422,423) Installation charges when tangible personal property is sold at retail. When the sale of tangible personal property includes a charge for installation of the personal property sold, the current rate of tax shall be measured on the entire gross receipts from the sale. The installation charges would not be taxable if: (1) The installation service is not an enumerated service, and also (2) where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, regardless whether or not such installation charges are itemized separately on the invoice.

If the installation services are enumerated services, the installation charges would not be taxable if: (1) The services are exempt from tax, e.g., the services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure; or, the services are rendered in connection with the installation of new industrial machinery or equipment. See rule 701—19.13(422, 423) and subrule 18.45(7), respectively. And also (2) where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, regardless whether or not such installation charges are itemized separately on the invoice. If no written contract exists, the installation charges must be separately itemized on the invoice to be exempt from tax.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—15.15(422) Premiums and gifts. A person who gives away or donates tangible personal property shall be deemed to be a consumer of such property for tax purposes. The gross receipts from the sale of tangible personal property to such persons for such purposes shall be subject to tax.

When a retailer purchases tangible personal property, exclusive of tax, for the purpose of resale in the regular course of business and later gives it away or donates it, the retailer shall include in the return the value of the property at the retailer's cost price.

When a retailer sells tangible personal property and furnishes a premium with the property sold, the retailer is considered to be the ultimate consumer or user of the premium furnished.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—15.16(422) Gift certificates. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—15.17(422,423) Finance charge. Interest or other types of additional charges that result from selling on credit or under installment contracts are not subject to sales tax when such charges are separately stated and when such charges are in addition to an established cash selling price. However, if a sale is made for a lump sum, the tax is due on the total selling price if finance charges are not separately stated.

When interest and other types of additional charges are added as a condition of a sale in order to obtain title rather than as a charge to obtain credit where title to goods has previously passed, such charges will be subject to tax even though they may be separately stated. *State ex. rel. Turner v. Younkers Bros., Inc.,* 210 N.W.2d 550 (Iowa 1973); *Road Machinery Supplies of Minneapolis, Inc., v. The Commissioner of Revenue,* Minnesota Tax Court of Appeals, 1977, 2 Minn. CCH State Tax Reporter II 200-835. See rule 701—16.47(422,423) relating to conditional sales contracts.

This rule is intended to implement Iowa Code sections 422.42(2) and 423.4.

701—15.18(422,423) Coins and other currency exchanged at greater than face value. Any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency shall be subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the gross receipts or purchase price subject to tax. Coins or currency becomes articles of tangible personal property having a value greater than face value when they are exchanged for a price greater than face value. However, when a coin or other currency, in the course of circulation, is exchanged at its face value, the sale shall be subject to tax for the face value alone. *Losana Corp. v. Porterfield,* 14 Ohio St.2d 42, 236 N.E.2d 535 (1968).

EXAMPLE 1. Taxpayer operates a furniture store. The taxpayer offers to exchange furniture for silver coins at ten times the face value of any coins dated prior to January 1, 1965. Upon any exchange pursuant to the offer, the value of the coins for purposes of determining the tax on the exchange will be equivalent to the value as agreed upon by the parties without regard to the face value of the coins.

EXAMPLE 2. Taxpayer operates a hardware store. In the regular course of business, the taxpayer receives silver coins dated prior to January 1, 1965. Taxpayer has received the coins at face value for the sales price and only that value is subject to tax.

Also see Attorney General Opinion Griger to Bair, Director of Revenue, May 15, 1980, #80-5-13.

This rule is intended to implement Iowa Code section 422.42(6).

701—15.19(422,423) Trade-ins.

15.19(1) Trade-ins involving tangible personal property only. For periods ending prior to July 1, 1982.

a. Tangible personal property exchanged for tangible personal property of equal value. When tangible personal property is traded for tangible personal property of equal value, tax shall be due on the value of the items traded. See O.A.G. #80-5-13, May 15, 1980.

EXAMPLE: A owns a tractor valued at $5,000. A trades its tractor to XY dealer for a comparable tractor also valued at $5,000. Sales tax is due on the $5,000 tractor received by A. XY dealer must collect sales tax of $200 from A and XY dealer must also collect tax when the tractor is sold.

b. Tangible personal property of lesser value is traded for tangible property of greater value. When tangible personal property of a lesser value is traded for tangible personal property of greater value, tax shall be applicable to only that portion of the purchase price represented by the difference between the two items.

EXAMPLE: John Doe has an automobile with a value of $2,000. John and his neighbor Bill Jones who has an automobile valued at $3,500 decide to trade automobiles. John agrees to give Bill $1,500 difference and they trade automobiles. Vehicles subject to registration are subject to use tax which is payable to the county treasurer at the time of registration. In this example John would owe use tax on $1,500 or $45 use tax as tax is due on the cash difference. Bill would owe use tax on $2,000 or $60 as this would represent the value of the automobile traded for.

c. Tangible personal property of greater value traded for tangible personal property of lesser value. When tangible personal property of greater value is traded for tangible personal property of lesser value, the trade-in provisions found in Iowa Code sections 422.42(6)*"b"* and 423.1(3) are not applicable.

EXAMPLE: ABC Car Sales Inc. advertises a 1979 automobile for sale at $3,500. John Doe has a 1980 automobile valued at $6,500; however, John is unable to meet the payments, and decides to trade his 1980 automobile for the one advertised for $3,500. ABC Car Sales Inc. agrees to trade with John and pay him $3,000 difference. The trade-in provision is not applicable in this example. John would owe use tax on the $3,500 when registering the automobile with the county treasurer.

15.19(2) Trade-ins. For period commencing after June 30, 1982.

When tangible personal property is traded toward the purchase price of other tangible personal property, the gross receipts shall be only that portion of the purchase price which is payable in money to the retailer if the following two conditions are met:

a. The tangible personal property is traded to a retailer, and the property traded is the type normally sold in the regular course of the retailer's business.

b. The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail.

EXAMPLE 1. A owns a tractor valued at $5,000. A trades its tractor to XY implement dealer for a tractor valued at $12,000. XY implement dealer normally sells new and used tractors. Sales tax would be due on the $7,000 in money A paid to XY implement dealer, as both conditions *"a"* and *"b"* have been met.

EXAMPLE 2. John Doe has a pickup truck with a value of $2,000. John is needing a tractor so he offers to trade his $2,000 pickup to ABC implement dealer for the purchase of a tractor valued at $5,000. ABC implement dealer is strictly a farm machinery dealer. ABC implement dealer agrees to accept the $2,000 pickup and $3,000 cash in trade for the tractor. In this example the tax would be computed on $5,000. The trade-in provision would not apply because condition *"a"* is not met. The property traded is not the type of property normally sold by ABC implement dealer in the regular course of the implement dealer's business.

EXAMPLE 3. ABC Corporation trades 500 bushels of corn and $500 cash to the local cooperative elevator for the purchase of a tractor. The local cooperative elevator normally sells grain in its regular course of business for processing into bread. The trade-in provision in this example would not apply because condition *"b"* would not be met. The grain traded toward the purchase price of the tractor when ultimately sold by the cooperative elevator is sold for processing and not at retail.

EXAMPLE 4. Hometown Appliance store is in the business in Iowa of selling stoves, refrigerators, and other various appliances. Hometown Appliance has a refrigerator valued at $650. Customer A wishes to trade their used refrigerator toward the purchase price of the new refrigerator. Hometown Appliance agrees to accept A's used refrigerator at a value of $150 toward the purchase price of the new refrigerator. A pays Hometown Appliance $500 in money. The trade-in provision applies as both conditions *"a"* and *"b"* are met and tax would be due on the $500.

Several months later, Hometown Appliance sells the used refrigerator it received from customer A to the local school district who is exempt from sales tax on its purchase. The trade-in provision on the original transaction is still applicable as both conditions *"a"* and *"b"* were met. The sale is "at retail," even if it is a retail sale exempt from tax.

EXAMPLE 5. ABC Auto Parts, an Iowa dealer, advertises its 48-month battery for $52 and will allow a trade-in allowance of $10 for an old battery. The total selling price of the battery with a trade-in would be $42. ABC Auto Parts has an agreement to sell all of the used batteries it receives in trade for new batteries to XYZ Salvage Company. XYZ Salvage Company will melt the batteries down for the metals in the batteries to make new products from the metals, and sell them.

In this example, the trade-in provision would not apply. ABC Auto Parts has met the first condition as it normally sells batteries in its regular course of business. The second condition is lacking. ABC Auto Parts does not intend the used batteries traded to be sold at retail. Prior to the time of the transaction ABC Auto Parts knows that the used batteries will be sold to XYZ Salvage Company who will buy them tax-free for further processing of removing the metal.

15.19(3) Trade-ins. For period commencing after June 30, 1983.

When tangible personal property is traded toward the purchase price of other tangible personal property, the gross receipts shall be only that portion of the purchase price which is payable in money to the retailer if the following conditions are met.

a. The tangible personal property is traded to a retailer, and the property traded is the type normally sold in the regular course of the retailer's business; and

b. The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail; or

c. The tangible personal property traded to a retailer is intended to be used by the retailer or another in the remanufacturing of a like item.

Examples 1, 2, 3 and 4 in subrule 15.19(2) apply to this subrule.

EXAMPLE: ABC Auto Supply is in the business of selling various types of automobile and farm implement supplies. The normal selling price for a car generator is $80. ABC Auto Supply will allow a $20 trade-in credit to any customer who wishes to trade in an unworkable generator. At the time ABC accepts the unusable generator it knows that the generator will not be sold at retail; however, ABC Auto Supply does know that the generator will be sold to XYZ Company who is in the business of rebuilding generators by using existing parts plus new parts. In this example the trade-in provision would apply since conditions *"a"* and *"c"* are met.

15.19(4) All the provisions of subrule 15.19(2) apply to the trade-in of vehicles subject to registration when the trade involves retailers of vehicles.

When vehicles subject to registration are traded between persons neither of which is a retailer of vehicles subject to registration, the conditions set forth in 15.19(2) *"a"* and *"b"* need not be met. The purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the amount of the vehicle subject to registration traded.

EXAMPLE: John Doe has an automobile with a value of $2,000. John and his neighbor Bill Jones, who has an automobile valued at $3,500, decide to trade automobiles. John pays Bill $1,500 cash. Vehicles subject to registration are subject to use tax which is payable to the County Treasurer at the time of registration. In this example John would owe use tax on $1,500 since this is the amount John paid Bill and tax is only due on the cash difference. Bill would not owe any use tax on the vehicle acquired through the trade.

EXAMPLE: Joe has a Ford automobile with a value of $5,000. Joe and his friend Jim who has a Chevrolet automobile also valued at $5,000 decide to trade automobiles. Joe and Jim make an even trade, automobile for automobile with no money changing hands. In this example there is no tax due on either automobile because there is no exchange of money.

15.19(5) The trade-in provisions found in Iowa Code sections 422.42(6)*"b"* and 423.1(3) do not apply to taxable enumerated services. Where taxable enumerated services are traded, the gross receipts would be determined based on the value of the service.

This rule is intended to implement Iowa Code sections 422.42(6)*"b"* and 423.1(3). See also *Reynolds Motor Co. et al v. Iowa Dep't. of Revenue,* Equity 72050, Dist. Ct. of Scott Cty., Iowa, August 28, 1987.

701—15.20(422,423) Corporate mergers which do not involve taxable sales of tangible personal property or services. If title to or possession of tangible personal property or ownership of services is transferred from one corporation to another pursuant to a statutory merger, the transfer is not a "sale" subject to tax if all of the following circumstances exist: (1) the merger is pursuant to statute (for example, Iowa Code section 490.1106); (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging corporation to a surviving corporation and not for any consideration; and (3) the merging corporation is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger. Transactions which are not of the type described above may involve taxable sales. See the following court cases relating to this area: *Nachazel v. Mira Co. Mfg.,* 466 N.W.2d 248 (Iowa 1991); *D. Canale & Co. v. Celauro,* 765 S.W.2d 736 (Tenn 1989); and *Commissioner of Revenue v. SCA Disposal Services,* 421 N.E.2d 766 (Mass 1981).

EXAMPLE A: Nonaffiliated Corporations A and C enter into a voluntary merger agreement governed by Iowa Code section 490.1106. A and C are separate and independent, one from the other, and neither is a subsidiary of another corporation. No officer of the one is an officer of the other. A and C voluntarily negotiate an arms-length merger agreement which results in the transfer of A's assets to C and the dissolution of A. In return, A's stockholders receive stock in C. A's transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B: Corporations B, D, and E are independent entities. They enter into a merger agreement governed by Iowa Code section 490.1106 and agree to merge into one surviving corporation which will (after the dissolution of B and D) be E. They agree that the shares of merging corporations will be converted into shares of E on an equal basis. The transfers of property by the corporations which are parties to the merger are not sales subject to Iowa tax.

EXAMPLE C: Corporation F receives all of Corporation G's outstanding shares from G's sole stockholder. In return, G's sole stockholder receives stock from F. Corporation G continues to exist after the transaction as a subsidiary of Corporation F. This particular transaction involves a trade or barter of the stock shares of F and G. There is a barter of the stocks and thus a "sale" as that term is understood for the purposes of Iowa sales tax law. However, because the sale involves only intangible property (the stock shares), that sale is not taxable. The stock exchange transaction would not prevent taxation of subsequent transfers of tangible personal property or services between F and G.

EXAMPLE D: Corporation H buys all the assets of Corporation I which include machinery, equipment, finished goods, and raw materials. Corporation H pays cash for these assets. This transaction does involve the sale of tangible personal property and may be subject to Iowa sales tax. However, see 701—subrule 18.28(2) concerning a casual sale exemption applicable to the liquidation of a business.

[Filed December 12, 1974]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed 5/23/80, Notice 3/19/80—published 6/11/80, effective 7/16/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 8/13/82, Notice 7/7/82—published 9/1/82, effective 10/6/82]
[Filed emergency 2/9/83—published 3/2/83, effective 3/1/83]
[Filed 4/22/83, Notices 3/2/83, 3/16/83—published 5/11/83, effective 6/15/83]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 10/3/86, Notice 8/13/86—published 10/22/86, effective 11/26/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]
[Filed 11/25/87, Notice 10/21/87—published 12/16/87, effective 1/20/88]
[Filed 3/18/88, Notice 2/10/88—published 4/6/88, effective 5/11/88]
[Filed 4/28/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]
[Filed 9/30/88, Notice 8/24/88—published 10/19/88, effective 11/23/88]
[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 3/26/92, Notice 2/19/92—published 4/15/92, effective 5/20/92]
[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]
[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]
[File 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]
[Filed 6/12/97, Notice 5/7/97—published 7/2/97, effective 8/7/97]
[Filed 11/14/97, Notice 10/8/97—published 12/3/97, effective 1/7/98]
[Filed 4/17/98, Notice 12/3/97—published 5/6/98, effective 6/10/98]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

701—17.6(422,423) Sales of vehicles subject to registration—new and used—by dealers. Receipts derived from the sale at retail in Iowa of new and used vehicles subject to registration under the motor vehicle laws of Iowa shall be exempt from sales tax. When the vehicles are registered at the office of the county treasurer or the motor vehicle registration division, Iowa department of transportation, the tax is collected as use tax. Vehicle dealers selling tangible personal property or taxable services in Iowa, in addition to new or used vehicles, shall be required to hold a permit. Upon filing their quarterly returns, dealers shall show the amount of their gross receipts derived from the sale of new and used vehicles subject to registration and shall take appropriate deductions.

The purchaser of a new or used vehicle subject to registration shall be required to pay use tax when the vehicle is registered in Iowa under the Iowa motor vehicle law; and, the county treasurer or the motor vehicle registration division, department of transportation (whichever issues the registration) shall collect use tax.

This rule is intended to implement Iowa Code sections 422.45(4), 423.7 and 423.8.

701—17.7(422,423) Sales to certain federal corporations. The department holds that the following are some of the federal corporations immune from the imposition of sales and use tax in connection with their purchases:

1. Central Bank for Cooperatives and Banks for Cooperatives
2. Commodity Credit Corporation
3. Farm Credit Banks
4. Farmers Home Administration
5. Federal Credit Unions
6. Federal Crop Insurance Corporation
7. Federal Deposit Insurance Corporation
8. Federal Financing Bank
9. Federal Home Loan Banks
10. Federal Intermediate Credit Banks
11. Federal Land Banks and Federal Land Bank Associations
12. Federal National Mortgage Association
13. Federal Reserve Bank
14. Federal Savings & Loan Insurance Corporation
15. Production Credit Association
16. Student Loan Marketing Association
17. Tennessee Valley Authority

The federal statutes creating the above corporations contain provisions substantially identical with Section 26 of the Federal Farm Loan Act which has been construed as barring the imposition of state and local sales taxes.

This rule is intended to implement Iowa Code sections 422.45(1), 422.45(5), and 423.4(4).

701—17.8(422) Sales in interstate commerce—goods transported or shipped from this state. When tangible personal property is sold within the state and the retailer transports it to a point outside the state or transfers it to a common carrier, or to the mails or to parcel post for shipment to a point without the state, sales tax shall not apply, provided the property is not returned to a point within the state except solely in the course of interstate commerce or transportation. See 701—subrule 26.2(3) for a description of an exemption applicable to services performed on the above-described property on or after May 22, 1999.

EXAMPLE: Company A sells point-of-sale computer equipment. The company is located in Des Moines, Iowa. Company A enters into a contract with company B to sell the latter company a large number of point-of-sale computers. Company B is located in Little Rock, Arkansas. A transfers possession of the computers to a common carrier in Des Moines, Iowa, for shipment to B in Little Rock. Sale of the computers is exempt from Iowa sales tax.

17.8(1) *Proof of transportation.* The most acceptable proof of transportation outside the state shall be:

a. A waybill or bill of lading made out to the retailer's order calling for transport; or

b. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts; or

c. A trip sheet signed by the retailer's transport agency which shows the signature and address of the person outside the state who received the transported goods.

17.8(2) *Certificate of out-of-state delivery.* Iowa retailers making delivery and therefore sales out of state shall use a certificate in lieu of trip sheets. The certificate shall be completed at the time of sale, identifying the merchandise delivered and signed by the purchaser upon delivery.

17.8(3) *Exemption not applicable.* Sales tax shall apply when tangible personal property is delivered in the state to the buyer or the buyer's agent, even though the buyer may subsequently transport that property out of the state and, also, when tangible personal property is sold in Iowa to a carrier and then delivered by the purchasing carrier to a point outside of Iowa for the carrier's use.

This rule is intended to implement Iowa Code section 422.45(46).

701—17.9(422,423) Sales of breeding livestock, fowl and certain other property used in agricultural production. The gross receipts from the sales of the following tangible personal property relating to agricultural production is exempt from tax.

17.9(1) Sales of agricultural breeding livestock. *"Livestock"* means domestic animals which are raised on a farm as a source of food or clothing, *Van Clief v. Comptroller of State of Md.,* 126 A.2d 865 (Md. 1956) and In the Matter of Simonsen Mill Inc., Declaratory Ruling of the State Board, Docket No. 211, April 24, 1980. The term includes cattle, sheep, hogs, and goats. On and after July 1, 1995, ostriches, rheas, and emus are livestock and their sales are also exempt from tax. On and after July 1, 1997, fish and any other animals which are products of aquaculture are considered to be livestock as well. Their sales are exempt from tax. Excluded from the term are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term are mink, fish (prior to July 1, 1997), bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded is any animal raised for racing.

The sale of agricultural livestock is exempt from tax under this subrule only if the purchaser intends to use the livestock primarily for breeding at the time of purchase. The sale of agricultural livestock which is capable of, but will not be used for breeding or primarily for breeding, is not exempt from tax under this subrule. However, sales of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax.

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale the intent is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

701—17.33(422,423) Sales of building materials, supplies and equipment to not-for-profit rural water districts. Retroactive to July 1, 1998, sales of building materials, supplies, and equipment to not-for-profit rural water districts (those organized under Iowa Code chapter 504A and as provided by Iowa Code chapter 357A), which are used by the districts for the construction of their facilities, are exempt from tax. See rule 701—19.3(422,423) for definitions of the terms "building materials," "building supplies," and "building equipment" which are applicable to this rule. Additionally, for the purposes of this rule, cranes, underground boring machines, water main pulling equipment, and similar machinery used by a rural water district for the construction of its facilities are "building equipment." This rule does not exempt rentals of building equipment from tax, but a rural water district's rentals of building equipment may be exempt from tax if the rental is on or in connection with new construction, alteration, reconstruction, remodeling, or expansion of real property or a structure. See rule 701—19.13(422,423).

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 59.

701—17.34(422,423) Sales to hospices. As of July 1, 1999, gross receipts from the sale or rental of tangible personal property to or the performance of services for any freestanding nonprofit hospice facility which operates a hospice program are exempt from tax if the property or service is purchased for use in the hospice's program. A "hospice program" is any program operated by a public agency, a private organization, or a subdivision of either, which is primarily engaged in providing care to terminally ill individuals. A "freestanding hospice facility" is any hospice program housed in a building which is dedicated only to the hospice program and which is not attached to any other building or complex of buildings. An individual is "terminally ill" if that individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 62.

[Filed 12/12/74]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/15/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed emergency 4/28/78—published 5/17/78, effective 4/28/78]
[Filed 5/26/78, Notice 3/22/78—published 6/14/78, effective 7/19/78*]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 2/16/79, Notice 1/10/79—published 3/7/79, effective 4/11/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed emergency 6/11/79—published 6/27/79, effective 7/1/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 2/10/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]
[Filed 3/23/84, Notice 2/15/84—published 4/11/84, effective 5/16/84]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 10/7/85, Notice 8/14/85—published 10/23/85, effective 11/27/85]
[Filed 12/2/85, Notice 7/17/85—published 12/18/85, effective 1/22/86]
[Filed 3/21/86, Notice 9/11/85—published 4/9/86, effective 5/14/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 12/29/86, Notice 11/19/86—published 1/14/87, effective 2/18/87]
[Filed 11/12/87, Notice 10/7/87—published 12/2/87, effective 1/6/88]

[Filed 2/5/88, Notice 10/21/87—published 2/24/88, effective 3/30/88]
[Filed 10/14/88, Notice 9/7/88—published 11/2/88, effective 12/7/88]
[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]◊
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]◊
[Filed 10/12/90, Notice 9/5/90—published 10/31/90, effective 12/5/90]
[Filed emergency 3/15/91—published 4/3/91, effective 3/15/91]
[Filed 3/15/91, Notice 2/6/91—published 4/3/91, effective 5/8/91]
[Filed 5/10/91, Notice 4/3/91—published 5/29/91, effective 7/3/91]
[Filed 8/16/91, Notice 7/10/91—published 9/4/91, effective 10/9/91]
[Filed 3/26/92, Notice 2/19/92—published 4/15/92, effective 5/20/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 7/1/93, Notice 5/26/93—published 7/21/93, effective 8/25/93]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 10/22/93, Notice 9/15/93—published 11/10/93, effective 12/15/93]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]◊
[Filed 2/9/96, Notice 1/3/96—published 2/28/96, effective 4/3/96]
[Filed 10/31/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 4/17/98, Notice 12/3/97—published 5/6/98, effective 6/10/98]
[Filed 8/5/98, Notice 7/1/98—published 8/26/98, effective 9/30/98]
[Filed 10/15/98, Notice 9/9/98—published 11/4/98, effective 12/9/98]
[Filed 10/30/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

*Effective date of 17.3 "c" delayed by the Administrative Rules Review Committee at its July 11, 1978, meeting under the provisions of the Sixty-seventh General Assembly, S.F. 244, section 19. See amendment published 3/7/79.
◊Two ARCs

18.29(5) *Integral part of the production of the product test.* Certain activities may be exempt as part of processing if those activities are very closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Southern Sioux Rural Water System, Inc.,* supra. Merely because an activity is vital or essential to a processing operation does not make that activity exempt as part of processing unless the activity itself is closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Mississippi Valley Milk Producers Ass'n v. Iowa Dept. of Revenue,* 387 N.W.2d 611 (Iowa App. 1986). See the nonexclusive example below.

A manufactures nails. In A's factory is a machine which draws steel into long rods the width of whatever nail A may wish to manufacture. After this machine draws the steel into the desired-size rods, the rods are moved to a second machine by a conveyor belt. This second machine cuts the rods into the length of nail which A desires. A second conveyor belt then transports these cut rods to a third machine which sharpens one end of the rod to a point and puts a "nail head" on the other end of the rod. The activities of the three machines are clearly processing, in that they are activities which change the form, context or condition of raw material, and as a result of those activities, marketable tangible personal property or a finished product is created. The two conveyor belts move the partially finished nails from one piece of processing equipment to another while processing is occurring. Since the activities of the conveyors are very closely interconnected with and an integral part of the operation of the various pieces of processing equipment while processing is occurring, the conveyor belts are involved in processing as well.

18.29(6) *Other specific examples of processing.* The Iowa Supreme Court has also stated that the following activities are processing: manufacturing ice, refrigerating cheese to age it from "green" to edible, refrigerating eggs to change their flavor, pasteurizing and subsequent refrigeration of milk, "hard" freezing of meat and butter for aging, canning vegetables and cooking foodstuffs; *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission,* 248 Iowa 497, 81 N.W.2d 437 (1957); and, *Mississippi Valley Milk Producers v. Iowa Dept. of Revenue and Finance,* 387 N.W.2d 611 (Ia. App. 1986), also crushing of "flat rock" limestone and treating limestone in kilns. *Linwood Stone Products Co. v. State Dept. of Revenue,* 175 N.W.2d 393 (Iowa 1970). See 701—subrule 17.3(2) for an expanded definition of processing with regard to food manufacturing.

18.29(7) *Other department rules concerned with processing.* Various sections of the Iowa Code set out activities which are defined by statute to be "processing". The rules interpreting these statutes for the purposes of sales and use tax law are the following:

a. 15.3(422,423) Certificates of resale, processing, and fuel used in processing.

b. 17.2(422) Fuel used in processing—when exempt.

c. 17.3(422,423) Electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax.

d. 17.9(422,423) Sales of breeding livestock, fowl, and certain other property used in agricultural production. See 701—subrules 17.9(4), 17.9(5), 17.9(6), and 17.9(7) for processing exemptions.

e. 17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing.

f. 18.3(422,423) Chemical compounds used to treat water.

g. 18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997.

h. 18.58(422,423) Sales or rentals of machinery, equipment, and computers and sales of fuel and electricity to manufacturers and sales or rentals of computers to commercial enterprises for periods on and after July 1, 1997.

i. 26.2(422) Enumerated services exempt. See 701—subrule 26.2(2) for the processing exemption.

j. 28.2(423) Processing of property defined.

k. 33.3(423) Fuel consumed in creating power, heat, or steam for processing or generating electric current.

l. 33.7(423) Property used to manufacture certain vehicles to be leased.

701—18.30(422) Taxation of American Indians.

18.30(1) *Definitions.*

"American Indians" means all persons of Indian descent who are members of any recognized tribe.

"Settlement" means all lands within the boundaries of the Mesquakie Indian settlement located in Tama County, Iowa and any other recognized Indian settlement or reservation within the boundaries of the state of Iowa.

18.30(2) *Retail sales tax—tangible personal property.* Retail sales of tangible personal property made on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation, where delivery occurs on the reservation, are exempt from tax *(Bryan v. Itasca County,* 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 475-81 (1976)). Retail sales of tangible personal property made on a recognized settlement or reservation to Indians where delivery occurs off the reservation are subject to tax. Retail sales of tangible personal property made to non-Indians on a recognized settlement or reservation are subject to tax regardless of where the delivery occurs. Sales made to non-Indians are taxable even though the seller may be a member of a recognized settlement or reservation.

18.30(3), *Retail sales tax—services.* Sales of enumerated taxable services and sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Indians who are members of the tribe located on the recognized settlement or reservation where delivery of the service occurs are exempt from tax *(Bryan v. Itasca County,* 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 475-81 (1976)). Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Indians where delivery of the services occurs off a recognized settlement or reservation are subject to tax.

18.30(4) *Off-reservation purchases.* Purchases made by Indians off a recognized settlement or reservation are subject to tax if delivery occurs off the reservation. Purchases made by Indians off a recognized settlement or reservation are not subject to tax if delivery is made on the reservation to Indians who are members of the tribe located on that reservation.

See rule 701—33.5(423) for the taxation of tangible personal property and services where the state use tax may be applicable.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.45(1).

701—18.31(422,423) Tangible personal property purchased by one who is engaged in the performance of a service.

18.31(1) *In general. (Effective July 1, 1990)*

a. On and after July 1, 1990, tangible personal property purchased by one who is engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

b. Prior to July 1, 1990, in those circumstances in which tangible personal property is purchased by one who is engaged in the performance of a service and the property is transferred to the customer in conjunction with a performance of the service in a form or quantity which is capable of any fixed or definite price value, but the actual sale of the property is not indicated by a separate charge for the identifiable item, the burden of proving that the property was purchased for resale by one engaged in the performance of a service and not subject to tax at the time of purchase is upon the person engaged in the performance of a service who asserts this.

The following is a list of various fees which would be considered fees paid to a city or county for the privilege of participating in any athletic sport, and thus subject to tax under this rule. The list is not exhaustive.

1. Fees paid for the privilege of using any facility specifically designed for use by those playing an athletic sport: fees for use of a golf course, ball diamond, tennis court, swimming pool, or ice skating rink are subject to tax. These fees are subject to tax whether they allow use of the facility for a brief or extended period of time, e.g., a daily fee or season ticket for use of a swimming pool or golf course would be subject to tax. Group rental of facilities designed for playing an athletic sport would also be subject to tax.

2. Fees paid to enter any tournament or league which involves playing an athletic sport would be subject to tax. Both team and individual entry fees are taxable. Fees paid to enter any marathon or foot race of shorter duration would be subject to tax under this rule.

Not subject to tax as fees paid to a city or county for the privilege of participating in any athletic sport under this rule are the following charges. The list is not intended to be exhaustive.

1. Fees paid for lesson or instruction in how to play or to improve one's ability to play an athletic sport are not subject to tax. Golf and swimming lesson fees are specific examples of such nontaxable charges. The fees are excluded from tax regardless of whether the person receiving the instruction is a child or an adult. Fees charged for equipment rental, regardless of whether this equipment is helpful or necessary to participation in an athletic sport, are not subject to tax. The rental of a golf cart or moveable duck blind would not be subject to tax. The rental of a recreational boat is a transportation service, the gross receipts of which are not subject to tax if provided by a city or county.

2. Sales of merchandise, e.g., food or drink, to persons watching or participating in any athletic sport are not subject to tax.

3. Fees charged to improve any facility where any athletic sport is played are not subject to tax, unless such a fee must be paid to participate in an athletic sport which can be played within the facility.

4. Fees paid by any person or organization to rent any county or city facility or any portion of any county or city park shall not be subject to tax unless the portion of the park or facility is specifically designed for the playing of an athletic sport.

EXAMPLE: A local bridge club pays a fee to use a shelter house and the surrounding grounds at a county park for a picnic. During the course of the picnic, the club members set up a net and use the surrounding grounds to play volleyball. They also improvise a softball field and play a softball game there. The fee which the bridge club has paid to rent the shelter house and surrounding grounds would not be subject to tax.

5. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code sections 422.43 and 422.45.

701—18.40(422,423) Renting of rooms. The gross receipts from the renting of any and all rooms, including but not limited to sleeping rooms, banquet rooms or conference rooms in any hotel, motel, inn, public lodging house, rooming or tourist court, or in any place where sleeping accommodations are furnished to transient guests, whether with or without meals are subject to the tax. The rental of a mobile home or of manufactured housing which is tangible personal property is treated as room rental rather than tangible personal property rental. The renting of all rooms would be exempt from the tax if rented by the same person for a period of more than 31 consecutive days.

This rule is intended to implement Iowa Code section 422.43.

701—18.41(422,423) Envelopes for advertising.

18.41(1) Some envelopes which contain advertising are exempt from tax. Envelopes which are not primarily used for advertising are taxable. The primary use of the envelopes should control whether they will be taxable or exempt. *Iowa Movers and Warehouseman's Assn. v. Briggs,* 237 N.W.2d 759 (Iowa 1976).

EXAMPLE 1: XYZ mails coupons and advertisements to persons giving discounts on a certain item which is sold at retail. The envelope used to package these materials is exempt from tax since it is primarily used to contain advertising materials.

EXAMPLE 2: XYZ mails a monthly billing statement to its charge account customers. In addition to the billing statement, XYZ Company encloses an advertisement in the envelope. The envelope has a dual purpose: (1) the collection of accounts receivable and (2) the distribution of advertising. However, the envelope is not primarily used for advertising but for billing the customer, therefore, the exemption does not apply.

18.41(2) Because of the difficulty of administering this exemption, purchasers of envelopes may petition to the department for permission to use a formula to represent to the seller the portion of taxable and exempt gross receipts from envelope purchases.

This rule is intended to implement Iowa Code subsection 422.45(9).

701—18.42(422,423) Newspapers, free newspapers and shoppers' guides.

18.42(1) *General observations.* The gross receipts from the sales of newspapers, free newspapers, and shoppers' guides are exempt from tax. The gross receipts from the sales of magazines, newsletters, and other periodicals which are not newspapers are taxable. Recent cases decided by the United States Supreme Court and the Supreme Court of Iowa prohibit exempting from taxation the sale of any periodical if that exemption from taxation is based solely upon the contents of that periodical. See *Arkansas Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987) and *Hearst v. Iowa Department of Revenue & Finance,* 461 N.W.2d 295 (Iowa 1990).

18.42(2) *General characteristics of a newspaper.* "Newspaper" is a term with a common definition. A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material. Other frequent characteristics of newspapers are the following:

a. Newspapers usually contain photographs. The photographs are more often in black and white rather than color.

b. Information printed on newspapers is usually contained in columns on the newspaper pages.

c. The larger the cross section of the population which reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a "newspaper."

18.42(3) *Characteristics of newspaper publishing companies.* Companies in the business of publishing newspapers are differently structured from other companies. Often, companies publishing larger newspapers will subscribe to various syndicates or "wire services." A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

18.48(8) *Seller's and purchaser's liability for sales tax.* The seller shall be relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery or equipment meeting the requirements of subrule 18.48(4). An exemption certificate can take the form of a stamp imprinted onto one of the documents of sale. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the tax directly to the department.

This rule is intended to implement Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.49(422,423) Aircraft sales, rental, component parts, and services exemptions prior to, on, and after July 1, 1999.

18.49(1) Prior to July 1, 1999, sales in Iowa of aircraft subject to registration were subject to sales tax. On and after July 1, 1999, sales of aircraft in Iowa are subject to Iowa use tax rather than Iowa sales tax. See rule 701—31.6(423). Also, on and after that date, the use tax imposed on sales of aircraft in Iowa is collected by the Iowa department of transportation at the time of the aircraft's registration. Sales of certain aircraft parts in Iowa, the performance of taxable services in Iowa on or in connection with the repair, remodeling, or maintenance of aircraft, and the rental of aircraft in Iowa remain subject to Iowa sales tax on and after July 1, 1999. See subrule 18.49(3).

18.49(2) For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air and is used in a scheduled interstate Federal Aviation Administration certified air carrier operation.

a. Exempt aircraft sales. As of July 1, 1988, and up to and including June 30, 1999, gross receipts from the sale of aircraft are exempt from tax.

b. Exempt rental of aircraft. Effective May 1, 1995, and retroactive to July 1, 1988, the taxable rental (see 701—26.74(422,423)) of aircraft, as defined in the introductory paragraph of this subrule, is exempt from tax.

c. Exempt sale or rental of aircraft parts. Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the sale or rental of tangible personal property permanently affixed to any aircraft as a component part of that aircraft are exempt from tax. The term "component parts" includes, but is not limited to, repair or replacement parts and materials.

d. Exempt performance of services. Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the rendering, furnishing, or performing of services in connection with the repair, remodeling, or maintenance of aircraft (including aircraft engines and component materials or parts) are exempt from tax.

18.49(3) For the purposes of this subrule only, an "aircraft" is any aircraft used in a nonscheduled interstate Federal Aviation Administration certified air carrier operation conducted under 14 CFR ch. 1, pt. 135. On and after July 1, 1998, the gross receipts from the sale or rental of tangible personal property permanently affixed or permanently attached as a component part of these aircraft, including but not limited to repair or replacement materials or parts, are exempt from tax. Also exempt, on and after that date, are the gross receipts from the performance of any service used for aircraft repair, remodeling, or maintenance when the service is performed on an aircraft, aircraft engine, or aircraft component material or part exempt under this subrule. Gross receipts from the sale or rental of aircraft are not exempt from tax under this subrule.

18.49(4) For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air. On and after July 1, 1998, and up to and including June 30, 1999, the gross receipts from the sale of an aircraft to an aircraft dealer who rents or leases the aircraft to another are exempt from tax if all of the following circumstances exist:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

As soon as an aircraft, the sale of which is exempt under this subrule, is used for any purpose other than leasing or renting, or the conditions set out in paragraphs *"a," "b,"* and *"c"* are not continuously met, the dealer claiming the exemption is liable for the tax which would have been due but for the exemption set out in this subrule. Tax will be computed on the original purchase price paid by the dealer.

See rule 701—32.13(423) for a description of the manner in which transactions described in this subrule are exempted from tax on and after July 1, 1999.

This rule is intended to implement Iowa Code section 422.45, subsections 38, 38A, 38B and 38C and Iowa Code section 423.2 as amended by 1999 Iowa Acts, chapter 168.

701—18.50(422,423) Property used by a lending organization. On and after July 1, 1988, the gross receipts from the sale of tangible personal property to a nonprofit organization organized for the purpose of lending the tangible personal property to the general public for use by the public for nonprofit purposes are exempt from tax. The exemption contained in this rule is applicable to tangible personal property only, and not to taxable services. It is applicable to the sale of that property and not to its rental to a nonprofit organization. Finally, the exemption is applicable only to property purchased by a nonprofit organization for subsequent rental to the general public. The exemption is not applicable to other property (e.g., office equipment) which the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 422.45(36).

701—18.51(422,423) Sales to nonprofit legal aid organizations. On and after July 1, 1988, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit legal aid organization are exempt from tax.

This rule is intended to implement Iowa Code subsection 422.45(37).

701—18.52(422,423) Irrigation equipment used in farming operations. On and after July 1, 1989, the gross receipts from the sale or rental of irrigation equipment used in farming operations are exempt from tax. The term "irrigation equipment" includes, but is not limited to, circle irrigation systems and trickle irrigation systems. The term "farming operations" has the same meaning as the term "agricultural production" set out in 701—subrule 17.9(3), paragraph *"a,"* and as further characterized in 18.44(2)*"a."*

This rule is intended to implement Iowa Code section 422.45.

18.58(8) *Designing or installing new industrial machinery or equipment.* The gross receipts from the services of designing or installing new industrial machinery or equipment are exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to exemption under this rule. In addition, the machinery or equipment must be "new." For purposes of this subrule, "new" means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt, or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A "computer" is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

18.58(9) *Property used in recycling or reprocessing of waste products.* Gross receipts from the sale or rental of machinery (including vehicles subject to registration), equipment, or computers directly and primarily used in the recycling or reprocessing of waste products are exempt from tax. "Reprocessing" is not a subcategory of "processing." Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an end loader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. The sale of a bin for storage ordinarily would not be exempt from tax; storage without more activity would not be a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing. For example, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. A person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

a. By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

b. Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.58(1) for the definition of "directly used" which is applicable to this subrule. The examples of machinery not directly used in processing set out in 18.58(5)*"a"* should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.58(5)*"a"*(4)) is not machinery directly used in recycling or reprocessing.

c. Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an "integral part" of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of "processing." Some of that discussion is applicable to this subrule.

d. The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material or in the form of a product. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, crates, and other waste wood into wood chips. After grinding, the wood chips are sold and transported to various sites where the chips are dumped and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in recycling because at the time the chips are placed in the truck they are in the form in which they will be used in erosion control.

This rule is intended to implement Iowa Code Supplement section 422.45(27) as amended by 1998 Iowa Acts, Senate File 2288; Iowa Code section 422.45(29); and Iowa Code chapter 423.

701—18.59(422,423) Exempt sales to nonprofit hospitals. On and after July 1, 1998, the gross receipts from sales or rentals of tangible personal property to and from the rendering, furnishing, or performing of services for a nonprofit hospital licensed under Iowa Code chapter 135B are exempt from tax if the property or service purchased is used in the operation of the hospital. A hospital is not entitled to claim a refund for tax paid by a contractor on the sale or use of tangible personal property or the performance of services in the fulfillment of a written construction contract with the hospital.

For the purposes of this rule, the word "hospital" means a place which is devoted primarily to the maintenance and operation of facilities for diagnosis, treatment, or care, over a period exceeding 24 hours, of two or more nonrelated individuals suffering from illness, injury, or a medical condition (such as pregnancy). The word "hospital" includes general hospitals, specialized hospitals (e.g., pediatric, mental, and orthopedic hospitals, and cancer treatment centers), sanatoriums, and other hospitals licensed under Iowa Code chapter 135B. Also included are institutions, places, buildings, or agencies in which any accommodation is primarily maintained, furnished, or offered for the care, over a period exceeding 24 hours, of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care. Excluded from the meaning of the term "hospital" are institutions for well children; day nursery and child care centers; foster boarding homes and houses; homes for handicapped children; homes, houses, or institutions for aged persons which limit their function to providing food, lodging, and provide no medical or nursing care, and house no bedridden person; dispensaries or first-aid stations maintained for the care of employees, students, customers, members of any commercial or industrial plan, educational institution, or convent; freestanding hospice facilities which operate a hospice program in accordance with 42 CFR § 418 and freestanding clinics which do not provide diagnosis, treatment, or care for periods exceeding 24 hours. This list of inclusions and exclusions is not exclusive. For additional information see 481—Chapter 51.

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, House File 2513.

701—18.60 (422,423) Exempt sales of gases used in the manufacturing process. Effective May 24, 1999, but retroactive to January 1, 1991, sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases which are similar to argon. An "inert gas" is any gas which is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, nitrogen, carbon dioxide, helium, neon, krypton, and xenon are nonexclusive examples of inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases which are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for used in "processing," as those terms are defined in subrule 18.45(1), for the period prior to July 1, 1997, and as those terms are defined in subrule 18.58(1) for the period beginning July 1, 1997.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 170.

[Filed 12/12/74]
[Filed 1/9/76, Notice 12/1/75—published 1/26/76, effective 3/1/76]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed effective date change 10/20/77—published 11/2/77, effective 10/20/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed 3/20/79, Notice 1/10/79—published 4/4/79, effective 5/9/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed 3/28/80, Notice 2/20/80—published 4/16/80, effective 5/21/80]
[Filed 5/23/80, Notice 4/16/80—published 6/11/80, effective 7/16/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 8/1/80, Notice 6/25/80—published 8/20/80, effective 9/24/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 3/13/81, Notice 2/4/81—published 4/1/81, effective 5/6/81]
[Filed 6/5/81, Notice 4/29/81—published 6/24/81, effective 7/29/81]
[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]
[Filed 3/25/82, Notice 2/17/82—published 4/14/82, effective 5/19/82]
[Filed emergency 2/9/83—published 3/2/83, effective 3/1/83]
[Filed 4/22/83, Notices 3/2/83, 3/16/83—published 5/11/83, effective 6/15/83]
[Filed emergency 7/29/83—published 8/17/83, effective 7/29/83]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 11/30/84, Notice 7/18/84—published 12/19/84, effective 1/23/85]
[Filed 12/14/84, Notice 9/26/84—published 1/2/85, effective 2/6/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 10/4/85, Notice 8/28/85—published 10/23/85, effective 11/27/85]
[Filed 10/18/85, Notice 9/11/85—published 11/6/85, effective 12/11/85]
[Filed 12/13/85, Notice 11/6/85—published 1/1/86, effective 2/5/86]
[Filed 1/10/86, Notice 9/11/85—published 1/29/86, effective 3/5/86]
[Filed 3/21/86, Notice 2/12/86—published 4/9/86, effective 5/14/86]
[Filed 3/21/86, Notice 9/11/85—published 4/9/86, effective 5/14/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
[Filed 10/31/86, Notice 9/24/86—published 11/19/86, effective 12/24/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 12/29/86, Notice 11/19/86—published 1/14/87, effective 2/18/87]
[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 10/30/87, Notice 9/23/87—published 11/18/87, effective 12/23/87]
[Filed 12/23/87, Notice 10/7/87—published 1/13/88, effective 2/17/88]
[Filed 1/7/88, Notice 12/2/87—published 1/27/88, effective 3/2/88]
[Filed 2/5/88, Notice 10/21/87—published 2/24/88, effective 3/30/88]
[Filed 3/3/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]
[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]
[Filed 10/14/88, Notice 9/7/88—published 11/2/88, effective 12/7/88]

[Filed emergency 12/23/88—published 1/11/89, effective 1/2/89]
[Filed 3/3/89, Notice 1/25/89—published 3/22/89, effective 4/26/89]
[Filed 3/31/89, Notice 2/22/89—published 4/19/89, effective 5/24/89]
[Filed 8/16/89, Notice 7/12/89—published 9/6/89, effective 10/11/89]◊
[Filed 10/26/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]◊
[Filed 1/5/90, Notice 11/29/89—published 1/24/90, effective 2/28/90]
[Filed 4/26/90, Notice 3/21/90—published 5/16/90, effective 6/20/90]
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]
[Filed 9/28/90, Notice 8/22/90—published 10/17/90, effective 11/21/90]
[Filed 7/5/91, Notice 5/29/91—published 7/24/91, effective 8/28/91]
[Filed 10/11/91, Notice 9/4/91—published 10/30/91, effective 12/4/91]
[Filed 3/13/92, Notice 2/5/92—published 4/1/92, effective 5/6/92]
[Filed emergency 3/26/92—published 4/15/92, effective 4/1/92]
[Filed 6/5/92, Notice 4/15/92—published 6/24/92, effective 7/29/92]
[Filed 9/23/92, Notice 8/19/92—published 10/14/92, effective 11/18/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 10/8/93, Notice 9/1/93—published 10/27/93, effective 12/1/93]
[Filed 12/30/94, Notice 11/23/94—published 1/18/95, effective 2/22/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]
[Filed 2/9/96, Notice 1/3/96—published 2/28/96, effective 4/3/96]
[Filed 5/16/96, Notice 4/10/96—published 6/5/96, effective 7/10/96]
[Filed 10/31/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 12/19/96, Notices 10/9/96, 11/20/96—published 1/15/97, effective 2/19/97*]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 4/17/98, Notice 12/3/97—published 5/6/98, effective 6/10/98]
[Filed 10/15/98, Notice 9/9/98—published 11/4/98, effective 12/9/98]
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]
[Filed emergency 6/22/99—published 7/14/99, effective 7/1/99]
[Filed 7/9/99, Notice 6/2/99—published 7/28/99, effective 9/1/99]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]◊

◊Two ARCs
*Effective date of 18.20(5) and 18.20(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 10, 1997.

EXAMPLE 4. Down Home Construction Company is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Down Home Construction Company would not be considered a contractor-retailer under this rule. Rather, Down Home Construction Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Down Home Construction Company should have a sales tax permit. However, Down Home Construction Company can adjust its sales tax report by taking a credit for tax paid to its vendor on the item sold to the local resident.

EXAMPLE 5. Intown Home Construction Company places modular homes on slabs or basement foundations, makes electrical, plumbing and other connections, and otherwise prepares the modular homes for sale as real estate. Intown also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Intown is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner. See rule 701—17.22(422,423) for an explanation of the basis on which tax is computed.

EXAMPLE 6. Smith's Plumbing has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

701—19.5(422,423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

19.5(1) The use of building materials, supplies, or equipment in the performance of construction contracts by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event. The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts in Iowa is a sale at retail and a taxable event. The tax is computed on the manufacturer's fabricated cost or cost of production. See rule 701—16.3(422,423) for a characterization of the term manufacturer's "fabricated cost."

19.5(2) Prior to July 1, 1987, a contractor-retailer's withdrawal of material from inventory kept in this state for use in construction contracts performed outside Iowa is subject to tax. On and after July 1, 1987, a withdrawal of materials from inventory for use in construction contracts outside this state is not a taxable event.

19.5(3) A contractor is a consumer by statute. A contractor's purchase of materials for use in a construction contract is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

19.5(4) A manufacturer's purchase of tangible personal property consumed as building material in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts within Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. See rule 701—16.3(422,423) for a characterization of the term "fabricated cost." The purchase of tangible personal property consumed by a manufacturer as building material in the manufacturer's or the manufacturer's subcontractor's performance of a construction contract outside Iowa is not subject to tax.

19.5(5) See rule 701—32.8(423) for an exemption from use tax for building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract outside this state.

This rule is intended to implement Iowa Code sections 422.42(12) and 422.42(13).

701—19.6(422,423) Prefabricated structures.

19.6(1) *Basic concepts and general rules.* A "prefabricated structure" is any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor. The term "prefabricated structure" includes a "modular home" as defined in rule 701—17.22(422,423), a mobile home whether or not sold subject to the issuance of a certificate of title, "manufactured housing" as defined in rule 701—33.10(423), sectionalized housing, precut housing packages, and panelized construction. With a few major exceptions (see 19.6(2) below regarding the "60 percent rule" and rule 701—33.10(423) regarding the taxation of manufactured housing while it is real property), the sales and use tax treatment of prefabricated structures generally follows the treatment of construction materials: Tax is due when those structures are sold to or used by owners, contractors, subcontractors, or builders. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable at the time of retail sale. The usual basis for computing sales or use tax is the purchase price charged to a consumer or user by the seller of a prefabricated structure. *Custom Built Homes Co. v. Kansas State Commission of Revenue and Taxation,* 184 Kan. 31, 334 P.2d 808 (1959). Sales or use tax is due on the full purchase price when a prefabricated structure is delivered under a contract for sale or sold for use in Iowa. *Dodgen Industries Inc. v. Iowa State Tax Commission,* 160 N.W.2d 289 (Iowa 1968).

19.6(2) *Exceptions to the general rules.* There are a number of exceptions to the general rules stated above in 19.6(1). Those exceptions are applicable to modular and mobile homes and manufactured housing. They are explained as follows.

a. Modular homes. Only 60 percent of the gross receipts from the sale of a modular home are subject to Iowa tax. See rule 701—17.22(422,423). This rule is applicable only to a "modular home" as that phrase is defined in rule 701—17.22(422,423) and not to other types of prefabricated structures which do not meet the definition of the term such as sectionalized housing or panelized construction. Also, the rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. Mobile homes and manufactured housing. Iowa use tax and not Iowa sales tax is imposed on mobile homes or manufactured housing sold subject to the issuance of a certificate of title, and, similar to 19.6(2)*"a"* above, use tax is imposed only upon 60 percent of the purchase price of these mobile homes or manufactured housing. See rule 701—32.3(423). All mobile homes and manufactured housing sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park; see Iowa Code chapters 423 and 435.

19.6(3) *Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.*

a. A retailer (dealer) who is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor who is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor's sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of rule 19.4(422,423).

c. A dealer who is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in the performance of a construction contract as explained in rule 19.4(422,423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the gross receipts from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 19.6(4) below in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than gross receipts from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes and manufactured housing. However, one distinct difference is that mobile homes and manufactured housing are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home or manufactured housing for subsequent resale to a customer as tangible personal property and then will place or install the mobile home or manufactured housing on a site prepared by the customer. This is not the performance of a construction contract (see rule 19.7(422,423)), and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

19.6(4) *Manufacturers who perform construction contracts.* When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer's part. See rule 701—16.3(422,423) for a detailed description of the sales tax treatment of this sort of transaction. The 60 percent rule (see 19.6(2) above) is not applicable when calculating the amount of tax owed by a manufacturer.

19.6(5) *Examples.* The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner, or acts as a contractor in erecting the home. The incidence of tax depends on several factors, such as the nature of the manufacturer's business, the point of delivery, the contractual agreement for erection and whether or not a sale for resale has occurred.

EXAMPLE 1. The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in its factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer's income relates to on-site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to another state.

EXAMPLE 2. The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer's foundation. The manufacturer delivers the home into Iowa on its own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the selling price to the Iowa builder/dealer.

EXAMPLE 3. The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a "nexus" requiring the manufacturer to collect Iowa tax. In this situation the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4. The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa who will resell the home to the final customer. The manufacturer may deliver the home or delivery may be made by a common carrier. The manufacturer has no contractual obligation for erection. In this situation the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5. The manufacturer is located in Iowa. The manufacturer sells a home to a customer F.O.B. plant site. The manufacturer, under a separate invoice, agrees to transport the home to the job site and also do the setup of the home.

The manufacturer should collect tax on 60 percent of the selling price of the home irrespective of where final delivery occurs, as legal delivery occurs in Iowa. The transportation and setup charge are not taxable when separately contracted for and separately invoiced. If these charges are not separately stated and the sale contract is for a lump sum, the tax is computed on 60 percent of the lump sum selling price.

EXAMPLE 6. The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer withdraws the home from inventory and transports the home to the other state for setup. In this example, the Iowa manufacturer does not owe any Iowa tax because Iowa Code section 422.42(12) exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 7. The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the selling price of the home. The customer also wanted a garage. The manufacturer agreed to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail and the manufacturer should collect tax on the entire selling price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire selling price of the appliances.

EXAMPLE 8. The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer who is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, who transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services which are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer who is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home's invoice price.

701—19.7(422,423) Types of construction contracts. The term "construction contract" is defined as an agreement under the terms of which an individual, corporation, partnership or other entity agrees to furnish the necessary building or structural materials, supplies, equipment or fixtures and to erect the same on the project site for a second party known as a sponsor. Nonexclusive examples of the types of construction contracts would include: lump-sum contracts; cost plus contracts; time and material contracts; unit price contracts; guaranteed maximum or upset price contracts; construction management contracts; design built contracts; and turnkey contracts.

The following is a nonexclusive list of activities and items which could fall within the meaning of a construction contract or are generally associated with new construction, reconstruction, alteration, or expansion of a building or structure. The list is provided merely for the purpose of illustration. It should not be used to distinguish machinery and equipment from real property or structures since such a determination is factual. See rules 19.10(422,423) and 19.11(422,423) for details.

4. The size and weight of the structure.

5. The permanency or degree of annexation of the structure to other real property which would affect its mobility.

6. The cost of building, moving or dismantling the structure.

EXAMPLE: A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high, 20 feet around, weighs 30 tons, and it is affixed to a concrete foundation weighing 60 tons which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of $7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, it is considered a structure and not machinery or equipment. *Wisconsin Department of Revenue v. A. O. Smith Harvestore,* 240 N.W.2d 357 (Wisc. 1976).

The above criteria are intended only to be summation of factors which the department will consider in determining whether or not a project involves construction. The following cases are used as reference material:

Wisconsin Department of Revenue v. A. O. Smith Harvestore Products, Inc., 240 N.W.2d 357 (Wisc. 1976); *Prairie Tank or Construction Co. v. Department of Revenue,* 364 N.W.2d 963 (Ill. 1977); *Levine v. State Board of Equalization,* 299 P. 2d 738 (Calif. 1956); *State of Alabama v. Air Conditioning Engineers, Inc.,* 174 So 2d 315 (Ala. 1965); *A. S. Schulman Electric Company v. State Board of Equalization,* 122 Cal. Rptr 278 (Calif. 1975); *Western Pipeline Constructors, Inc. v. J. M. Dickinson,* 310 S.W.2d 455 (Tenn.); and City of Pella Municipal Light Plant, Order of the Director of Revenue, June 16, 1975.

701—19.12(422,423) Contracts with governmental units, private nonprofit educational institutions, nonprofit private museums, businesses in economic development areas, and rural water districts organized under Iowa Code chapter 504A. Contractors, subcontractors, and builders who enter into written construction contracts with governmental units, private nonprofit educational institutions, nonprofit private museums, businesses or supporting businesses in economic development areas, or rural water districts organized under Iowa Code chapter 504A, are still required to remit sales tax on building materials, supplies, and equipment to their suppliers or to pay a corresponding use tax. If the construction contract is a contract which includes machinery or equipment or a mixed contract, the machinery and equipment must be purchased tax-free because these items will be resold. There would be no sales tax charged on the sale of machinery and equipment to a governmental unit or a private nonprofit educational institution or a nonprofit private museum since these sales are exempt under Iowa Code sections 422.45(5) and 422.45(8). See rules 19.8(422,423) and 19.9(422,423) relating to machinery and equipment sales. See also 261—subrule 58.4(7) for an explanation of the exemption for sales of machinery and equipment to businesses or supporting businesses in an economic development area.

In addition, under the provisions of Iowa Code section 422.45(7) or 15.331A(1), the contractor is required to provide the governmental unit, private nonprofit educational institution, or nonprofit private museum, business or supporting business in an economic development area, or a rural water district organized under Iowa Code chapter 504A with a statement before final settlement of the contract, showing the amount of sales of goods, wares, or merchandise or services rendered, furnished, or performed and used in the performance of the contract, and the amount of sales and use taxes paid on these items. The department provides Form 35-002 for this purpose. If final settlement occurs before May 20, 1999, the governmental unit, private nonprofit educational institution, nonprofit private museum, business or supporting business, or rural water district organized under Iowa Code chapter 504A has six months after the final settlement to file a claim for refund on Form 35-003 for sales and use taxes paid by the contractor. If final settlement occurs on or after May 20, 1999, a period of one year after the date of final settlement is allowed for filing a claim for refund. The failure of a contractor to remit taxes on materials, supplies, and equipment used in the performance of a construction contract does not relieve the contractor of liability even though the refund was not or cannot be claimed. See *Dealers Warehouse Co. Inc. v. Department of Revenue,* Jasper County District Court, 90-3910936, December 6, 1978.

This rule is intended to implement Iowa Code sections 357A.15 and 422.45 as amended by 1998 Iowa Acts, chapter 1161.

701—19.13(422,423) Tax on enumerated services. The tax on the services enumerated in Iowa Code section 422.43 is basically a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of real property or structures, they are exempt from tax. The repair of machinery on the job site is not exempt from tax under this rule.

The distinction between a repair (see subrule 19.13(1)) and new construction, reconstruction, alteration, expansion and remodeling activities (see subrule 19.13(2)) can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project may become the factors which determine whether certain enumerated services are taxable. An area of particular difficulty is the distinction between repair and remodeling. "Remodeling" a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof. See *Board of Commissioners of Guadalupe County v. State,* 43 N.M. 409, 94 P.2d 515 (1939) and *City of Mayville v. Rosing,* 19 N.D. 98, 123 N.W. 393 (1909).

19.13(1) Repair is synonymous with mend, restore, maintain, replace and service. A repair contemplates an existing structure or thing which has become imperfect and constitutes the restoration to the original existing structure which has been lost or destroyed. A repair is not a capital improvement; that is, it does not materially add to the value or substantially prolong the useful life of the property.

Iowa Code section 422.42(13) defines a person engaged in the business of performing taxable services as a retailer. Since retailers may purchase building materials, supplies and equipment for resale, persons making taxable repairs (repairpersons and servicepersons) are not considered to be contractors and are not subject to the provisions of Iowa Code section 422.42(15). In addition, such persons are not considered to be owners, subcontractors or builders. So repairpersons and servicepersons will normally purchase building materials and supplies free of tax for subsequent resale to their customers; contractor-retailers will also do this. However, contractors, subcontractors or builders who may make repairs are subject to Iowa Code section 422.42(15) and must pay tax at the time building materials, supplies and equipment are purchased from their vendors even though they hold a valid sales tax permit. See rules 19.2(422,423) and 19.3(422,423). In determining who is a contractor and who is a retailer of repair services, the department looks to the "total business" of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor. When contractors do repair work, they should separately itemize labor and materials charges and collect sales tax on labor charges only. A contractor's markup on a materials charge is not part of any taxable labor charge unless that markup is a disguised labor charge done with the intent to evade collecting Iowa sales tax.

When other persons making repairs sell tangible personal property at retail in connection with any taxable service enumerated in Iowa Code section 422.43, then those persons shall collect and remit tax on all gross receipts. The person making repairs shall purchase tangible personal property for resale when the property is used in the repair job and is resold to a customer. See rule 701—18.31(422,423) for an explanation of when persons performing services sell the property they use in performing those services to their customers. Nonexclusive examples of repair situations follow:

1. Repair of broken or defective glass.
2. Replacement of broken, defective or rotten windows.
3. Replacing individual or damaged roof shingles.
4. Replacing or repairing a portion of worn-out or broken kitchen cabinets.
5. Replacement of garage doors or garage door openers.
6. Replacing or repairing a portion of a broken or worn tub, shower, or faucets.
7. Replacing or repairing a portion of a broken water heater, furnace or central air conditioning compressor.
8. Restoration of original wiring in a house or building.

19.13(2) The following are examples of new construction, reconstruction, alteration, expansion and remodeling activities:

a. The building of a garage or adding a garage to an existing building would be considered new construction.

b. Adding a redwood deck to an existing structure would be considered new construction.

c. Replacing a complete roof on an existing structure would be considered new construction or alteration.

d. Adding a new room to an existing building would be considered new construction.

e. Adding a new room by building interior walls would be considered alteration.

f. Replacing kitchen cabinets with some modification would be considered an improvement.

g. Paneling existing walls would be considered an improvement.

h. Laying a new floor over an existing floor would be considered an improvement.

i. Rebuilding a structure damaged by flood, fire or other uncontrollable disaster or casualty would be considered reconstruction.

j. Building a new wing to an existing building would be considered an expansion.

k. Rearranging the interior structure of a building would be considered remodeling.

l. Installing manufactured housing or a modular or mobile home on a foundation. However, see rule 701—33.10(423) for a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.

m. Replacing an entire water heater, water softener, furnace or central air conditioning unit.

n. Sign installation and well-drilling services are generally performed in connection with new construction.

In all the examples, the contractor is responsible for paying tax to any supplier on materials. However, there would be no tax on any enumerated services.

19.13(3) The term "on or connected with" is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. "On or connected with" does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of production machinery and equipment in a building while remodeling of the real property was in progress. (Tax could apply to the sales price of the production machinery and equipment; see rule 701—18.45(422,423).) However, if a year after all construction activity has ended, the owner decides to install a piece of production machinery in the building, any taxable enumerated services relating thereto would be subject to tax. Further, if following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. See also 701—subrule 18.45(7) for the exemption, effective July 1, 1985, regarding the installation of new industrial machinery and equipment.

Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction, for example. For instance, a homeowner hires a general contractor to add a new room to an existing home (which is new construction; see 19.13(2)*"d"* above). The existing home is in need of a number of the repairs described in 19.13(1); for example, it is in need of rewiring and replacement of a broken window. The general contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 3/3/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]
[Filed 9/30/88, Notice 8/24/88—published 10/19/88, effective 11/23/88]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]
[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]
[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 11/27/96, Notice 10/23/96—published 12/18/96, effective 1/22/97]
[Filed 10/30/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

CHAPTERS 21 to 25
Reserved

TITLE III
SALES TAX ON SERVICES

CHAPTER 26
SALES AND USE TAX ON SERVICES

[Prior to 12/12/74, appeared as Ch 5, IDR]
[Prior to 12/17/86, Revenue Department[730]]

701—26.1(422) Definition. The phrase "persons engaged in the business of" as used herein shall mean persons who offer the named service to the public or to others for a consideration whether such person offers the service continuously, part-time, seasonally or for short periods. The Iowa sales tax law imposes for periods prior to July 1, 1992, a tax of 4 percent and for periods on or after July 1, 1992, a tax at the rate of 5 percent upon the gross receipts from the rendering, furnishing or performing at retail of certain enumerated services, hereinafter described in more detail in this chapter.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47 and 423.2.

701—26.2(422) Enumerated services exempt. Tax shall not apply on any of the following services.

26.2(1) Services on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, or the services of a general building contractor, architect or engineer. *Iowa Movers and Warehousemen's Association v. Briggs,* Equity No. 75910, Polk County District Court, May 8, 1974.

26.2(2) A taxable service which is utilized in the processing of tangible personal property for use in taxable retail sales or services.

26.2(3) A service which is performed in interstate commerce in such a manner that imposition of tax would violate the commerce clause of the United States Constitution. Services performed on tangible personal property on or after May 20, 1999, are exempt from tax if those services are performed on property which the retailer of the property transfers to a carrier for shipment to a point outside Iowa, places in the United States mail or parcel post directed to a point outside Iowa, or transports to a point outside Iowa by means of the retailer's own vehicles and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption does not apply to services performed on property if the purchaser, consumer, or the agent of either a purchaser or consumer, other than a carrier, takes physical possession of the property in Iowa.

26.2(4) Services rendered, furnished or performed for an "employer" as defined in Iowa Code subsection 422.4(15).

26.2(5) Those exemptions in 701—Chapter 17 applicable to both sale of services and sale of tangible personal property, excluding those exemptions pertaining only to the sale of tangible personal property.

26.2(6) A service which is purchased for resale. A service is purchased for resale when it is subcontracted by the person who is contracted to perform the service. For example:

a. X is a printer and enters into a contract with Y to print 500 bulletins. X subcontracts the job to Z. Z prints the 500 bulletins for X. There is no tax on the contracts between X and Z since X is purchasing the printing service from Z for resale to Y.

b. B owns a used car lot. E purchases an automobile from B. As a condition of such sale, B agrees to make repairs to the automobile. However, B subcontracts such repair work to C. E has agreed to pay B for the repair services and for the sale price of the automobile. Under these circumstances, the repair services furnished by C to B constitute a sale of such services to B for resale to E who is the consumer of these services.

c. B owns an auto repair shop and C brings an automobile in to have the air conditioner fixed. B is unable to fix the unit so the car is sent to G who is an air conditioning specialist. The sale of G's service to B is a sale for resale by B to C.

26.2(7) Services purchased which are not for resale. For periods beginning July 1, 1978, the tax on services is collectible at the time the service is complete even if not purchased by the ultimate beneficiary. For example:

a. B, a used car dealer, owns a used car lot and contracts an automobile repair job to C. B cannot purchase the repair service for resale merely because at some later date the automobile may be sold. Tax is due when the service is completed for the used car dealer. See *Iowa Auto Dealers v. Iowa Department of Revenue,* 301 N.W.2d 760 (Iowa 1981). This particular example does not apply to denote tax due after June 30, 1981. See subrule 26.2(8).

b. A operates a test laboratory business. A agrees to provide testing services to B. In the course of conducting the tests, A rents equipment from C. In computing the fee which B has agreed to pay A for testing services, A will include A's costs, including the rental A paid to C in rendering the testing services. Under these circumstances, A furnished B with testing services, and not with the equipment rental services which C furnished to A. A is the consumer of the equipment rental services which are not resold to B and B is the consumer of the testing services. See rule 701—15.3(422,423) regarding resale certificates.

26.2(8) Services are exempt from tax when used in the reconditioning or repairing of tangible personal property of the type which is normally sold in the regular course of the retailer's business and which is held for sale by the retailer. For example:

a. A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B-tax free because A is regularly engaged in selling refrigerators and will offer the refrigerator for sale when it is repaired.

b. B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax-free because B is regularly engaged in selling used cars and will sell the used car after it is repaired.

c. C operates a retail farm implement dealership. C accepts a motorboat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motorboats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

d. XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television set that XYZ is going to sell. XYZ can purchase television repair service tax-free from W because XYZ is regularly engaged in selling television sets subject to sales tax. However, in this instance XYZ sells the used television and delivers it into interstate commerce with the result that the Iowa sales tax is not collectible. Regardless of this fact, the exemption is applicable, and no Iowa tax is due for the television repair services performed.

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(13) and 422.43.

701—26.3(422) Alteration and garment repair. Persons engaged in the business of altering or repairing any type of garment or clothing are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Included are the services rendered, furnished or performed by tailors, dressmakers, furriers and others engaged in similar occupations. When the vendor of garments or clothing agrees to alter same without charge when an individual purchases such garments or clothing, no tax on services, in addition to the sales tax paid on the purchase price of the article, shall be charged. However, if the vendor makes an additional charge for alteration, that additional charge shall be subject to the tax on the gross receipts from the services.

26.18(2) *For periods beginning July 1, 1984, rental of tangible personal property.* The gross receipts from the rental of all tangible personal property shall be subject to tax. Tangible personal property is any personal property which is visible and corporeal, has substance and body or can be touched or handled. *RAMCO Inc. v. Director, Department of Revenue,* 248 N.W.2d 122 (Iowa 1976). Electromagnetic waves and other types of waves are not tangible personal property. *RAMCO Inc.* supra. Thus, the receipt of signals from a pay television company does not involve the rental of tangible personal property. See *Indiana Dept. of State Revenue, Sales Tax Division v. Cable Brazil Inc.,* 380 N.E.2d 555 (Ind. App. 1978). At common law, rental consists of consideration paid for the use or occupation of property, but not for passage of title, Black's Law Dictionary 1461 (4th Ed. 1968).

a. Rentals not taxed under previous law. Prior to July 1, 1984, only if tangible personal property consisted of "equipment" was its rental taxable. Equipment rental continues to be a service subject to tax under the present law. Equipment refers to implements or tools used to produce a final product or achieve a given result. *KTVO, Inc. and KBIZ, Inc. v. Bair,* 255 N.W.2d 111 (Iowa 1977) and *State v. Bishop,* 257 Iowa 336 (1965). The rental of certain tangible personal property not considered to be equipment is now subject to tax. As nonexclusive examples, clothing rental, such as tuxedos and formal gown rental, or costume rental; picture, painting, sculpture and other art work rental; plant rental to homes or businesses; and furniture rental are now subject to tax.

b. Rental of real property distinguished from rental of tangible personal property. If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incident to that contract, tangible personal property is provided which allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the gross receipts are for the rental of real property and are not subject to tax.

If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property's use, the gross receipts from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

c. Rental of tangible personal property and rental of fixtures. The rental of tangible personal property which shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property which is connected to real property in a way that it cannot be removed without damage to itself or to the real property is a fixture. *Equitable Life Assurance Society of the United States v. Chapman,* 282 N.W.2d 355 (Iowa 1983) and *Marty v. Champlin Refining Co.,* 36 N.W.2d 360 (Iowa 1949). The rental of a mobile home or manufactured housing, not sufficiently attached to realty to constitute a fixture, is room rental rather than tangible personal property rental and subject to tax on that basis; see *Broadway Mobile Home Sales Corp. v. State Tax Commission,* 413 N.Y.S.2d 231 (N.Y. 1979). See also rule 701—18.40(422,423).

d. Rental of tangible personal property embodying intangible personal property rights, transactions exempt and taxable. Under the law, the gross receipts from rental of tangible personal property include "royalties, and copyright and license fees." The department interprets the legislature's use of this phrase as evidence of the legislature's intent to tax the rental of all property which is a tangible medium of expression for the intangible rights of royalties, copyright and license fees. Thus gross receipts from the rental of films, video disks, video cassettes, and any computer software (other than rental of custom programs, see 701—paragraph 18.34(3)*"a"*) which is the tangible means of expression of intangible property rights is subject to tax. The rental of such tangible property shall be subject to tax whether the property is held for rental to the general public or for rental to one or a few persons. See *Boswell v. Paramount Television Sales, Inc.*, 282 So.2d 892 (Ala. 1973). See rule 17.18(422,423) regarding the exemption from the requirements of this subrule for rental of films, video tapes and other media to lessees imposing a taxable charge for viewing or rental of the media or to lessees who broadcast the contents of this media for public viewing or listening.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—26.19(422) Excavating and grading. Persons engaged in the business of excavating and grading for purposes other than new construction, reconstruction, alteration, expansion or remodeling are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.19(1) For purposes of this rule, *"excavation"* shall mean the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. The word excavate ordinarily comprehends not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface. *Rochez Brothers v. Duricka,* 374 Pa. 262, 97 A.2d 825 (1953).

26.19(2) *"Grading"* shall mean, in its commonly accepted sense, a physical change of the earth's structure by scraping and filling in the surface to reduce it to a common level; the reducing of the surface of the earth to a given line fixed as the grade, involving excavating or filling or both.

When it is determined that the enumerated service of excavating or grading is present, the situation must be further examined to determine if the new construction exemption applies. See chapter 248(9), Acts of the Sixty-third General Assembly.

701—26.20(422) Farm implement repair of all kinds. Persons engaged in the business of repairing, restoring or renovating implements, tools, machines, vehicles or equipment, but not including installation of new parts or accessories which are not replacements, used in the operation of farms, ranches or acreages on which growing crops of all kinds, livestock, poultry or fur-bearing animals are raised or used for any purpose are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.21(422) Flying service. Persons engaged in the business of teaching a course of instruction in the art of operation and flying of an airplane, and instructions in repairing, renovating, reconditioning an airplane, or any other related service are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. While not intended to be inclusive, the following is a list of taxable and nontaxable charges related to flight instruction.

Charges for instructors' services, ground instruction and ground school are taxable.

Charges for dual flying and for students learning to fly with an instructor are taxable. The instruction is taxable as a flying service. The plane rental is also taxable. This paragraph shall become effective for periods beginning on or after April 1, 1992.

[Filed 11/2/84, Notice 9/12/84—published 11/21/84, effective 12/26/84]
[Filed 11/30/84, Notice 7/18/84—published 12/19/84, effective 1/23/85]
[Filed 12/28/84, Notice 7/18/84—published 1/16/85, effective 2/20/85]
[Filed 1/10/85, Notice 10/10/84—published 1/30/85, effective 3/6/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 10/4/85, Notice 8/28/85—published 10/23/85, effective 11/27/85]◊
[Filed 1/10/86, Notice 8/28/85—published 1/29/86, effective 3/5/86]
[Filed 4/18/86, Notice 9/11/85—published 5/7/86, effective 6/11/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 1/23/87, Notice 12/19/86—published 2/11/87, effective 3/18/87]
[Filed 7/24/87, Notice 6/17/87—published 8/12/87, effective 9/16/87]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 12/23/87, Notice 10/7/87—published 1/13/88, effective 2/17/88]
[Filed 3/3/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]
[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 10/12/90, Notice 9/5/90—published 10/31/90, effective 12/5/90]
[Filed 10/11/91, Notice 9/4/91—published 10/30/91, effective 12/4/91]◊
[Filed emergency 3/26/92—published 4/15/92, effective 4/1/92]
[Filed 6/5/92, Notice 4/15/92—published 6/24/92, effective 7/29/92]
[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]
[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]
[Filed 12/13/96, Notice 11/6/96—published 1/1/97, effective 2/5/97]
[Filed 5/15/98, Notice 4/8/98—published 6/3/98, effective 7/8/98*]
[Filed 10/30/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

◊Two ARCs
*Effective date of 26.45 delayed until July 16, 1998, by the Administrative Rules Review Committee at its meeting held June 9, 1998.

EXAMPLE 10. Iowa lessor enters into a lease with Sally Jones on August 11, 1996, for use of a vehicle in Iowa. The lease is for a period of 12 months. Motor vehicle lease tax is not due on this because the lease was entered into prior to January 1, 1997, the effective date of the motor vehicle lease tax.

EXAMPLE 11. Iowa lessor enters into a lease with Joe Smith on January 1, 1996, for use of a vehicle in Iowa. The lease is for a period of 12 months and contains 30-day options that may be exercised by Joe Smith at the conclusion of the initial 12-month period. On January 1, 1997, Joe Smith exercises a 30-day option. Motor vehicle lease tax is not due on the exercised option period because the option is an extension of the original lease which was entered into prior to January 1, 1997, the effective date of the motor vehicle lease tax.

Examples 12 and 13 offer guidance for computing the tax imposed in this rule for leases entered into prior to July 1, 1997.

EXAMPLE 12. Lessor and lessee located in Iowa enter into a qualifying lease agreement on March 9, 1997. The price negotiated by the parties for the lease is $9,120, which will be paid by the lessee in 36 monthly installments. The lessor and lessee also agreed that the lessee will separately pay by personal check the total cost of each of the following items: tax, $456; title, $35; license, $164; and tinted windows, $225. The total lease price of the leased vehicle, including the items separately paid by personal check by the lessee is $10,000. The amount to be reported to the county treasurer at the time of registration or titling of the vehicle is $10,000. The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer is $500 ($10,000 × 5% = $500).

EXAMPLE 13. Lessor and lessee located in Iowa enter into a qualifying lease agreement on June 24, 1997. The lessor and lessee agree that the lessee will provide a down payment, trade-in, and pay the tax, title, and license as a capitalized cost over the term of the lease agreement. The total lease price, including the down payment, trade-in, and capitalized costs, is $10,000. To compute the total lease price to be reported to the county treasurer when the lease price includes tax as a negotiated capitalized cost of the lease to be paid by the lessee, the owner/lessor may multiply the total lease price of $10,000 by the factor of 1.0526316 which results in the sum of $10,526.32. The total of $10,526.32 is the total lease price to be reported by the owner/lessor to the county treasurer or department of transportation at the time of registering or titling of the vehicle. The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer or department of transportation is $526.32 ($10,526.32 × 5% = $526.32).

Effective July 1, 1997, the following examples may be used for guidance in computing the lease price and motor vehicle lease tax imposed under this rule.

EXAMPLE 14. Lessor and lessee located in Iowa enter into a qualifying lease agreement on July 12, 1997. The price negotiated by the parties for the lease is $9,120, which will be paid by the lessee in 36 monthly installments. The lessor and lessee also agreed that the lessee will separately pay by personal check the total cost of each of the following items: tax, $467.25; title, $35; license, $164; and tinted windows, $225. However, effective July 1, 1997, tax, title fees, and license fees are not to be included in the computation of the lease price. As a result, the amount to be reported to the county treasurer at time of registration or titling of the vehicle is $9,345 ($9,120 – the total monthly payments + $225 – cost of the tinted windows = $9,345). The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer is $467.25 ($9,345 × 5% = $467.25).

EXAMPLE 15. Lessor and lessee located in Iowa enter into a qualifying lease agreement on August 11, 1997. The lessor and lessee agree that the lessee will provide a down payment, trade-in, and pay the tax, title, license, pin striping, and cost of an upgraded stereo system as capitalized costs over the term of the lease agreement. The total lease price, including the down payment, trade-in, and capitalized costs, but excluding the tax, title, and license to be paid by the lessee in the monthly lease payments, is $10,000. The total of $10,000 is the total lease price to be reported by the owner/lessor to the county treasurer or department of transportation at the time of registering or titling of the vehicle. The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer or department of transportation is $500 ($10,000 × 5% = $500).

701—31.6(423) Sales of aircraft subject to registration. On and after July 1, 1999, taxable sales in Iowa of aircraft subject to registration under Iowa Code section 328.20 are subject to Iowa use tax and not Iowa sales tax. This use tax is to be collected by the Iowa department of transportation at the time of the aircraft's registration. The sale of an aircraft subject to registration is not subject to local option sales tax, either that imposed by Iowa Code chapter 422B or that imposed by Iowa Code chapter 422E. For the purposes of this rule, an "aircraft" is any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air, for the purpose of transporting persons or property, or both. See rule 701—32.13(423) for exemptions applicable to aircraft subject only to use tax.

This rule is intended to implement Iowa Code section 423.2 as amended by 1999 Iowa Acts, chapter 168.

These rules are intended to implement Iowa Code sections 421.6, 421.17, 423.4(16), and 423.25 and Iowa Code section 423.7A as amended by 1997 Iowa Acts, Senate File 222.

[Filed December 12, 1974]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 12/31/96, Notice 11/6/96—published 1/1/97, effective 2/5/97]
[Filed 7/25/97, Notice 6/18/97—published 8/13/97, effective 9/17/97]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

CHAPTER 32
RECEIPTS EXEMPT FROM USE TAX
[Prior to 12/17/86, Revenue Department[730]]

701—32.1(423) Tangible personal property and taxable services subject to sales tax. The gross receipts from the sale of tangible personal property which are subject to the imposition of sales tax under Iowa Code chapter 422 shall be exempt from use tax if the sales tax has been paid to the department or to a retailer. This shall not apply to vehicles subject to registration or the purchase of a taxable service enumerated in Iowa Code section 422.43 prior to July 1, 1994. On and after that date the rendering, furnishing, or performing of a service taxable under Iowa Code chapter 422 shall be exempt from use tax if the sales tax has been paid to the department or to a retailer. Prior to, on, and after July 1, 1994, either a sales tax or a use tax, but not both, shall be imposed upon the use in Iowa of services rendered, furnished, or performed in this state.

This rule is intended to implement Iowa Code subsection 423.4(1).

701—32.2(423) Sales tax exemptions applicable to use tax. When an exemption is allowed for sales tax purposes the same shall apply for use tax, except for the exemptions provided in Iowa Code section 422.45, subsections 4 and 6, as they relate to vehicles subject to registration.

This rule is intended to implement Iowa Code subsections 423.4(3) and 423.4(4).

701—32.3(423) Mobile homes and manufactured housing. A use tax is not to be imposed on any mobile home or manufactured housing if the tax has been previously imposed pursuant to Iowa Code section 423.2 and paid. In order for the exemption to be allowed, the purchaser of the mobile home or manufactured housing has the responsibility to provide the county treasurer with documentation verifying that the Iowa use tax was previously paid. All taxable mobile homes or manufactured housing is subject to a use tax in an amount equal to 60 percent of the mobile home's or manufactured housing's purchase price (40 percent of the home's or housing's purchase price is exempt from use tax). In arriving at the purchase price upon which the use tax is to be computed, the trade-in allowance provided in Iowa Code section 423.1(6)*"b"* is a reduction in the purchase price if (1) the property traded for the mobile home or manufactured housing is a type of property normally sold in the regular course of business of the retailer selling the home or housing, and (2) the retailer intends ultimately to sell the traded property at retail or to use the traded property in the manufacture of a like item.

EXAMPLE 1: A manufactured housing dealer receives from the factory a new manufactured home that has a sales price of $20,000. The dealer sells it and takes the purchaser's old manufactured home worth $5,000 in trade. The dealer keeps the traded-in manufactured home as an office. The Iowa use tax is computed as follows:

Sales price	$20,000
Less trade-in	$ 5,000
Buyer's price	$15,000
Amount subject to tax ($20,000 × 60%)	$12,000
Use tax at 5%	$ 600

The trade-in allowance does not apply since the traded-in manufactured home will not be ultimately sold at retail or used to manufacture a like item.

EXAMPLE 2: Same facts as given in Example 1 with the exception that the dealer lists the trade-in for sale.

Sales price	$20,000
Less trade-in	$ 5,000
Buyer's price	$15,000
Amount subject to tax ($15,000 × 60%)	$ 9,000
Use tax at 5%	$ 450

The trade-in allowance applies since the traded-in manufactured home will be ultimately sold at retail.

This rule is intended to implement Iowa Code sections 423.4(11) and 423.4(12) as amended by 1999 Iowa Acts, chapter 188.

701—32.4(423) Exemption for vehicles used in interstate commerce. Trailers and semitrailers used initially in Iowa on and after July 1, 1986, and registered under Iowa Code chapter 326, are exempt from tax. These trailers and semitrailers are not subject to the record-keeping requirement and other requirements of the next paragraph. See rule 32.10(423) for an additional exemption for vehicles operated but not registered under Iowa Code chapter 326.

For trailers and semitrailers registered under Iowa Code chapter 326 and initially used in Iowa between July 1, 1985, and June 30, 1986, inclusive, and for any other vehicle registered under chapter 326, including those purchased for lease, and truck and road tractors, a use tax is not to be imposed provided that the vehicle is used in interstate commerce, accrues at least 25 percent of its mileage outside of Iowa and is registered for a gross weight of 13 tons or more. Mileage records must be maintained for each vehicle by the vehicle owner on a fiscal year basis which begins on July 1 and ends on June 30. For trailers and semitrailers, the requirements of this paragraph and the subsequent paragraph are not applicable if the trailer is registered as of July 1, 1986, or is initially registered on or after that date. These trailers and semitrailers are treated as if they have been used initially and registered in Iowa on or after July 1, 1986, and the first paragraph of this rule is applicable to their use. The vehicle will be subject to use tax if the required mileage outside Iowa is not attained during each fiscal year. For purposes of determining eligibility for this exemption, mileage accrued in the year before the first full fiscal year of operation must be added to the mileage accrued during the first full fiscal year of operation and mileage accrued in the year after the last full fiscal year of operation must be added to the mileage accrued during the last full fiscal year of operation. The vehicle owner is responsible for maintaining mileage records that prove eligibility for the exemption.

For assessments issued pursuant to this rule on and after July 1, 1998, if a vehicle meets the requirement that 25 percent of the miles operated accrue in states other than Iowa in each year of the first four-year period of operation, the exemption from use tax shall continue until the vehicle is sold or transferred. If a vehicle is found not to have met the exemption requirements of this paragraph in its first four years of operation, or the exemption was revoked, the value of the vehicle upon which use tax shall be imposed is the book or market value, whichever is less, at the time the exemption requirements first were not met or at the time the exemption was revoked. However, if exemption from use tax is claimed for a vehicle under this paragraph and that vehicle is, subsequently, never used in an exempt fashion, then the purchase price of the vehicle is the value upon which any assessed tax shall be computed.

EXAMPLE: Company A purchases a vehicle stating that its future use will be in interstate commerce; 25 percent of its miles traveled accrue outside the state of Iowa. In fact, the vehicle is never driven outside the state of Iowa. Use tax is computed on the purchase price of the vehicle paid by Company A.

701—32.12(423) Exemption for vehicles previously purchased for rental. The use of motor vehicles subject to registration and previously purchased for rental is exempt from tax if the following circumstances exist:

1. The motor vehicle was registered and titled between July 1, 1982, and July 1, 1992, inclusive;
2. The motor vehicle was registered and titled to a motor vehicle dealer licensed under Iowa Code chapter 322;
3. The motor vehicle was rented to a "user" as that term is defined in Iowa Code section 422C.2 and 701—27.1(422,422C,423);
4. The dealer kept the vehicle on the inventory of vehicles for sale at all times;
5. The vehicle was to be immediately taken from the user when a buyer was found; and
6. The user was aware of this fact.

This rule is intended to implement Iowa Code chapter 423.

701—32.13(423) Exempt use of aircraft on and after July 1, 1999. On and after July 1, 1999, "aircraft" are subject only to use tax. See rule 701—31.6(423). As of that same date, the use of the following aircraft is exempt from tax:

32.13(1) Aircraft used in a scheduled interstate Federal Aviation Administration certified air carrier operation.

32.13(2) The use of an aircraft by an aircraft dealer who rents or leases the aircraft to another is exempt from tax if all of the following circumstances exist:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

As soon as an aircraft is used for any purpose other than leasing or renting, or the conditions set out in paragraphs *"a," "b,"* and *"c"* are not continuously met, the dealer claiming the exemption is liable for the tax which would have been due but for the exemption set out in this subrule. Tax will be computed on the original purchase price paid by the dealer.

See rule 701—18.49(422,423) for a description of various aircraft parts and of services performed on aircraft which are exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.4 as amended by 1999 Iowa Acts, chapter 168.

[Filed December 12, 1974]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 7/24/87, Notice 6/17/87—published 8/12/87, effective 9/16/87]
[Filed 3/3/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 9/28/90, Notice 8/22/90—published 10/17/90, effective 11/21/90]
[Filed 8/16/91, Notice 7/10/91—published 9/4/91, effective 10/9/91]
[Filed 3/26/92, Notice 2/19/92—published 4/15/92, effective 5/20/92]
[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]

[Filed 7/17/92, Notice 6/10/92—published 8/5/92, effective 9/9/92]
[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 12/13/96, Notice 11/6/96—published 1/1/97, effective 2/5/97]
[Filed 7/25/97, Notice 6/18/97—published 8/13/97, effective 9/17/97]
[Filed 10/15/98, Notice 9/9/98—published 11/4/98, effective 12/9/98]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

CHAPTER 33
RECEIPTS SUBJECT TO USE TAX DEPENDING ON METHOD OF TRANSACTION

[Prior to 12/17/86, Revenue Department[730]]

701—33.1(423) Gifts and prizes. Rescinded IAB 9/4/91, effective 10/9/91.

701—33.2(423) Federal manufacturer's or retailer's excise tax. See rule 701—15.12(422,423) for the principles used to determine when federal excise tax is included in or excluded from the "purchase price" upon which Iowa use tax is based. The rule also contains a list of federal excise taxes which are currently includable in or excludable from the purchase price.

701—33.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current. Tangible personal property purchased outside the state and consumed in creating power, heat or steam for processing tangible personal property or for generating electric current intended to be sold ultimately at retail shall be exempt from use tax. If the property purchased to be consumed as fuel in creating power, heat or steam for processing is also used in the heating of the factory or office, ventilation of the building, lighting of the premises or for any use other than that of direct processing, that portion of the property so used shall be subject to use tax.

When buying tangible personal property, part of which is exempt as fuel under the provisions of the law, from an out-of-state seller registered to collect use tax for the state, the purchaser shall furnish to such registered seller a written certificate certifying the cost of the property which is to be used for processing and shall, therefore, be exempt. The certificate shall also show the cost of the property which is not to be used in processing and, therefore, taxable in order that the registered seller may properly bill the amount of use tax due. See 701—17.3(422).

701—33.4(423) Repair of tangible personal property outside the state of Iowa. A person who owns tangible personal property in the state of Iowa and sends such property or causes such property to be sent outside the state for the purpose of having it repaired and brings such property back into Iowa, shall be liable for the payment of use tax on the full charge if the service is enumerated.

When the repair is not an enumerated service subject to tax and is invoiced as a separate item from the materials furnished and used in the repair, tax shall be computed only on the charge made for the tangible personal property furnished by the repairer.

701—33.5(423) Taxation of American Indians.

33.5(1) *Definitions.*

"American Indians" means all persons of Indian descent who are members of any recognized tribe.

"Settlement" means all lands within the boundaries of the Mesquakie Indian settlement located in Tama County, Iowa, and any other recognized Indian settlement or reservation within the boundaries of the state of Iowa.

33.5(2) *Use tax.* Out-of-state purchases made by Indians which are purchased for use on a recognized settlement or reservation where delivery occurs on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation are exempt from tax. Out-of-state purchases made by Indians where delivery occurs off a recognized settlement or reservation are subject to tax even though purchased for use on a recognized settlement or reservation.

33.5(3) *Use tax—vehicles subject to registration.* Vehicles subject to registration with county treasurers are exempt from use tax if delivery of the vehicle is made on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation. Vehicles subject to registration with county treasurers are subject to use tax if delivery of the vehicle is made off a recognized settlement or reservation.

See rule 701—18.31(422,423) for the taxation of tangible personal property and services where the state sales tax may be applicable.

This rule is intended to implement Iowa Code sections 423.1, 423.2, and 423.7.

701—33.6(422,423) Exemption for property used in Iowa only in interstate commerce. In determining whether property used in interstate commerce is exempt from Iowa use tax, the following four circumstances will be considered. Any person claiming that use of property in Iowa is exempt from tax by virtue of its use in interstate commerce must prove that:

1. The use does not have a substantial nexus with Iowa; or
2. Iowa use tax is not fairly apportioned; or
3. Imposition of Iowa use tax results in discrimination against interstate commerce; or
4. The use tax imposed is not fairly related to services provided by Iowa and which aid the retailer or user.

See *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 51 L.Ed.2d 326, 97 S.Ct. 1076 (1977) and *D. H. Holmes Company, Ltd. v. McNamara,* 100 L.Ed.2d 21,108 S.Ct. 1619 (1988). The second prong, fair apportionment, will be satisfied where the tax credit, authorized by Iowa Code section 423.25, is granted. *D. H. Holmes,* 100 L.Ed.2d at 28.

701—33.7(423) Property used to manufacture certain vehicles to be leased. Tangible personal property which by means of fabrication, compounding, or manufacturing becomes an integral part of vehicles defined in Iowa Code section 321.1, subsections 4, 6, 8, 9, and 10, is exempt from use tax provided the vehicle is manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Such vehicles are commonly known as motor trucks, truck tractors, road tractors, trailers, and semitrailers.

The exemption provided in this rule shall not be applicable to any vehicle designed primarily for the purpose of carrying persons.

Should a vehicle, which has been manufactured for lease and actually leased to a lessee for use outside the state of Iowa, have a "taxable moment" (as set forth in rule 33.6(422,423)) subsequent to the lease, tax would be owing and computed at the rate of 3 percent of the cost of the materials used in the manufacture of the vehicle.

The tax shall be paid on or before the last day of the month following the close of the quarter in which a taxable moment took place.

Sales of tangible personal property used as described in this rule and otherwise subject to Iowa retail sales tax imposed pursuant to Iowa Code section 422.43 are not exempt from the sales tax under the provisions of this rule.

The exemption provided in this rule shall be retroactive to January 1, 1973.

701—33.8(423) Out-of-state rental of vehicles subject to registration subsequently used in Iowa. If a vehicle is rented outside this state (such rental occurs when possession of the vehicle is transferred to a customer pursuant to a rental contract) and used within Iowa under the rental contract, rental payments are subject to Iowa use tax if those rental payments are made in Iowa at the termination of the rental agreement. See rule 701—30.7(423) regarding credit for taxes previously paid to another state.

EXAMPLE 1. Customer W signs a rental contract and takes possession of a rental car in Los Angeles. W drives the car to Des Moines and then pays a total charge for the rental of $300. This $300 payment is subject to Iowa use tax assuming that no tax was previously paid to another state.

EXAMPLE 2. Customer X rents and takes possession of a truck in Phoenix, Arizona. There customer X pays a $500 deposit to the rental agency. Rental of the truck is on a mileage and per-day basis. Customer X then drives the truck to Des Moines. The mileage and per-day charges add up to $600. Customer X pays the rental agency an additional $100. This $100 is subject to Iowa use tax.

701—33.9(423) Sales of mobile homes, manufactured housing, and related property and services.

33.9(1) *Sales of mobile homes, manufactured housing, and related property and services for one package price.* The following rule is applicable only to mobile homes and manufactured housing sold as tangible personal property rather than in the form of real property. If, at the time of the sale, a mobile home or manufactured housing is real property, this rule is not applicable to it. If a mobile home dealer buys a mobile home, incorporates that mobile home into real estate in the manner required by and described in Iowa Code section 435.26, and then sells the mobile home to a consumer, the sale of that mobile home, the sale of any services used to transform the mobile home from tangible personal property to real property, and the sale of any tangible personal property with the mobile home (such as furniture) are governed by 701—Chapter 19 which deals with building contracts and building contractors. Sales of manufactured housing in the form of real estate are governed by rule 701—33.10(423).

When a customer purchases a mobile home or manufactured housing from a dealer, it is usually the customer's wish that the dealer prepare the mobile home or manufactured housing so that it is ready for the customer to move into it. To render a mobile home or manufactured housing "ready to move into" a dealer will sell, with the home or housing, certain tangible personal property and will also perform or arrange for other parties to perform various services.

With respect to any one particular mobile home or manufactured house which a dealer may sell, a dealer may provide any combination of the following services or provide the following services and sell the below-listed property to any person purchasing the home or house:

1. Connect the electricity.
2. Connect the water.
3. Connect sewer system lines.
4. Sell and install skirting. Skirting is used to fill the space between the bottom of the mobile home or manufactured house and the ground. It gives the home or house an appearance more like a conventional home because it covers up this space.
5. Build and install steps for a door.
6. Build a deck.
7. Do minor repair.
8. Install and sell a foundation upon which to place the mobile home or manufactured housing.
9. Sell furniture or appliances (e.g., air conditioners, refrigerators, and stoves) for use in the mobile home or manufactured housing. Install the appliance (e.g., an air conditioner) if necessary.

A dealer selling a mobile home or manufactured housing on a "ready-to-move-into" basis usually sells that home or housing and the services and additional property necessary to render them livable for one "package price." The dealer and customer do not bargain separately for the sale of the various articles of tangible personal property (e.g., the mobile home or manufactured house and appliances) or the services (e.g., electrical installation) which are part of this package price; nor is the dealer's package price broken down to indicate any of the expenses which are components of the package price either in the dealer's sales contract or on any sales invoice.

The package price of any one particular mobile home or manufactured house will vary depending upon how many services the dealer will provide, or how much tangible personal property the dealer will sell in addition to the home or house. In many cases, a dealer will contract with a third party to perform the services promised in the dealer's contract to a customer. For example, the dealer will contract with a third party to hook up the home or house purchaser's electricity, install window air conditioning or will contract with a third party to build a deck or perform minor repairs on the mobile home or manufactured house.

In the situation described above, the "purchase price" of a mobile home or manufactured house is the entire package price charged for the home or house, additional personal property for use in and around the home or house, and services performed to render the home or house livable. The entire amount of the package price, reduced by 40 percent as explained in rule 701—32.3(423), is used to calculate the amount of use tax due resulting from the sale of the mobile home or manufactured house. No part of the package price is subject to Iowa sales tax; rather it is subject to Iowa use tax.

33.9(2) *Sales of property and rendition of service under separate contract.* If the personal property and services listed in subrule 33.9(1) are purchased under separate contract and not as part of one package price with a mobile home or manufactured house, either from a mobile home dealer or from another party, the price paid for those items of property or services will not be a part of the purchase price of the home or house. Because the price of the property or services is not part of the "purchase price" of a home or house, that price will not be reduced by 40 percent, as required under rule 701—32.3(423), in computing the use tax due upon the sale of a mobile home. Also, if sold in Iowa, the property would be subject to Iowa sales tax. The same is true of services rendered in Iowa.

If separately contracted for, the gross receipts from the following services sold are subject to Iowa sales tax under Iowa Code subsection 422.43(11):

a. Electrical hookup and air conditioning installation (electrical installation).

b. Water and sewer system hookup (plumbing).

c. Skirting installation and building and installation of steps and decks (carpentry).

d. Nearly all "minor repairs" would be taxable.

The sale, under separate contract, of skirting, steps, decks, furniture, appliances, and other tangible personal property to customers purchasing mobile homes or manufactured housing would be sales of tangible personal property, the gross receipts of which are subject to Iowa sales rather than use tax.

The installation of a concrete slab on which to place the mobile home or manufactured housing would not be a service taxable to the home or housing owner since this installation involves "new construction" and the service performed upon this new construction is thus exempt from tax. The person installing the concrete slab would be treated as a construction contractor and would pay sales tax upon any tangible personal property purchased and used in the construction of the slab.

33.9(3) *Dealer purchases of tangible personal property and services for resale.* Regardless of whether the tangible personal property and services connected with the purchase of a mobile home or manufactured housing have been purchased as part of a package price or whether their purchase has been separately contracted for, a dealer's or other retailer's purchase of the tangible personal property or service for subsequent resale to a mobile home or manufactured housing purchaser is a purchase "for resale" and thus exempt from Iowa sales or use tax.

701—33.10(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate. As of July 1, 1999, tax is imposed on the use of "manufactured housing" in Iowa. On and after that date the term "manufactured housing" or "manufactured home" is intended, generally, to replace the term "mobile home" when referring to prefabricated housing which is subject only to use tax and not to sales tax even though there are some differences in the law's treatment of mobile homes and manufactured housing.

33.10(1) *Definition.* "Manufactured housing" is basically housing which is factory built to specifications required by federal law (42 U.S.C. § 5403) and which is required by federal law to display a seal from the United States Department of Housing and Urban Development. It may be further characterized as (1) a structure built on a permanent chassis, (2) transportable in one or more sections, and (3) designed to be used as a dwelling with or without a permanent foundation. See the definition of "manufactured home" found in 24 Code of Federal Regulations § 3280.2 for additional characteristics of what is and is not "manufactured housing" for the purposes of Iowa use tax law.

33.10(2) *Tax treatment of manufactured housing which is similar to the tax treatment of mobile homes:*

a. Manufactured housing is subject only to Iowa use tax and not Iowa sales tax. The sale of manufactured housing in Iowa is defined by the applicable statute as a use of the housing in this state.

b. The use tax on manufactured housing is paid by the owner of the housing directly to the appropriate county treasurer. The law does not require any dealer or retailer in manufactured housing to collect use tax from a purchaser and remit the tax to any governmental body, although the law does not prevent a dealer from doing this as a courtesy to buyers.

c. Only 60 percent of the purchase price of either a mobile home or manufactured housing is subject to use tax. See rule 701—32.3(423). The use of manufactured housing previously subject to tax and upon which the tax has been paid is exempt from further tax.

d. The taxation of manufactured housing which is sold in the form of tangible personal property is similar to the taxation of mobile homes which are sold in the form of tangible personal property. See rule 701—33.9(423).

33.10(3) *Taxable use of manufactured housing in the form of real estate.* Unlike mobile homes, the use of which can be taxed only when the homes are in the form of tangible personal property, under certain conditions, the use of manufactured housing in the form of real estate can be subject to tax. On and after July 1, 1999, if a developer has placed a manufactured home on a foundation in a lot in Iowa and hooked up the necessary utilities and completed the necessary landscaping to convert the home from tangible personal property to realty, the sale of the manufactured home to a user is a taxable use of the home on the user's part.

EXAMPLE. Alpha and Omega Development Corp. buys land with enough space for 100 lots for manufactured housing and for the streets necessary to provide access to the lots. Alpha and Omega then buys 100 manufactured houses. It lawfully buys these houses exempt from use tax based on the assertion that they have been purchased for subsequent resale. Alpha and Omega then develops the land, installing water, sewer and electric lines, placing the manufactured homes on foundations, and otherwise taking steps to convert the homes from tangible personal property to real estate.

Alpha and Omega then sells the homes on the lots to various customers. Each purchase of a home by a customer is a taxable use of the home on that customer's part, and the customer is obligated to pay the appropriate county treasurer the amount of Iowa use tax due.

a. When tax is due on the use of manufactured housing in the form of real estate, the basis for computing the tax is the "installed purchase price" of the manufactured housing. The "installed purchase price" is the amount charged by a building contractor to a homebuyer to convert manufactured housing from tangible personal property into real estate. Use tax is due on 60 percent of the amount of the installed purchase price. See rule 701—32.3(423).

b. Included within the meaning of the term "installed purchase price" are amounts charged to a buyer of a manufactured home to build and install a foundation on which to place a home; amounts charged to hook up electric, water, gas, sewer system, and other lines for necessary utilities; amounts charged to sell and install "skirting" (see subrule 33.9(1)); amounts charged to build and install any steps for a door; and amounts separately charged for any appliances or other items which become a part of the housing after installation, e.g., dishwashers and whirlpool tubs.

c. Excluded from the meaning of the term "installed purchase price" is any amount charged for the purchase of land on which to place a manufactured house; any amount charged for landscaping in connection with the installation of a manufactured house; any amount charged to build and install any deck or similar appurtenance to a manufactured home; and any amounts charged for the sale of furniture or appliances which remain tangible personal property after installation, e.g., furniture, room air conditioners, and refrigerators. This list of inclusions and exclusions is not exclusive. Furthermore, the purchase of furniture or appliances which remain tangible personal property is subject to Iowa sales or use tax, including consumers' use tax.

d. The exemption in favor of taxable services performed on or in connection with new construction (see rule 701—19.13(422,423)) is not applicable when calculating the amount of any installed purchase price.

This rule is intended to implement Iowa Code sections 423.1, 423.2, 423.4, 423.6, and 423.7 as amended by 1999 Iowa Acts, chapter 188.

These rules are intended to implement Iowa Code sections 422.45(2), 422.45(18), 423.1(3), 423.2, 423.4(4) and Iowa Code section 423.4(12) as amended by 1999 Iowa Acts, chapter 188.

[Filed December 12, 1974]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 10/4/85, Notice 8/28/85—published 10/23/85, effective 11/27/85]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed emergency 2/1/90—published 2/21/90, effective 2/1/90]
[Filed 5/11/90, Notice 4/4/90—published 5/30/90, effective 7/5/90]
[Filed 8/16/91, Notice 7/10/91—published 9/4/91, effective 10/9/91]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]◊

◊Two ARCs

CHAPTER 34
VEHICLES SUBJECT TO REGISTRATION
[Prior to 12/17/86, Revenue Department[730]]

701—34.1(422,423) Definitions.

34.1(1) A *"vehicle subject to registration"* shall mean any vehicle subject to registration pursuant to Iowa Code section 321.18. This includes every motor vehicle, trailer and semitrailer when driven or moved upon a highway with certain exceptions as stated in Iowa Code section 321.18. This also includes new and used motor vehicles for the purpose of the administration of Iowa Code chapters 422 and 423; a modular home shall not be considered a vehicle subject to registration, but rather a modular home shall be subject to the provisions of Iowa Code chapters 422 and 423 pertaining to sales and use tax on sales of tangible personal property.

34.1(2) *"Dealers"* shall be persons licensed to sell vehicles subject to registration.

34.1(3) *"Taxable price"* shall be the total delivered price of the vehicle less cash discounts, trade-in allowances, and any manufacturer's cash rebate to a purchaser which is applied to the purchase price of a vehicle. The total delivered price shall include all accessories, additional equipment, services, freight and manufacturer's tax, valued in money, whether paid in money or otherwise. Gasoline, separately itemized, shall not be subject to use tax.

34.1(4) *Taxable moment.* Rescinded IAB 9/4/91, effective 10/9/91.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1(1), 423.2, 423.4(4) and 423.7.

701—34.2(423) County treasurer shall collect tax. It shall be the duty of the county treasurer to collect use tax, when applicable, on vehicles subject to registration. The departmental rules adopted shall apply in the collection of use tax on vehicles subject to registration registered in their respective counties.

701—34.3(423) Returned vehicles and tax refunded by manufacturers. When a vehicle subject to registration is sold and later returned to the seller with the entire purchase price refunded, the purchaser is entitled to a refund of the use tax paid. To obtain a refund the purchaser must be able to show that the entire purchase price was returned and provide proof that the use tax had been paid. See rule 701—30.11(423) for details on claims for refund.

If a vehicle manufacturer has refunded to any purchaser, lessee, or lessor of a vehicle any amount required to be refunded by Iowa Code chapter 322G (Lemon Law), and a portion of that refund is use tax paid by the purchaser, lessee, or lessor, then the department shall refund to the manufacturer the amount of use tax which the manufacturer has refunded to the purchaser, lessee, or lessor. The manufacturer must send the department a written request for a refund, which contains adequate proof that the tax was paid when the vehicle was purchased and that the manufacturer refunded the tax to the purchaser, lessee, or lessor who paid it.

This rule is intended to implement Iowa Code sections 322G.4(2), 423.1, and 423.7.

701—34.4(423) Use tax collections required. The county treasurer or state motor vehicle registration division shall, before issuing a registration for a vehicle subject to registration, collect use tax due. The issuing office shall remit the tax in its monthly report to the department unless requirements for electronic transmission of remittances and related information specify otherwise.

For reports for months starting on or after April 1, 1990, remittances are to be made electronically in a format and by means specified by the department of revenue and finance. Monthly reports are to be made separately from electronic transmission of the remittance. Remittances transmitted electronically are considered to have been made on the date that the remittance is added to the bank account designated by the treasurer of the state of Iowa. The filing of a monthly report and the remittance of the tax are simultaneous acts both of which shall occur for either condition to be met.

This rule is intended to implement Iowa Code section 423.7.

701—34.5(423) Exemptions. An affidavit of exemption may be required if there is reason to believe that the exemption being requested is not within the provisions of one of the exemptions set forth by law or it is believed that the person requesting the exemption will not use the vehicle for one of the exempt purposes. The burden of proof whether an exemption applies shall be upon the person claiming the exemption.

An original registration in Iowa may be issued for a vehicle subject to registration without the collection of use tax only in the following situations, unless exceptions are noted:

34.5(1) When the applicant for an Iowa registration for a vehicle subject to registration has paid to another state a state sales, use or occupational tax on that unit, credit shall be allowed against the Iowa tax due in the amount paid. Credit shall not be allowed when such tax is paid upon equipment rental receipts. If tax paid is equal to or greater than the Iowa tax due, no further tax shall be collected. If tax paid is less than the Iowa tax due, the difference shall be collected by Iowa.

34.5(2) When the consumer applies for registration of a "homemade vehicle subject to registration" built from parts purchased at retail, upon which the consumer paid a tax to the seller, and never before registered. The term "homemade vehicle subject to registration" shall include such things as homemade automobiles, trucks, trailers, motorcycles and motorbikes, but shall not include those vehicles subject to registration which are made by a manufacturer engaged in the business for the purpose of sales or rental.

34.5(3) When a nonresident of Iowa applies for a "nonresident-in-transit" registration for a motor vehicle purchased in Iowa but which the person intends to permanently register in a state other than Iowa.

34.5(4) When vehicles are purchased by any federal or state governmental agency or tax-certifying or tax-levying body of Iowa or governmental subdivision thereof. The exemption shall not apply to vehicles purchased and used in connection with the operation of or by a municipally owned public utility engaged in selling gas, electricity or heat to the general public and, therefore, shall be subject to use tax.

34.5(5) When the purchaser of a vehicle subject to registration in Iowa remits use tax on the taxable price, then moves the vehicle to a foreign state where it is registered in that state and subsequently returns the same vehicle to Iowa where it is again registered. The same purchaser shall have maintained ownership of the vehicle throughout the respective moves from and back to Iowa.

34.5(6) When a vehicle subject to registration is inherited, the county treasurer may require the registrant to set forth the facts before such exemption is granted.

34.5(7) When an applicant for an Iowa registration has moved from another state with intent of changing residency to Iowa and if the vehicle subject to registration was purchased for use in the state from which the applicant moved and was not, at or near the time of such purchase, purchased for use in Iowa.

34.5(8) Vehicles purchased for lease and used outside the state of Iowa. When certain vehicles defined as "motor trucks, truck tractors, road tractors, trailers, or semitrailers" in Iowa Code section 321.1, except vehicles designed primarily for carrying persons, are purchased for the purpose of leasing to a lessee for use outside the state of Iowa, and actually leased to a lessee for use outside Iowa, such vehicles shall be exempt from use tax provided the subsequent sole use in Iowa is in interstate transportation or interstate commerce.

Should a "use," as defined in Iowa Code subsection 423.1(1) occur in Iowa, subsequent to the leasing to a lessee outside the flow of interstate transportation or interstate commerce, use tax would be owing. The tax, if found to be due, shall be computed on the purchase price.

701—34.12(423) Government payments for a motor vehicle which do not involve government purchases of the same. If a dealer or other seller transfers title to a vehicle under a contract of sale to a buyer, payment by a government of all or part of the purchase price of the vehicle is not a sale of that vehicle to the government making the payment, and the entire purchase price of the vehicle is subject to use tax.

EXAMPLE: A disabled veteran is purchasing a van. The veteran makes an application with the Veterans Administration (V.A.) to help purchase the van for $30,695. The application is approved and the V.A. prepares a check for $12,456. The check is paid to the order of the seller of the van. It is also the usual custom for a veteran to apply for a grant to pay some or all of the remainder of the price. If this grant is approved, a check is issued in the name of the veteran. The veteran then either assigns the check to the dealer or deposits the check and writes a personal check to the dealer for the remaining amount due. Under these circumstances, the van is sold to the veteran and not the U.S. government. The purchase price upon which tax is computed is $30,695.

This rule is intended to implement Iowa Code section 423.7.

701—34.13(423) Transfers of vehicles resulting from corporate mergers and other types of corporate transfers. Corporate mergers often involve the transfer of title to large numbers of vehicles from a merging corporation to a surviving corporation. These transfers generally do not involve the "purchase" of these vehicles, though other transfers of vehicles between corporations may involve purchases of vehicles and thus be subject to use tax. See rule 701—15.20(422,423) for examples of property transfers between corporations which involve mergers without purchases and those nonmerger transactions which involve purchases or transfers that may result in an obligation to pay use tax.

[Filed December 12, 1974]
[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 8/13/82, Notice 7/7/82—published 9/1/82, effective 10/6/82]
[Filed 4/22/83, Notices 3/2/83, 3/16/83—published 5/11/83, effective 6/15/83]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 10/4/85, Notice 8/28/85—published 10/23/85, effective 11/27/85]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 12/29/86, Notice 11/19/86—published 1/14/87, effective 2/18/87]
[Filed 9/30/88, Notice 8/24/88—published 10/19/88, effective 11/23/88]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 8/16/91, Notice 7/10/91—published 9/4/91, effective 10/9/91]
[Filed 10/25/91, Notice 9/18/91—published 11/13/91, effective 12/18/91]
[Filed 12/20/91, Notice 11/13/91—published 1/8/92, effective 2/12/92]
[Filed 7/17/92, Notice 6/10/92—published 8/5/92, effective 9/9/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 12/30/94, Notice 11/23/94—published 1/18/95, effective 2/22/95]
[Filed 11/3/95, Notice 9/27/95—published 11/22/95, effective 12/27/95]
[Filed 12/13/96, Notice 11/6/96—published 1/1/97, effective 2/5/97]
[Filed 6/12/97, Notice 5/7/97—published 7/2/97, effective 8/7/97]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

CHAPTERS 35 and 36
Reserved

TITLE X
CIGARETTES AND TOBACCO

CHAPTER 81
ADMINISTRATION
[Prior to 12/17/86, Revenue Department[730]]

701—81.1(453A) Definitions. As used in this title the following definitions apply:

"Bank" means a bank designated and authorized by the director of revenue and finance to sell cigarette stamps and set cigarette meters.

"Carton" means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

"Cigarette licensee" means any person who has or is required to obtain a permit of any kind under Iowa Code chapter 453A, division I.

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

"Director" means the director of the department, or the director's authorized representative.

"License" and *"permit"* are used interchangeably.

"Licensee" means any person holding or required to obtain a permit or license of any kind under Iowa Code chapter 453A.

"Meter settings" means Iowa cigarette meters which imprint indicia on cigarette packages.

"Package" or *"pack"* means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

"Revenue" means any evidence of tax on cigarettes required by the department to be affixed to individual packages of cigarettes.

"Stamps" means Iowa Fuson stamps, 30,000 to a roll and Iowa hand stamps of any quantity authorized by the director to be applied to packages of cigarettes and little cigars.

"Supplier" means any person or firm authorized to manufacture or supply cigarette stamps for the department.

"Tax" means the tax imposed under Iowa Code chapter 453A on cigarettes or other tobacco products.

"Taxpayer" means any person required to collect or remit tax directly to the department or required to be licensed or to file any report or return or keep records under Iowa Code chapter 453A.

"Tobacco" means the same as "tobacco products" as defined in Iowa Code section 453A.42.

"Tobacco licensee" means any person who has or is required to obtain a permit of any kind under Iowa Code chapter 453A, division II.

In addition to these definitions, the definitions contained in Iowa Code sections 421B.2, 453A.1, and 453A.42 apply to these rules.

This rule is intended to implement Iowa Code chapter 453A as amended by 1999 Iowa Acts, chapter 151.

701—81.2(453A) Credentials and receipts. Employees of the department have official credentials and the taxpayer should require proof of the identity of any person claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer's name, address and permit number; the purpose for the payment; and the amount of the payment. The taxpayer should retain all receipts, and only official receipts for a cash payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 453A.25 and 453A.49.

701—81.3(453A) Examination of records. Within two years after a return or report is filed or within two years after the report or return became due, whichever is later, the department shall examine it, determine the amount of cigarette or tobacco tax due, and give notice of assessment to the taxpayer. If no return or report has been filed, the department may determine the amount of tax due and give notice thereof. The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report or return made with the intent to evade tax, or in the case of a failure to file a report or return, or if a person purchases or is in possession of unstamped cigarettes. The two-year period of limitation may be extended by a taxpayer by signing a waiver agreement form provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies and must provide that a claim for refund may be filed at any time during the period of extension.

Whenever books and records are examined by an employee designated by the director, whether to verify a return, report, or claim for refund or in making an audit, an assessment will be issued for any amount of tax due or a refund made for any amount of tax overpaid.

This rule is intended to implement Iowa Code sections 453A.15, 453A.28, and 453A.46 as amended by 1999 Iowa Acts, chapter 151.

701—81.4(453A) Records. Every taxpayer subject to the provisions of Iowa Code chapter 453A shall keep, preserve, and make available to the department records for a period of two years. The following is a list of records subject to the provisions of this rule. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

81.4(1) *Cigarette manufacturer.* Licensed cigarette manufacturers are required to keep the following records.

a. Records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.

b. Records evidencing the transportation of cigarettes into Iowa.

c. Records, including invoices, showing all sales of cigarettes to licensees.

d. A record of all stamps purchased.

e. Copies of all reports filed with the department.

Unlicensed cigarette manufacturers shipping cigarettes into Iowa are asked to keep records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.

Nothing in this rule shall be construed to affect the provisions of P.L. 95-575 (Contraband Cigarette Act, 18 USC Ch. 114) or P.L. 81-363 (Jenkins Act, 15 USC, Sec. 375).

81.4(2) *Cigarette distributing agent.*

a. Records of the receipt of all cigarettes showing the amount of cigarettes received and from whom received.

b. Records of all distribution of cigarettes showing the amount of cigarettes shipped, to whom and at whose direction the cigarettes were distributed.

c. Records showing all exports of cigarettes.

d. Copies of all reports filed with the department.

e. Detailed inventory records.

f. Freight receiving and shipping records.

81.4(3) *Cigarette distributors.*

a. Records, including invoices, showing the purchase of all cigarettes sold, used or stored in Iowa.

b. Records, including invoices, showing the sale of cigarettes in Iowa.

c. Detailed inventory records.

d. Freight receiving and shipping records.

e. A record of all stamps purchased.

f. Copies of all reports filed with the department.

81.4(4) *Wholesaler.*

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Records, including invoices, evidencing the sale of all cigarettes.

c. Detailed inventory records.

81.4(5) *Cigarette vendor.*

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Records evidencing the sale of cigarettes.

c. Inventory records.

d. Records of all cigarette vending machines owned, furnished, installed, serviced, operated or maintained by the vendor and the location of each.

81.4(6) *Cigarette retailer.*

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Inventory records.

81.4(7) *Tobacco distributor.* The same records as a cigarette distributor but with respect to tobacco, excluding records of stamps purchased. (See 81.4(3))

81.4(8) *Tobacco subjobber.* The same records as a cigarette wholesaler but with respect to tobacco.

81.4(9) *Tobacco retailer.* The same records as a cigarette retailer but with respect to tobacco.

81.4(10) *Common carrier engaged in transporting cigarettes or tobacco products into Iowa.*

a. Copies of bills of lading or manifests as to each transportation of cigarettes or tobacco.

b. Log book or trip sheets.

81.4(11) *Microfilm and related records system.* Microfilm, microfiche, COM (computer on machine) and other related reduction in storage systems will be referred to as "microfilm" in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those that have been approved by the Internal Revenue Service under Revenue Procedure 76-43, Section 302. However, microfilm reproductions of supporting records of detail, such as sales invoices, purchase invoices, credit memoranda, etc., may be allowed providing all the following conditions are met and accepted by the taxpayer.

a. Appropriate facilities are provided to ensure the preservation and readability of the films.

b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.

d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.

e. Any audit of "detail" on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director's designated representative.

f. A posting reference must be on each invoice.

g. Credit memoranda must carry a reference to the document evidencing the original transaction.

h. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

81.4(12) *Automatic data processing records.* Automatic data processing is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forwarded to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the director's designated representative upon request. The system should be so designed that the supporting documents, such as sales invoices, purchase invoices, credit memoranda, etc., are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source (invoice, check, etc.) to a financial statement or tax return; or the reverse; that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

(1) The application being performed;

(2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(3) The controls used to ensure accurate and reliable processing. Program and systems changes, together with their effective dates should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

81.4(13) *General requirements.* If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

The records will be considered inadequate when the requirements of this rule are not met. The director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed (agreements must be in writing).

81.4(14) *Other persons.* The director may require any person other than those previously listed in this rule to maintain books and records as deemed necessary by the director.

This rule is intended to implement Iowa Code sections 453A.15 and 453A.45 as amended by 1999 Iowa Acts, chapter 151, and Iowa Code sections 453A.18, 453A.19, 453A.24, and 453A.49.

701—81.5(453A) Form of invoice. Whenever an invoice is required to be prepared or kept by Iowa Code chapter 453A or these rules, it shall minimally contain the following information:

1. The seller's name, address.
2. The purchaser's name, address and permit number (if any).
3. The date of sale.
4. All prices and discounts stated separately.
5. An indication as to whether cigarettes or tobacco products are being sold with or without tax stamps attached or tax included.
6. The origination and destination points.

This rule is intended to implement Iowa Code sections 453A.15, 453A.25, 453A.45 and 453A.49.

701—81.6(453A) Audit of records—cost, supplemental assessments and refund adjustments. The department shall have the right and duty to examine or cause to be examined the books, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return or report filed or determining the tax liability of any taxpayer under Iowa Code chapter 453A.

When it is determined, upon audit, that any person dealing in cigarettes owes additional tax, the costs of the audit are assessed against such person as additional penalty.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code section 453A.30.

701—81.7(453A) Bonds. When bonds are required by Iowa Code chapter 453A or these rules, said bonds shall be in the form of cash, a certificate of deposit or a bond issued by a surety company licensed to do business in the state of Iowa, payable to the state of Iowa and in a form approved by the director. Bonds required by tobacco distributors must be issued by a surety company licensed to do business in Iowa. However, upon approval by the director, a cash bond or a certificate of deposit will be accepted by the department as a substitute for the surety bond. (See Iowa Code section 453A.44(4).)

This rule is intended to implement Iowa Code sections 453A.14 and 453A.44.

701—81.8(98) Penalties. Renumbered as 701—10.76(98), IAB 1/23/91.

701—81.9(98) Interest. Renumbered as 701—10.77(98), IAB 1/23/91.

701—81.10(98) Waiver of penalty or interest. Renumbered as 701—10.78(98), IAB 1/23/91.

701—81.11(453A) Appeal—practice and procedure before the department.

81.11(1) *Procedure.* The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7 of the department's rules.

81.11(2) *Appeals—time limitations.* For assessments or denials of refund claims made on or after July 1, 1987. An assessment or denial of all or any portion of a refund claim issued pursuant to Iowa Code section 453A.28 or 453A.46 may be appealed pursuant to rule 701—7.41(17A) and the protest must be filed within 30 days of the issuance of the assessment or denial of the refund claim. For notices of assessment or refund denial issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of the assessment notice or refund denial, or if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing such claims.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 453A.25, 453A.28, 453A.29, 453A.46, 453A.48, and 453A.49.

701—81.12(453A) Permit—license revocation.

81.12(1) *Cigarette permits.* Cigarette permits issued by the department must be revoked if the permittee willfully violates the provisions of Iowa Code section 453A.2 (sale or gift to minors). The department may revoke permits issued by the department for violation of any other provision of division I of Iowa Code chapter 453A or the rules promulgated thereunder. (Also see Iowa Code chapter 421B and rule 701—84.7(421B).) The revocation shall be subject to the provisions of rule 701—7.55(17A). The notice of revocation shall be given to the permittee at least ten days prior to the hearing provided therein. The department will revoke a permit of a permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support unit in regard to the permit holder, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

The board of supervisors or the city council that issued a retail permit is required by Iowa Code section 453A.22 to revoke the permit of any retailer violating Iowa Code section 453A.2 (sale or gift to minors). The board or council may revoke a retail permit for any other violation of division I of Iowa Code chapter 453A. The revocation procedures are governed by Iowa Code section 453A.22(2) and the individual council's or board's procedures. Iowa Code chapter 17A does not apply to boards of supervisors or city councils. (See rule 701—84.7(421B).) The board of supervisors or the city council that issued a retail permit is required by Iowa Code chapter 252J to revoke the permit of any retailer, who is an individual, if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the retailer, unless the unit furnishes the board of supervisors or the city council with a withdrawal of the certificate of noncompliance.

If a permit is revoked under this subrule, except for the receipt of a certificate of noncompliance from the child support recovery unit, the permit holder cannot obtain a new cigarette permit of any kind nor may any other person obtain a permit for the location covered by the revoked permit for a period of one year unless good cause to the contrary is shown to the issuing authority.

81.12(2) *Tobacco licenses.* The director may revoke, cancel or suspend the license of any tobacco distributor or tobacco subjobber for violation of any provision in division II of Iowa Code chapter 453A, the rules promulgated thereunder, or any other statute applicable to the sale of tobacco products. The licensee shall be given ten days' notice of a revocation hearing under Iowa Code section 453A.48(2) and rule 701—7.55(17A). No license may be issued to any person whose license has been revoked under Iowa Code section 453A.44(11) for a period of one year. The department will revoke a license of a licensee, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 453A.22, 453A.44(11) and 453A.48(2) and Iowa Code chapter 252J.

701—81.13(453A) Permit applications and denials.

81.13(1) *Applications for permits.* The application forms for all permits issued under Iowa Code chapter 453A are available from the department upon request. The applications shall include, but not be limited to:

a. The nature of the applicant's business;
b. The type of permit requested;
c. The address of the principal office of the applicant;
d. The place of business for which the permit is to apply;

e. The names and addresses of principal officers or members, not to exceed three, if the business is not a sole proprietorship;

f. A list of persons who will be the applicant's suppliers or customers or both (whichever is applicable);

g. If the applicant intends to operate as a cigarette distributor, a certificate from a manufacturer of cigarettes indicating an intention to sell unstamped cigarettes to the applicant;

h. Whether or not the applicant possesses any other permit issued under Iowa Code chapter 453A; and

i. The signature of the person making the application.

81.13(2) *Denial of application for permit.* The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit 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 permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The director will deny a permit to any applicant, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

81.13(3) *Revocation of a permit.* The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the permit holder is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot 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—13.6(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department will revoke the permit of any permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

81.13(4) *Applications for retail cigarette permits.* Applications for retail cigarette permits are supplied by the department to city councils and county boards of supervisors. The application must be obtained from and filed with the individual council or board. The board of supervisors or the city council is required by 1995 Iowa Acts, chapter 115, to deny a retail permit to any applicant, who is an individual, if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the board of supervisors or city council with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 453A.13, 453A.16, 453A.17, 453A.22, 453A.23, and 453A.44, and 1995 Iowa Acts, chapter 115.

701—81.14(453A) Confidential information. The release of information contained in any reports or returns filed under Iowa Code chapter 453A or obtained by the department in the administration of Iowa Code chapter 453A is governed by the general provisions of Iowa Code chapter 22 since there are no specific provisions relating to confidential information contained in chapter 453A. Any requests for information must be made pursuant to rule 701—6.2(17A). See rule 701—6.3(17A).

Any request for information pertaining to a taxpayer's business affairs, operations, source of income, profits, losses, or expenditures must be made in writing to the director. The taxpayer to whom the information relates will be notified of the request for information and will be allowed 30 days to substantiate any claim of confidentiality under Iowa Code chapter 22 or any other statute such as Iowa Code section 422.72. If substantiated, the request will be denied; otherwise, the information will be released to the requesting party. This rule will not prevent the exchange of information between state and federal agencies.

This rule is intended to implement Iowa Code sections 453A.25 and 453A.49.

701—81.15(98) Request for waiver of penalty. Renumbered as 701—10.79(98), IAB 1/23/91.

701—81.16(453A) Inventory tax. All persons required to be licensed under Iowa Code section 453A.13 as distributors shall take an inventory of all cigarettes and little cigars in their possession prior to delivery for resale upon which the tax has been affixed and all unused cigarette tax stamps and unused metered imprints in their possession at the close of business on the day preceding the effective date of an increase in the tax rate.

Persons required to take an inventory shall remit the tax due on all cigarette stamps or metered imprints and all cigarettes and little cigars with revenue affixed in their possession prior to delivery for resale within 30 days of the inventory date. The tax is equal to the difference between the amount paid for cigarette stamps or metered imprints purchased prior to the tax increase and the amount that is to be paid for cigarette stamps or metered imprints purchased after the tax increase.

In computing the inventory tax, any discount allowed or allowable under Iowa Code section 453A.8 shall not be considered.

The inventory tax is applicable only when there is an increase in the tax rate. See rule 701—82.11(453A) for an explanation of whether a refund is allowable when there is a decrease in the tax rate.

This rule is intended to implement Iowa Code sections 453A.6, 453A.40, and 453A.43.

[Filed 3/14/80, Notice 2/6/80—published 4/2/80, effective 5/7/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 5/8/81, Notice 4/1/81—published 5/27/81, effective 7/1/81]
[Filed without Notice 6/5/81—published 6/24/81, effective 7/29/81]
[Filed 3/25/82, Notice 2/17/82—published 4/14/82, effective 5/19/82]
[Filed 5/7/82, Notice 3/31/82—published 5/26/82, effective 6/30/82]
[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]
[Filed 11/19/82, Notice 10/13/82—published 12/8/82, effective 1/12/83]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]
[Filed 6/28/85, Notice 5/8/85—published 7/17/85, effective 8/21/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
[Filed 10/31/86, Notice 9/24/86—published 11/19/86, effective 12/24/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]
[Filed 9/4/87, Notice 7/29/87—published 9/23/87, effective 10/28/87]
[Filed 5/26/88, Notice 4/20/88—published 6/15/88, effective 7/20/88]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 10/20/95, Notice 9/13/95—published 11/8/95, effective 12/13/95]
[Filed 9/20/96, Notice 8/14/96—published 10/9/96, effective 11/13/96]
[Filed 3/7/97, Notice 1/29/97—published 3/26/97, effective 4/30/97]
[Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]
[Filed 10/2/98, Notice 8/26/98—published 10/21/98, effective 11/25/98]
[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

CHAPTER 82
CIGARETTE TAX
[Prior to 12/17/86, Revenue Department[730]]

701—82.1(453A) Permits required. Every person selling or distributing cigarettes or using or consuming untaxed cigarettes within the state of Iowa must first obtain the appropriate permit.

82.1(1) *Distributor's permit.* Every person acting as a distributor as defined in Iowa Code section 453A.1 must obtain a permit from the department. A distributor is any person who obtains unstamped cigarettes within or without this state by manufacture, production, import or by any means for the purpose of making the first intrastate sale or distribution or the first use or consumption in Iowa. Every distributor holding a distributor's permit will cause to be affixed, within or without Iowa, all cigarette tax stamps or meter impressions as set forth in rule 82.8(453A) and Iowa Code section 453A.10. The distributor permit expires annually on June 30, and costs $100. A distributor must obtain a duplicate permit for each place of business owned or operated by the distributor from which distributor activities are carried on. Duplicate distributor permits may be obtained from the department at an annual cost of $5 for each duplicate permit. A distributor may act as a wholesaler without obtaining a wholesaler's license, but a wholesaler's license may be obtained upon meeting all of the requirements for the issuance of a wholesaler's license. If a distributor performs any other function which requires a license, a separate license must be obtained. If a person is not performing the functions of a distributor, a permit will not be issued.

82.1(2) *Wholesaler's permit.* Every person acting as a wholesaler as defined in Iowa Code section 453A.1 must obtain a wholesaler's permit. A wholesaler is any person, other than a distributor or a distributing agent, who sells or distributes cigarettes within Iowa for resale. A "sale or distribution" of cigarettes connotes a transfer of cigarettes from one person or entity to another person or entity. *Union Oil Co. of California v. State,* 2 Wash. 2d 436, 98 P, 2d 660 (1940); *State v. Nash Johnson and Sons' Farms Inc.,* 263 N.C. 66, 138 S.E. 2d 773 (1964). Therefore, an intraentity transfer is not a transaction which qualifies as a function of a wholesaler. The wholesaler permit expires annually on June 30, and costs $100 annually. A wholesaler must obtain a duplicate permit for each place of business owned or operated by the wholesaler from which wholesale activities are carried on. Duplicate wholesaler permits may be obtained from the department at an annual cost of $5 for each duplicate permit. If a person is not performing the functions of a wholesaler, a permit will not be issued.

The following example will illustrate the application of this subrule:

The XYZ Grocery Chain has a warehouse in Des Moines where stamped cigarettes are stored. The stamped cigarettes are purchased from a licensed distributor. XYZ transfers the cigarettes to its retail outlets across the state for the purpose of making retail sales, and makes no other sales. The storage of stamped cigarettes and the retail sale of cigarettes are not functions of a wholesaler, and XYZ would not be eligible for a wholesaler's permit.

82.1(3) *Cigarette vendor's permit.* Every person acting as a cigarette vendor as defined in Iowa Code section 453A.1 must obtain a permit from the department. A cigarette vendor is any person who takes responsibility for furnishing, installing, servicing, operating or maintaining one or more vending machines for the purpose of selling cigarettes at retail, and does so by reason of ownership, agreement or contract.

A retailer who holds a retail permit is not required to get a cigarette vendor's permit if the retail permittee is, in fact, the owner of the cigarette vending machine(s) which is operated in the location described in the retail permit. The cigarette vendor's permit expires annually on June 30, and costs $100 annually. A cigarette vendor must have a duplicate permit for each place of business from which cigarette vending machines are furnished, installed or serviced. A duplicate permit can be obtained from the department for an annual cost of $5. The duplicate permit applies to additional places of business from which the cigarette vendor conducts operations and not to those places of business where the cigarette vending machines are installed for retail sales.

EXAMPLE: A cigarette vendor owns three warehouses from which the vendor supplies cigarettes to 100 vending machines located at various retail establishments. The total permit cost for the vendor would be $110 ($100 for a regular permit plus $10 for two duplicate permits at $5 each).

82.1(4) *Railway retail permit.* A retail permit may be issued to a railway dining car company, railway sleeping car company, railroad or a railway company. A retailer's permit for railway cars is issued by the department for an annual cost of $25 and expires on June 30 of each year. A duplicate permit is required for each car in which cigarettes are stored for sale or sold and each duplicate permit is issued by the department at an annual cost of $2.

82.1(5) *Manufacturer's permit.* Any manufacturer, as defined in Iowa Code section 453A.1, may obtain a manufacturer's permit from the department. A manufacturer is any person who ships cigarettes into this state from outside the state. The permit is issued without cost and is valid until revoked or canceled. The permit allows the manufacturer to purchase tax stamps from the department and to affix such stamps to cigarettes outside of this state prior to their shipment into the state. A manufacturer is required to affix stamps to cigarettes prior to their shipment into this state unless the cigarettes are shipped to an Iowa permitted distributor or an Iowa permitted distributor's agent.

82.1(6) *Distributing agent's permit.* Every person acting as a distributing agent as defined in Iowa Code section 453A.1 must obtain a permit from the department. A distributing agent is any person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from such manufacturer subject to distribution or delivery to distributors upon orders received from the manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such storage place. The distributing agent's permit is issued by the department at an annual cost of $100 and expires on June 30 of each year. A separate permit at the $100 cost must be obtained for each place of business owned or operated within the state by the distributing agent. The permit authorizes the distributing agent to store unstamped cigarettes which are received in interstate commerce for distribution or delivery to distributors upon orders received from outside this state or to be sold outside this state. Stocks of cigarettes held for interstate and intrastate commerce must be kept separate.

82.1(7) *Retailer's permit.*

a. In general. Every person acting as a retailer, as defined in Iowa Code section 453A.1, must obtain a permit. A retailer is any person who:

(1) Directly sells, distributes or offers for sale cigarettes for consumption, or

(2) Possesses cigarettes for direct sale for consumption.

Retail permits are issued by the following authorities at the following prices:

1. Within unincorporated areas of a county, by the county board of supervisors at an annual cost of $50.

2. Within the city limits of a city of less than 15,000 population, by the city council, at an annual cost of $75.

3. Within the city limits of a city equal to or greater than 15,000 population, by the city council, at an annual cost of $100.

The retail permit expires on June 30 of each year. A renewal sticker furnished by the department containing the appropriate year and number may be issued in lieu of a new permit where the place of business of the retail permit holder has remained the same. The retail permit is valid only for the location described in the permit, and a retailer must obtain a separate permit for each place of business owned or operated by the retailer. (See subrule 82.2(3))

The power to grant the retail permit is discretionary with the city council or board of supervisors, and uniform, nondiscriminatory limits may be placed on their issuance. *Bernstein v. City of Marshalltown,* 215 Iowa 1168, 248 N.W. 26 (1933); *Ford Hopkins Co. v. City of Iowa City,* 216 Iowa 1286, 248 N.W. 668 (1933); 1938 O.A.G. 708.

b. Mobile retailer. If a cigarette retailer sells cigarettes from a mobile concession vehicle, the vehicle itself shall be considered a place of business. A city has the discretionary power to grant a retail cigarette permit to a place of business located within the corporate limits of that city. A county has the discretionary power to grant a retail cigarette permit to a place of business located within the unincorporated areas of the county. If a retailer is selling cigarettes from a mobile concession vehicle within the area of several permit-issuing authorities, the retailer must obtain a permit from each authority. The retailer is operating a single place of business within the jurisdiction of the several authorities and is, therefore, subject to regulation by each.

The location described on the permit shall include identification of the vehicle and the address of the permanent place of business from which the vehicle is dispatched. If the vehicle is traded in for a new vehicle, the exchange provisions of subrule 82.2(3) shall apply.

This rule is intended to implement Iowa Code sections 453A.13, 453A.17, and 453A.23 and Iowa Code section 453A.16 as amended by 1999 Iowa Acts, chapter 151.

701—82.2(453A) Partial year permits—payment—refund—exchange. For purposes of this rule, "year" means the cigarette tax year running from July 1 of year A to June 30 of year B and "quarter" means a yearly quarter with the first quarter commencing on July 1.

82.2(1) *Partial payment.* If any permit is granted other than in the first quarter, the following partial payments are required:

1. During the second quarter - 75 percent of the permit fee.
2. During the third quarter - 50 percent of the permit fee.
3. During the fourth quarter - 25 percent of the permit fee.

82.2(2) *Partial refund.* If any unrevoked permit for which the entire annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded:

1. During the first quarter - 75 percent of the permit fee.
2. During the second quarter - 50 percent of the permit fee.
3. During the third quarter - 25 percent of the permit fee.

If any unrevoked permit for which 75 percent of the annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded by the entity which issued the permit:

1. During the second quarter - 50 percent of the permit fee.
2. During the third quarter - 25 percent of the permit fee.

If any unrevoked permit for which 50 percent of the annual fee has been paid is voluntarily surrendered, the following permit fees will be refunded:

During the third quarter - 25 percent of the annual fee.

82.2(3) *Exchange of permits.* If a permittee changes the location of an operation requiring a permit but remains within the jurisdiction of the same entity which granted the original permit, the permittee may exchange the invalid permit (valid only for the location described in the permit) for a valid permit free of charge, without the partial payment-partial refund process. (1934 O.A.G. 106)

The following nonexclusive examples will illustrate the application of this rule:

EXAMPLE 1: City Bar and Grill sells cigarettes at retail and has obtained a retail cigarette permit from the city of Des Moines. The establishment is moved across the street but remains within the city limits of Des Moines. The retail permit is valid only for the location described in the permit, and therefore, the original permit is no longer valid. However, since the establishment has remained within the jurisdiction of the entity which granted the original permit, Des Moines, the original, presently invalid permit may be exchanged for a valid permit with a new location description at no cost.

EXAMPLE 2: Same as Example 1, except the new location of City Bar and Grill is outside the corporate limits of Des Moines and within the unincorporated area of Polk County. City Bar and Grill would have to surrender the old permit to the city of Des Moines and obtain a new permit from Polk County with the schedules set forth in this rule applying.

This rule is intended to implement Iowa Code section 453A.13, subsections 3 and 4.

701—82.3(453A) Bond requirements. The amount of the bond required for each permit shall be as follows:

1. Distributor permit - $2,500
2. Wholesaler permit - $2,500
3. Vendor permit - $1,000
4. Railway car retail permit - $500
5. Manufacturer permit - $5,000
6. Distributing agent permit - $2,500
7. Retail permit - $-0-
8. Nonpermittee storing interstate cigarettes - $5,000

If a person is required to obtain more than one type of permit, the bond requirements shall be cumulative and additional bonds or a single bond equal to the total aggregate requirements must be obtained. (See rule 701—81.7(453A) for the required form of the bond.)

This rule is intended to implement Iowa Code sections 453A.14, 453A.17 and 453A.23.

701—82.4(453A) Cigarette tax—attachment—exemption—exclusivity of tax.

82.4(1) *Tax.* See Iowa Code section 453A.6 for the rate of tax imposed on cigarettes.

82.4(2) *Attachment.* The tax is imposed when the cigarettes are received by any person in Iowa for the purpose of making a "first sale" of the cigarettes (as defined in Iowa Code section 453A.1). If the tax is not paid by the person making the first sale, it must be paid by any person into whose possession such cigarettes come until the tax has been paid, the tax to be paid only once. The fact that the tax is eventually paid will not relieve the person's standing prior in the chain of distribution of the sanctions for distributing untaxed cigarettes if the tax should have been paid sooner by said person.

The tax must be added to the selling price of every package of cigarettes so that the ultimate consumer bears the burden of the tax.

82.4(3) *Exemption.* If all of the following conditions are met, the Iowa cigarette tax need not be paid:

a. The cigarettes are imported on or about the person claiming the exemption,

b. The total quantity of cigarettes so imported is equal to or less than 40,

c. The seal of the individual cigarette package has been broken, and

d. The cigarettes are actually used by the person so importing and are not sold or offered for sale.

82.4(4) *Exclusivity of tax.* No other occupation or excise tax may be imposed by any political subdivision of the state. However, this provision does not apply to occupation or excise taxes imposed by the state.

82.4(5) *Sales exempt from tax.* Sales of cigarettes which the state is prohibited from taxing under the Constitution or the laws of the United States or under the Constitution of this state are exempt from the tax. If the sale is exempt from the tax, stamps must not be attached. No refund will be issued for stamps which are attached to cigarette packages which are later sold exempt.

a. Sales to the federal government. Military post exchanges or instrumentalities of the federal government are not required to comply with the provisions of Iowa Code chapter 453A nor pay the tax imposed thereunder. However, individuals who have purchased or obtained cigarettes from a federal instrumentality and come within the jurisdiction of the state, are subject to the provisions of Iowa Code sections 453A.6(2), 453A.36(1) and 453A.37. *U.S. v. Tax Commission of Mississippi,* 421 U.S. 599, 44 L.Ed. 2d 404, 95 S.Ct. 1872 (1975).

b. Sales by or to Indians. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribe members are exempt from the tax *(Bryan v. Itasca County,* 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 475-81 (1976)). The Indians are subject to the permit requirements of Iowa Code chapter 453A. Indians who have purchased or obtained cigarettes from an Indian reservation source and come within the taxing jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.6(2), 453A.36(1) and 453A.37.

This rule is intended to implement Iowa Code section 453A.6 as amended by 1999 Iowa Acts, chapter 151.

701—82.5(453A) Cigarette tax stamps.

82.5(1) *In general.* To evidence the payment of the cigarette tax, cigarette stamps must be securely affixed to the individual cigarette containers. The stamps shall be provided by the director, and either sold directly to a distributor or a manufacturer holding a valid distributor's or manufacturer's permit or through authorized banks, as defined in Iowa Code section 524.103 to these same permittees. The possession of unstamped cigarettes by persons not authorized to possess unstamped cigarettes shall be prima facie evidence of the nonpayment of the tax. The penalty for possession of unstamped cigarettes is set forth in Iowa Code section 453A.31(1) as amended by 1999 Iowa Acts, chapter 151, section 81. Any person in possession of unstamped cigarettes must pay the tax directly to the department. If sales of cigarettes exceed the purchase of cigarette stamps by persons authorized and responsible to affix stamps, there is established a rebuttable presumption that the excess cigarettes were sold without the tax stamps affixed thereto.

82.5(2) *Purchase of stamps from the department.* Stamps may be purchased from the department and from authorized banks in unbroken rolls of 30,000 stamps, or other quantities authorized by the director. The stamps may be purchased only by persons holding an unrevoked distributor's permit or an unrevoked manufacturer's permit.

When cigarette stamps are purchased from the department, orders shall be sent directly to the department on a form prescribed by and available upon request from the department. The order must be accompanied by a remittance payable to "Treasurer of State of Iowa" in the amount of the face value of the stamps less any discount as provided in rule 701—82.7(453A). The stamps shall be sent to the purchaser through the United States Postal Service by certified mail at the department's expense. The purchaser may request alternate methods of transmission, but such methods shall be at the expense of the purchaser. Regardless of the method used to send the stamps, title transfers to the purchaser at the time the department delivers the stamps to the carrier.

82.5(3) *Purchase of stamps from authorized bank.* The purchase of stamps from an authorized bank must be made by the distributor or manufacturer or the distributor's or manufacturer's representative. The permittee shall furnish the bank with a requisition form prescribed by the department along with payment for the full price of the stamps less any discount as provided in rule 701—82.7(453A). The director may require such payments to be by cashier's check or certified check as to any individual distributor or manufacturer. The authorized bank shall be notified in writing by the department of any such requirement. Distributors or manufacturers who elect to purchase stamps from authorized banks shall advise the department in writing of the authorized bank so elected. The distributor or manufacturer may not purchase from any other bank other than the one so selected, but may still purchase stamps directly from the department. See rule 701—82.6(453A) for restrictions on authorized banks as to the sale of stamps. Also see rule 82.11(453A) relating to refunds.

This rule is intended to implement Iowa Code sections 453A.6, 453A.8, and 453A.28 as amended by 1999 Iowa Acts, chapter 151, and Iowa Code sections 453A.7, 453A.10, 453A.12, and 453A.35.

701—82.6(453A) Banks authorized to sell stamps—requirements—restrictions.

82.6(1) *Authorization.* The director has the discretion to allow the sale or distribution of stamps through authorized banks as defined in Iowa Code section 524.103. The authorization of a bank to sell stamps is not a mandatory direction, but may be utilized by the director to enhance the efficiency of the tax stamp distribution system. Some of the factors the director will consider in determining whether or not to authorize a bank to sell stamps are:

a. Geographical location in relation to distributors or manufacturers requesting alternative purchase locations,

b. The anticipated volume of stamps to be purchased by the requesting distributors or manufacturers,

c. Access to transportation systems, and

d. Prior experience with the bank.

82.6(2) *Sale of stamps.* An authorized bank may sell cigarette stamps only to distributors or manufacturers holding valid permits who have "elected" (as per subrule 82.5(3)) to purchase stamps from that bank. The department shall furnish each bank with a list of all such distributors or manufacturers who have so elected, and the bank shall not sell stamps to persons not on the list. The bank must receive payment in full, less the discount, before selling stamps. See rule 82.7(453A). A bank is not authorized to accept credit memorandums from distributors or manufacturers.

82.6(3) *Stamp inventory.* Each bank shall keep an adequate inventory of stamps on hand to supply distributors or manufacturers assigned to said bank for at least six weeks. Stamps will be shipped freight prepaid to the bank from the department or from the supplier of the stamps. The supplier of the stamps shall advise the department at once by mail of a shipment to a bank and the bank shall advise the department at once by mail of the receipt of the stamps. Each bank shall store stamps in a secure vault.

82.6(4) *Reports and remittances.* Each bank authorized to sell stamps shall forward to the department the invoices, requisitions, and remittances for stamps sold on a daily basis. Each bank shall forward to the department, on the first working day of each month, an inventory report which shall minimally include as to the prior month: the quantity of stamps on hand at the beginning of the month, the quantity of stamps received during the month, the quantity of stamps sold as to each distributor or manufacturer, the quantity of stamps on hand at the end of the month and the signature of the person responsible for the stamps.

82.6(5) *Audit.* For the purpose of auditing for the end of the fiscal year, no bank shall sell cigarette stamps on the days from June 25 to June 30. With or without notice, the department or a representative designated by the department may take an inventory of stamps and audit stamp sales.

Each bank must retain all records of inventory, stamp receipts, and stamp sales for a period of two years.

82.6(6) *Termination of authorization.* The director may terminate the authorization of a bank to sell stamps if the bank has failed to comply with the provisions of this rule or Iowa Code chapter 453A, or if the director deems it desirable for the efficient distribution of stamps. Notice of termination shall be sent to the bank by certified mail. The bank may appeal the termination determination by filing a protest pursuant to 701—Chapter 7 within 30 days of notice of termination. A bank may voluntarily terminate the sale of stamps by giving the department 90 days' written notice. Upon termination, the bank must immediately return all stamps and present a final accounting, along with any remittances, to the department.

This rule is intended to implement Iowa Code sections 453A.8, 453A.12, and 453A.25.

701—82.7(453A) Purchase of cigarette tax stamps—discount. Upon the purchase of cigarette tax stamps, the distributor or manufacturer shall be entitled to a discount of 2 percent from the face value of the stamps.

This rule is intended to implement Iowa Code section 453A.8.

701—82.8(453A) Affixing stamps. Every package of cigarettes received in this state by a licensed distributor or for distribution within or without the state of Iowa must be stamped within 48 hours of their receipt, unless the distributor is also licensed as and is acting as a distributing agent. The cigarettes held by a person acting as a distributor and those held by the same person who is also acting as a distributing agent must be kept separate, and if not, the entire inventory will be subject to the 48-hour limitation. The 48-hour period shall be exclusive of Sundays and legal holidays. (See 1958 O.A.G. 25.)

This rule is intended to implement Iowa Code sections 453A.10 and 453A.17.

701—82.9(453A) Reports. Every person licensed as a cigarette distributor or manufacturer, or any other person as deemed necessary by the director, must file a monthly report on or before the tenth day of the month following the month for which the report is made. The report must be complete and certified by the person responsible for filling out the report. The failure to file a report or the filing of a false or incomplete report shall subject the person to a penalty as set forth in Iowa Code section 453A.31 as amended by 1999 Iowa Acts, chapter 151, section 81. (See rule 701—10.76(453A).) The report must be so certified or the report shall be considered incomplete. Whenever "cigarette" is used in this rule, it shall also include taxable "little cigars."

82.9(1) *In-state distributors not exporting cigarettes.* Every distributor with a place of business in Iowa where cigarettes are stamped and who is not engaged in exporting cigarettes from this state shall file Forms 70-017 (Monthly Cigarette Tax Report) and 70-020 (Self Audit Report). The two forms are considered a multipart report and both forms must be completed before the report will be considered "filed."

a. The Monthly Cigarette Tax Report shall include, but not be limited to:

1. The distributor's name, permit number and address;
2. The amount of Iowa revenue purchased during the month;
3. The quantity of cigarettes on hand at the end of the month;
4. The amount of revenue on hand at the end of the month;
5. Purchases of cigarettes during the month and as to each purchase, the seller's name, the date of purchase, the invoice number, and the quantity purchased;
6. An inventory report as to out-of-state revenue;
7. The quantity of cigarettes returned to the factory along with supporting documents; and
8. The certification of the person responsible for making the report.

b. The Self Audit Report shall include, but not be limited to:

1. The distributor's name, permit number and address;
2. An inventory accounting for cigarettes; and
3. An inventory accounting for revenue.

The quantity of cigarettes distributed or stamped should be equal to the tax equivalent of the revenue used. Any discrepancy must be adequately explained.

82.9(2) *In-state distributors exporting cigarettes.* Every distributor with a place of business in Iowa where cigarettes are stamped who also engages in exporting cigarettes from this state shall file Form 70-017 (Monthly Cigarette Tax Report). This form must be completed before the report will be considered "filed."

82.9(3) *Out-of-state distributors.* Every distributor stamping cigarettes only without the state shall file Form 70-018 (Monthly Cigarette Tax Report). The Monthly Cigarette Tax Report (Form 70-018) shall include, but not be limited to:

1. The distributor's name, address and permit number;
2. An itemized statement of Iowa revenue purchased;
3. An inventory accounting of Iowa revenue;
4. A detailed schedule of cigarette distribution in Iowa and as to each distribution, the date, the name of purchaser or receiver, the purchaser's address and the quantity of cigarettes distributed; and
5. The certification of the person responsible for making the report.

82.9(4) *Manufacturers and other persons.* The monthly reports for manufacturers and other persons shall contain such information as the director deems necessary.

This rule is intended to implement Iowa Code section 453A.15 as amended by 1999 Iowa Acts, chapter 151.

701—82.10(453A) Manufacturer's samples.

82.10(1) Iowa Code section 453A.39 provides a method for manufacturers to distribute free sample packages of cigarettes or little cigars. This method is to be followed to the exclusion of all others. (See 1982 O.A.G. #710.)

The cigarettes or little cigars must:

a. Rescinded IAB 1/22/92, effective 2/26/92.

b. Be sent to a licensed distributor.

c. Rescinded IAB 1/22/92, effective 2/26/92.

d. Have tax paid thereon by a distributor.

e. Be clearly marked "sample."

f. Contain acknowledgment of tax being paid on each carton containing free samples.

The manufacturer must notify the department by affidavit of shipment and the distributor must notify the department by affidavit of receipt and separately remit the tax. The tax must be computed on a per cigarette basis rather than a per package basis.

82.10(2) Remittance of tax and acknowledgment of payment. Iowa Code section 453A.39 provides that the tax will be paid by a licensed distributor. The payment of tax should accompany the distributor's affidavit (Form 70-033).

The department will stamp the distributor's affidavit containing the remittance and return a copy of the affidavit to the distributor as the acknowledgment that taxes have been paid on the samples. After receiving the acknowledgment, and before the sample cigarettes are distributed, each distributor is requested to stamp the cartons of free samples with a stamp containing the following information:

IOWA STATE TAX PAID

Distributor's name

License number

The department will make every effort to return a copy of the distributor's remittance report on the same day it is received. In the event the distributor needs acknowledgment sooner, the distributor may request that the department acknowledge by telephone or telegraph and follow up with the affidavit acknowledgment at a later date.

In the event sample cigarettes must be returned to the manufacturer for some reason, a refund of the taxes previously paid will be made to the distributor who actually remitted the tax to the department. The refund will be made in the same manner as for regular cigarettes by the distributor filing the appropriate forms with the department.

82.10(3) Promotions using cigarettes, noncigarettes or coupons. Promotional situations are specifically covered by Iowa Code section 421B.4. A promotional situation as described in section 421B.4 is valid provided it is a promotion scheme complying with the procedural requirements that it be a sale. A sale is defined to "mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever."

Once a sale has occurred, the gift may be any kind whatsoever.

a. Promotion using cigarettes. If a manufacturer wants to run a promotion where two packs of cigarettes are sold for the price of one, the manufacturer could give the complimentary cigarettes to a distributor to be stamped who would then give them to a retailer who gives the cigarettes away with the purchase of another pack. Provided the distributor is reimbursed for the cost of the tax stamps, there is no violation of Iowa Code chapter 421B, by anyone. The following example illustrates what a manufacturer can do.

EXAMPLE. A manufacturer ships packs of 20, free of charge, to a licensed distributor with instructions to stamp them and send them to retail outlets or deliver them to one of the manufacturer's employees. The manufacturer reimburses the distributor for the cost of stamping the cigarettes. The manufacturer sends or furnishes the retailers instructions and display materials for the retail distribution of the cigarettes. This method of distribution would be proper.

The cost provisions of 421B.4 would not prevent the distribution of cigarettes in this example, since 421B.4 is silent with respect to below cost combination sales by manufacturers. The cost of cigarettes which are sold is controlled by section 421B.2. The cigarettes sold under the "buy one" portion of the promotion will have a cost of the lower of the true invoice or the lowest replacement cost. The cigarettes sold under the "get one free" portion of the promotion and which were obtained free of charge will have no invoice cost to the retailer.

b. Promotions using noncigarette items. A manufacturer wants to give away promotional items with the purchase of cigarettes at the regular price. Since Iowa Code section 421B.4 is silent with respect to below cost combination sales by manufacturers, the practice of the manufacturer providing a gift item such as cigarette lighters through wholesale channels to retailers which will be delivered to the customer at the time of the sale of the cigarettes does not violate chapter 421B. (See 1958 O.A.G. #22.)

c. Coupons. A manufacturer distributes coupons to the general public to allow the purchase of cigarettes at a reduced price. Provided it is the manufacturer who absorbs the entire cost of the reduction in price, there would be no violation of Iowa Code chapter 421B. Coupons which are sent to the final consumer to be redeemed by a retailer who is reimbursed by a manufacturer do not violate chapter 421B. (See 1968 O.A.G. #68.) This would be true even though the coupon represented the full price of the cigarettes.

d. Replacement packages. A manufacturer wants to respond to a customer complaint by replacing a package of 20 cigarettes purchased by the customer with another package of 20 cigarettes. The replacement package must be clearly marked with the following information:

COMPLIMENTARY. NOT FOR SALE. ALL APPLICABLE STATE TAXES PAID.

The manufacturer may pay the tax directly to the department by submitting an affidavit to the department containing the number of replacement packages sent into the state during the previous month, along with the remittance. The number of replacement packages and remittance may be submitted as part of the manufacturer's affidavit required under Iowa Code section 453A.39 (manufacturer's samples).

This rule is intended to implement Iowa Code sections 453A.1, 453A.13, 453A.16, 453A.22, 453A.31, 453A.39 and chapter 421B.

701—82.11(453A) Refund of tax—unused and destroyed stamps.

82.11(1) *Refunds of unused stamps and destroyed stamps.* Refunds shall be issued for unused stamps which are returned to the department for any reason by a person entitled to receive a refund. This includes unused stamps unaffixed at the close of the business day next preceding the effective date of a decrease in the tax rate which are in excess of the unstamped cigarette inventory on hand as of that date. Banks which are authorized to sell stamps or meter settings are not authorized to issue a refund; the stamps must be returned to and a refund will be issued only by the department. This subrule would also cover stamps which are recalled by the director for purposes of effectuating a change of design of the stamps. A refund will also be issued for stamps which have been lost through destruction, since destroyed stamps have not been used. A refund will not be issued for stamps which are lost (misplaced) or stolen, it being the distributor's or manufacturer's responsibility to maintain proper control over cigarette tax stamps. The claim for refund must be supported by proof of the fact of the loss and proof of the quantity of the loss. The claim must be filed within 30 days of the loss.

82.11(2) *Return of used stamps.* Refunds shall be issued for stamps which have been affixed to cigarettes which have become unfit for use or consumption or unsaleable. This refund is available to any licensed distributor or manufacturer upon proof that the cigarettes were returned to the person who manufactured the cigarettes. The proof required shall be an affidavit from the distributor setting forth to whom the cigarettes were returned and verifying that cigarette stamps had been affixed thereto. There must also be included therewith an affidavit from the manufacturer to whom the cigarettes were returned verifying the information.

82.11(3) *Cigarettes which have been destroyed.* The tax shall be returned on cigarettes which have been destroyed after the tax stamps have been affixed, to the person stamping the cigarettes. The person claiming the loss must be able to prove the fact of the loss and quantity of the loss. The claim, accompanied by proof of the loss and proof of the quantity of the loss, must be filed with the department no later than 30 days following the date the loss occurred. The amount of the refund shall be the face value of the stamps less the applicable discount allowed purchasers of tax stamps. This provision does not apply to cigarettes which are lost (misplaced) or stolen.

82.11(4) *Credit in lieu of a refund.* There are no statutory provisions to allow a credit in lieu of a refund of taxes paid for returned or destroyed cigarette stamps.

This rule is intended to implement Iowa Code section 453A.8.

[Filed 3/14/80, Notice 2/6/80—published 4/2/80, effective 5/7/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed without Notice 6/5/81—published 6/24/81, effective 7/29/81]
[Filed 12/18/81, Notice 9/16/81—published 1/6/82, effective 2/10/82]
[Filed emergency 2/2/82—published 3/3/82, effective 2/10/82]
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 6/28/85, Notice 5/8/85—published 7/17/85, effective 8/21/85]
[Filed 6/28/85, Notice 5/22/85—published 7/17/85, effective 8/21/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 5/26/88, Notice 4/20/88—published 6/15/88, effective 7/20/88]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 3/1/91, Notice 1/23/91—published 3/20/91, effective 4/24/91]
[Filed 1/3/92, Notice 11/27/91—published 1/22/92, effective 2/26/92]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 9/20/96, Notice 8/14/96—published 10/9/96, effective 11/13/96]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

CHAPTER 83
TOBACCO TAX

[Ch 83, Selling Cigarette Revenue in Banks, rescinded, see IAC 4/2/80]
[Prior to 12/17/86, Revenue Department[730]]

701—83.1(453A) Licenses. Before any person engages in the business of a distributor or subjobber of tobacco products, that person must obtain a tobacco distributor's or tobacco subjobber's license. If the person holds a valid cigarette permit of any kind, the license will be issued without cost if all other requirements for the license are met, but the license must still be obtained. No license is required of a tobacco retailer.

83.1(1) *Distributor license.* Every person operating as a tobacco distributor, as defined in Iowa Code section 453A.42, must obtain a tobacco distributor's license. A tobacco distributor is any person:

a. Engaging in selling tobacco products in this state who brings tobacco products or causes tobacco products to be brought into this state for the purpose of selling them in this state; or

b. Making, manufacturing, or fabricating tobacco products in this state for sale in this state; or

c. Selling tobacco products without this state who ships or transports tobacco products directly to retailers in this state to be sold by those retailers. In any distribution scheme whereby tobacco products are imported into this state for sale, there must be at least one distributor. The following examples shall illustrate the application of this rule:

EXAMPLE 1: Manufacturer, Inc. is in the business of processing tobacco products in the state of North Carolina. Retailer, Inc. is in the business of selling tobacco products at retail in the state of Iowa. If Manufacturer, Inc. ships tobacco products directly to Retailer, Inc., f.o.b. manufacturer's plant, both are performing the functions of a distributor; Manufacturer, Inc. is selling tobacco products without this state and shipping them directly to a retailer in this state, and Retailer, Inc. is causing tobacco products to be brought into this state from without the state for the purpose of sale. If either the out-of-state manufacturer or the in-state retailer has a distributor's license, the other need not, but may, have a distributor's license.

EXAMPLE 2: Manufacturer, Inc. is in the business of processing tobacco products in the state of North Carolina. Retailer, Inc. is in the business of selling tobacco products at retail in the state of Iowa. If Manufacturer, Inc. ships tobacco products directly to Retailer, Inc., f.o.b. Retailer's place of business, Manufacturer, Inc. is acting as a distributor and Retailer, Inc. is not. Manufacturer, Inc. is selling tobacco products without this state and shipping them directly to a retailer in this state. Retailer, Inc. is not causing tobacco products to be brought into this state from without the state.

The license is issued by the department at an annual cost of $100 unless the distributor possesses any valid cigarette permit in which case the license shall be issued without cost. A separate application and fee payment, if applicable, must be submitted for each place of business from which distributor activities are carried on. The license expires on June 30 of each year, and there are no provisions for partial year license fee refunds if the license is voluntarily surrendered. If a license is issued between January 1 and June 30 of any year, the license fee is one-half of the normal fee.

83.1(2) *Subjobber's license.* Every person, other than persons licensed as tobacco distributors, operating as a tobacco subjobber, as defined in Iowa Code section 453A.42, must obtain a tobacco subjobber's license. A tobacco subjobber is any person, other than a manufacturer or distributor, who purchases tobacco products from a distributor and sells them to persons other than the ultimate consumer. The license is issued by the department at an annual cost of $10, unless the subjobber possesses any valid cigarette permit, in which case, the license shall be issued without cost. A single subjobber's license shall be sufficient for the subjobber's entire activities within the state, that is, it is not issued for each place of business. The license expires annually on June 30 of each year, and there are no provisions for partial year license fee refunds if the license is voluntarily surrendered. If a license is issued between January 1 and June 30 of any year, the license fee is one-half of the normal fee.

This rule is intended to implement Iowa Code section 453A.44.

701—83.2(453A) Distributor bond. A bond in the amount of $1,000 is required to be posted before a distributor's license can be issued, regardless of whether or not the distributor is licensed and bonded as a cigarette permittee. If the distributor has a cigarette permit of any kind and is required to post a bond thereunder, the amount of the cigarette bond(s) and the tobacco bond may be aggregated to reach a single bond requirement, and the distributor may provide a single bond in the aggregate amount provided the bond may be used to discharge either a cigarette tax liability or a tobacco tax liability. See rule 701—81.7(453A) relating to bonds.

This rule is intended to implement Iowa Code section 453A.44.

701—83.3(453A) Tax on tobacco products. The tax on tobacco products is to be paid but once, either upon distribution by a distributor or upon use or storage by a consumer. The tax is in addition to any occupation or privilege tax or license fees imposed by any city or county.

83.3(1) *Distributor's tax.* When a distributor:

a. Brings tobacco products or causes tobacco products to be brought into this state for sale;

b. Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

c. Ships or transports tobacco products directly to retailers in this state for sale by the retailer, the tax attaches at the rate specified in Iowa Code section 453A.43(1) of the wholesale price of the tobacco products. The wholesale price of the tobacco products is the manufacturer's gross list price.

83.3(2) *Consumer's tax.* If the tax has not been paid under Iowa Code section 453A.43(1) and subrule 83.3(1), the consumer is responsible for the tax specified in Iowa Code section 453A.43(2) on the cost to the consumer of the tobacco products used or stored by the consumer. The tax does not apply to the use or storage of tobacco products in quantities of:

1. Less than 25 cigars,
2. Less than ten ounces of snuff or snuff powder, or
3. Less than one pound of other tobacco products in the possession of any one consumer.

These exceptions do not apply to tobacco products subject to the tax imposed upon distributors under the provisions of Iowa Code section 453A.43(1) and subrule 83.3(1).

This rule is intended to implement Iowa Code section 453A.43.

701—83.4(453A) Tax on little cigars. "Little cigars" as defined in Iowa Code section 453A.42(5) means any roll for smoking made wholly or in part of tobacco not meeting the definition of cigarette as contained in Iowa Code section 453A.1(2) which either weighs three pounds or less per thousand or weighs more than three pounds per thousand (excluding packaging weight) and has a retail price of two and one-half cents or less per little cigar. All of the provisions applicable to cigarettes concerning the rate, imposition, method of payment and affixing of stamps apply equally to little cigars. The tax on little cigars is to be paid on the purchase of stamps by cigarette distributors or cigarette manufacturers who hold valid permits. The reporting requirements contained in section 453A.15 and rule 701—82.9(453A) shall pertain equally to the distribution of little cigars, and whenever information as to cigarettes is required to be reported, the same is required as to little cigars.

This rule is intended to implement Iowa Code sections 453A.42(5) and 453A.43.

701—83.5(453A) Distributor discount. Licensed tobacco distributors filing returns under Iowa Code section 453A.46 and rule 701—83.6(453A) are entitled to deduct, from the remittance for tax due, a discount equal to 3½ percent.

This rule is intended to implement Iowa Code section 453A.46(1).

701—83.6(453A) Distributor returns. Every distributor licensed under Iowa Code section 453A.44 must file monthly returns. These returns must be filed no later than the twentieth day of the month following the month covered by the return, and must include a remittance for the amount due less the applicable discount.

83.6(1) *In-state distributors.* Licensed tobacco distributors, with a place of business in Iowa, must file Forms 70-022 and 70-023 as the monthly distributor return. The return shall include, but not be limited to:

a. The distributor's name, address and license number;

b. An accounting of the acquisition of tobacco products subject to tax including as to each acquisition:

(1) The date received,

(2) The date and number of the invoice,

(3) The person from whom purchased, and

(4) The manufacturer's gross list price;

c. A claim for credit for tobacco products destroyed, returned to manufacturers and exported; and

d. The certification of the person responsible for making the return.

When claiming credits for tobacco products destroyed, returned to manufacturers and exported, Form 70-024 schedule I, Form 70-024 schedule II, and Form 70-025 schedule III, respectively, must be completed.

83.6(2) *Out-of-state distributors.* Licensed tobacco distributors, with no place of business in Iowa, must file Form 70-026 as the monthly distributor return. The return shall include, but not be limited to:

a. The distributor's name, address and license number;

b. An accounting of the sale in Iowa of tobacco products subject to tax including as to each sale:

(1) The date of sale,

(2) The invoice number,

(3) To whom sold,

(4) The purchaser's address, and

(5) The manufacturer's gross list price; and

c. The certification of the person responsible for making the return.

This rule is intended to implement Iowa Code sections 453A.46 and 453A.47.

701—83.7(453A) Consumer's return. Every person, other than a licensed tobacco distributor, who is responsible for reporting and paying the tax on tobacco products under Iowa Code section 453A.43(2) and subrule 83.3(2), shall file Form 70-022 (Monthly Distributor Tax Return) for any month that the person is responsible for paying the tax. The return shall be due by the twentieth day of the month following the month during which taxable tobacco products were acquired. The return shall be completed in all respects except the consumer will not have a permit number. The return must be accompanied by a full remittance in the amount of the tax due because the discount provided in Iowa Code section 453A.46(1) applies only to licensed distributors. The penalties provided in Iowa Code section 453A.46(3) apply to any taxpayer required to file any return and, therefore, apply equally to licensed tobacco distributors and any other person accruing a tax liability. See rules 701—81.8(453A) (penalty), 81.9(453A) (interest), and 81.10(453A) (waiver of penalty).

This rule is intended to implement Iowa Code section 453A.46.

701—83.8(453A) Transporter's report. The transportation of tobacco products into this state must be reported to the director. The report shall include, but not be limited to:

1. A description of the products imported,
2. The name and address of the seller or consignor,
3. The date of importation,
4. The name and address of the purchaser or consignee,
5. The point of origin, and
6. The point of destination.

83.8(1) *Out-of-state distributors.* Persons who are licensed as a tobacco distributor and have a place of business without the state, from which tobacco products are shipped, need not file a separate transportation report. This information is available from the distributor report.

83.8(2) *Common carriers.* Common carriers transporting tobacco products into this state need only report shipments to places other than public warehouses licensed under the provisions of Iowa Code chapter 554. Common carriers must file the transporter's report by the tenth day of the month following the month of importation.

83.8(3) *Others.* All other transportation of tobacco products into this state by persons other than described in subrules 83.8(1) and 83.8(2) must be reported to the department except:

a. The importation of tobacco products by the consumer in sufficiently small quantities to be exempt from the tax (see subrule 83.3(2)), and

b. The importation by the consumer of the tobacco products if the consumer is responsible to report and pay the tax under Iowa Code subsections 453A.43(2) and 453A.46(6) and subrule 83.3(2) and rule 83.7(453A).

The transportation report must be filed within 30 days of the date of importation.

This rule is intended to implement Iowa Code subsection 453A.45(4).

701—83.9(453A) Free samples. Where samples of tobacco products are distributed in this state, the person responsible for the distribution must pay the tax. The person responsible for the distribution shall file a return and pay the tax on the basis of the usual wholesale price for such products.

This rule is intended to implement Iowa Code sections 453A.43, 453.46, and 453A.49.

701—83.10(453A) Return of taxes. Credits for tobacco products destroyed, returned to manufacturers or exported are provided in subrule 83.6(1). If the credits exceed the average monthly tax liability of the distributor, based upon the prior 12 tax periods, a refund may be issued.

The only other return of tax paid on tobacco products is for a refund to a consumer who paid the tax as per Iowa Code section 453A.43(2). This refund shall be made upon the same basis as credits to distributors.

This rule is intended to implement Iowa Code section 453A.47.

701—83.11(453A) Sales exempt from tax. Sales of tobacco products which the state is prohibited from taxing under the Constitution or the laws of the United States or under the Constitution of this state are exempt from the tax.

83.11(1) *Sales to the federal government.* Military post exchanges or instrumentalities of the federal government are not required to comply with the provisions of Iowa Code chapter 453A or pay the tax imposed thereunder. However, individuals who have purchased or obtained tobacco products from a federal instrumentality and come within the jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.43(2) and 453A.50. *U.S. v. Tax Commission of Mississippi,* 421 U.S. 599, 95 S. Ct. 1872, 44 L.Ed.2d 404 (1975).

83.11(2) *Sales by or to Indians.* Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribe members are exempt from the tax (*Bryan v. Itasca County,* 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 475-81 (1976)). The Indians are subject to the license requirements of Iowa Code chapter 453A. Indians who have purchased or obtained tobacco products from an Indian reservation source and come within the taxing jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.43(2) and 453A.50.

This rule is intended to implement Iowa Code section 453A.43(4).

[Filed 3/14/80, Notice 2/6/80—published 4/2/80, effective 5/7/80]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 9/4/87, Notice 7/29/87—published 9/23/87, effective 10/28/87]
[Filed 5/26/88, Notice 4/20/88—published 6/15/88, effective 7/20/88]
[Filed 9/28/90, Notice 8/22/90—published 10/17/90, effective 11/21/90]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

TITLE XI
INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAX

CHAPTER 86
INHERITANCE TAX
[Prior to 12/17/86, Revenue Department[730]]

701—86.1(450) Administration.

86.1(1) *Definitions.* The following definitions cover Chapter 86.

"Administrator" means the administrator of the compliance division of the department of revenue and finance.

"Child" means a biological or adopted issue entitled to inherit pursuant to Iowa Code chapter 633.

"Compliance division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

"Department" means the department of revenue and finance.

"Devise," when used as a verb, means to dispose of property, both real and personal, by a will.

"Director" means the director of revenue and finance.

"Estate" means the real and personal property, tangible and intangible, of the decedent or a trust, that over time may change in form due to sale, reinvestment, or otherwise, and augmented by accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom. For the definitions of "gross estate" and "net estate" under this chapter, see those terms as referenced in this subrule.

"Executor" means any person appointed by the court to administer the estate of a testate decedent.

"Fiduciary" includes personal representative, executor, administrator, and trustee. This term includes both temporary and permanent fiduciaries appointed by the court to settle the decedent's probate estate and also the trustee of an inter vivos trust where the trust assets are part of the gross estate for inheritance tax purposes.

"Gross estate" as used for inheritance tax purposes as defined in Iowa Code section 450.2 includes all those items, or interests in property, passing by any method of transfer specified in Iowa Code section 450.3 without reduction for liabilities specified in Iowa Code section 450.12. The gross estate for tax purposes may not be the same as the estate for probate purposes. For example, property owned as joint tenants with right of survivorship, property transferred with a retained life use, gifts in excess of the annual gift tax exclusion set forth in Internal Revenue Code Section 2503(b) and within three years of death, transfers to take effect in possession or enjoyment at death, trust property, "pay on death" accounts, annuities, and certain retirement plans, are not part of the decedent's probate estate, but are includable in the decedent's gross estate for inheritance tax purposes. *In re Louden's Estate,* 249 Iowa 1393, 92 N.W.2d 409 (1958); *In re Sayres' Estate,* 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Toy's Estate,* 220 Iowa 825, 263 N.W. 501 (1935); *In re Mann's Estate,* 219 Iowa 597, 258 N.W. 904 (1935); *Matter of Bliven's Estate,* 236 N.W.2d 366 (Iowa 1975); *In re English's Estate,* 206 N.W.2d 305 (Iowa 1973).

"Gross share" means the total amount of property of an heir, beneficiary, surviving joint tenant, or transferee, without reduction of those items properly deductible in computing the net shares. The total of all gross shares is equal to the gross estate.

"Heir" includes any person, except the surviving spouse, who is entitled to property of the decedent under the statutes of intestate succession.

"Internal Revenue Code" means the Internal Revenue Code of 1954 as defined in Iowa Code section 422.3(4), and is to include the revisions to the Internal Revenue Code made in 1986 and all subsequent revisions.

"Intestate estate" means an estate in which the decedent did not have a will. Administration of such estates is governed by Iowa Code sections 633.227 through 633.230. Rules of inheritance for such estates are found in Iowa Code sections 633.211 through 633.226.

"Issue," for the purpose of intestate succession, means all lawful lineal descendants of a person, whether biological or adopted. For details regarding intestate succession, see Iowa Code sections 633.210 through 633.226. For details regarding partial intestate succession, see Iowa Code section 633.272.

"Net estate" means the gross estate less those items specified in Iowa Code section 450.12 as deductions in determining the net shares of property of each heir, beneficiary, surviving joint tenant, or transferee. *In re Estate of Waddington*, 201 N.W.2d 77 (Iowa 1972). The total of all net shares of an estate must equal the total of the net estate.

"Net share" means the gross share less the liabilities, if any, which are properly deductible from the gross share of an heir, beneficiary, surviving joint tenant, or transferee. The law of abatement of shares may be applicable for purposes of determining the net share subject to tax. See Iowa Code section 633.436; *In re Estate of Noe*, 195 N.W.2d 361 (Iowa 1972); *Colthurst v. Colthurst*, 265 N.W.2d 590 (Iowa 1978); *In re Estate of Duhme*, 267 N.W.2d 688 (Iowa 1978). However, see Iowa Code section 633.278 for property subject to a mortgage.

"Personal representative" shall have the same meaning as the term is defined in Iowa Code section 633.3(29) and shall also include trustees. For information regarding claims of a personal representative, see Iowa Code section 633.431.

"Probate" means the administration of an estate in which the decedent either had or did not have a will. Jurisdiction over the administration of such estates, among other matters, is by the district court sitting in probate. For further details on the subject matter and personal jurisdiction of the district court sitting in probate, see Iowa Code sections 633.10 through 633.21. For matters regarding the procedure in probate, see Iowa Code sections 633.33 through 633.53.

"Responsible party" is the person liable for the payment of tax under this chapter. See 701—86.2(450).

"Simultaneous deaths" occur when the death of two or more persons occurs at the same time or there is not sufficient evidence that the persons have died otherwise than simultaneously. For distribution of property in this situation, see Iowa Code sections 633.523 through 633.528.

"Surviving spouse" means the legally recognized surviving wife or husband of the decedent.

"Tax" means the inheritance tax imposed by Iowa Code chapter 450.

"Taxpayer" means a person liable for the payment of the inheritance tax under Iowa Code section 450.5 and includes the executor or personal representative of an estate, the trustee or other fiduciary of property subject to inheritance tax, and includes each heir, beneficiary, surviving joint tenant, transferee, or other person becoming beneficially entitled to any property or interest therein by any method of transfer specified in Iowa Code section 450.3, as subject to inheritance tax with respect to any inheritance tax due on the respective shares of the property.

(2) If any of the property includable in the gross estate passes to the surviving spouse by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the surviving spouse is not the only surviving joint tenant, an inheritance tax return is required to be filed.

d. Estates of decedents dying on or after July 1, 1999. In addition to the special rule for surviving spouses set forth in paragraph *"c"* of this subrule, effective for estates of decedents dying on or after July 1, 1999, an estate that consists solely of property includable in the gross estate that is held in joint tenancy with right of survivorship and that is exclusively owned by the decedent and a lineal ascendant of the decedent, lineal descendant of the decedent, a child legally adopted in compliance with the laws of this state by the decedent or a stepchild of the decedent, or any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, or a combination solely consisting of such persons, is not required to file an Iowa inheritance tax return, unless such an estate has an obligation to file a federal estate tax return. Property of the estate passing by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the title of property is held by persons other than a lineal ascendant, lineal descendant, a child legally adopted in compliance with the laws of this state, or a stepchild of the decedent or any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, an inheritance tax return is required to be filed.

86.2(3) *Liability for the tax.* The personal representative of an estate is personally liable for the total tax due from any person receiving property subject to the tax, to the extent the person's share of the property is subject to the jurisdiction of the probate court and the personal representative. The trustee of trust property subject to tax is personally liable for the total tax due from a beneficiary to the extent of the person's share of the trust property. Each heir, beneficiary, transferee, joint tenant, and any other person being beneficially entitled to any property subject to tax is personally liable for the tax due on all property received subject to the tax. The person is not liable for the tax due on another person's share of property subject to tax, unless the person is also a personal representative, trustee, or other fiduciary liable for the tax by reason of having jurisdiction over the property, the succession to which is taxable. *Eddy v. Short*, 190 Iowa 1376, 179 N.W. 818 (1920); *Waterman v. Burbank*, 196 Iowa 793, 195 N.W. 191 (1923).

86.2(4) *Supplemental return—deferred interest.* When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation.

86.2(5) *Amended return.* If additional assets or errors in valuation of assets or deductible liabilities are discovered after the filing of the inheritance tax return increasing the amount of tax due, an amended inheritance tax return must be filed with the department, reporting the additional assets. The appropriate penalty and interest will be charged on the additional tax due pursuant to Iowa Code section 421.27 and department rules in 701—Chapter 10. To file an amended inheritance tax return, Form IA 706 shall be completed and at the top of the front page of the return the word "AMENDED" shall be printed. If additional liabilities are discovered or incurred after the filing of the inheritance tax return which result in an overpayment of tax, an amended inheritance tax return must be filed in the manner indicated above. For amended returns resulting from federal audit adjustments—see subrule 86.3(6) and rules 86.9(450), and 86.12(450). For permitted and amended returns not permitted for change of values—see subrule 86.9(4).

86.2(6) *Due date for filing—return on present property interests.* Unless an extension of time has been granted, the final inheritance tax return, or the inheritance tax return in case of decedents dying on or after July 1, 1983, must be filed and any tax due paid, for all property in present possession or enjoyment:

a. On or before the last day of the ninth month after death for estates of decedents dying on or after July 1, 1984, subject to the due date falling on a Saturday, Sunday, or legal holiday, which would then make the return due on the following business day. The following table for return due dates illustrates this subrule:

Deaths Occurring During:	Return Due Date:
July 1996	April 30, 1997
August 1996	June 2, 1997
	(May 31 is a Saturday and June 1 is a Sunday)
September 1996	June 30, 1997
October 1996	July 31, 1997
November 1996	September 2, 1997
	(August 31 is a Sunday, September 1 is Labor Day)
December 1996	September 30, 1997
January 1997	October 31, 1997
February 1997	December 1, 1997
	(November 30 is a Sunday)
March 1997	December 31, 1997
April 1997	February 2, 1998
	(January 31 is a Saturday and February 1 is a Sunday)
May 1997	March 2, 1998
	(February 28 is a Saturday and March 1 is a Sunday)
June 1997	March 31, 1998

b. Within nine months after death for estates of decedents dying during the period beginning July 1, 1981, and ending June 30, 1984.

86.2(7) *Election to file—before termination of prior estate.* The tax due on a future property interest may be paid, at the taxpayer's election, on the present value of the future interest as follows:

a. On or before the last day of the ninth month after the decedent's death (or within one year after the death of the decedent for estates of decedents dying prior to July 1, 1981). Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date of the decedent's death. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date of the decedent's death that must be used.

b. After the last day of the ninth month following the decedent's death (one year after death for estates of decedents dying prior to July 1, 1981) but prior to the termination of the prior estate. Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date the tax is paid. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date the tax is paid that must be used. *In re Estate of Wickham,* 241 Iowa 198, 40 N.W.2d 469 (1950); *In re Estate of Millard,* 251 Iowa 1282, 105 N.W.2d 95 (1960). *In re Estate of Dwight E. Clapp,* Clay County District Court, Probate No. 7251 (1980).

86.2(8) *Mandatory due date—return on a future property interest.*

a. For estates of decedents dying prior to July 1, 1984. Rescinded IAB 10/13/93, effective 11/17/93.

b. Mandatory due date—return on a future property interest for estates of decedents dying on or after July 1, 1981. Unless the tax due on a future property interest has been paid under the provisions of subrule 86.2(7), paragraphs *"a"* and *"b,"* the tax due must be paid on or before the last day of the ninth month following the termination of the prior estate. The statute does not provide for an extension of the mandatory due date for payment of the tax.

86.2(9) *Extension of time—return and payment.* For estates of decedents dying on or after July 1, 1984, the department may grant an extension of time to file an inheritance tax return on an annual basis. To be eligible for an extension, an application for an extension of time must be filed with the department on a form prescribed or approved by the director. The application for extension must be filed with the department prior to the time the tax is due and an estimated payment of 90 percent of the tax due must accompany the application—see Iowa Code section 421.27 and rule 701—10.85(422). An extension of time to pay the tax due may be granted in the case of hardship. However, for extensions to be granted, the request must include evidence of the hardship—see 701—Chapter 10. An extension of time to file cannot be extended for a period of time longer than ten years after the last day of the month in which the death of the decedent occurs.

86.2(10) *Discount.* There is no discount allowed for early payment of the tax due.

This rule is intended to implement Iowa Code sections 421.14, 450.5, 450.6, and 450.9; section 450.22 as amended by 1999 Iowa Acts, chapter 151, section 46; and Iowa Code sections 450.44, 450.46, 450.47, 450.51, 450.52, 450.53, 450.63, and 450.94.

701—86.3(450) Audits, assessments and refunds.

86.3(1) *Audits.* Upon filing of the inheritance tax return, the department must audit and examine it and determine the correct tax due. A copy of the federal estate tax return must be filed with the inheritance tax return in those estates where federal law requires the filing of a federal estate tax return. The department may request the submission of wills, trust instruments, contracts of sale, deeds, appraisals, and such other information as may reasonably be necessary to establish the correct tax due. See Iowa Code sections 450.66 and 450.67 and *Tiffany v. County Board of Review,* 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4). The person or persons liable for the payment of the tax imposed by Iowa Code chapter 450 shall keep the records relating to the gross and net estate required for federal estate tax purposes under 26 U.S.C. Section 6001 of the Internal Revenue Code and federal regulation Section 20.6001-1.

86.3(2) *Assessments for additional tax.* The taxpayer must file an inheritance tax return on forms prescribed by the director on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department must notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the last day of the following month. For estates with decedents dying on or after July 1, 1999, the date of the notice and not the postmark date is controlling. If the inheritance tax return is not filed within the time prescribed by law, taking into consideration any extensions of time, or the return as filed is not correct, the department may make an assessment for the tax and any penalty and interest due based on the inventories, wills, trust instruments, and other information necessary to ascertain the correct tax. For interest and penalty rate information, see 701—Chapter 10.

86.3(3) *Refunds.* If the examination and audit of the inheritance tax return discloses an overpayment of tax, the department will refund the excess to the taxpayer. See 701—Chapter 10 for the statutory interest rate commencing on or after January 1, 1982. For estates of decedents dying prior to January 1, 1988, interest shall be computed for a period beginning 60 days from the date of the payment to be refunded. For estates of decedents dying on or after January 1, 1988, interest must be computed for a period beginning the first day of the second calendar month following the date of payment, or the date upon which the return which sets out the refunded payment was actually filed, or the date that return was due to be filed, whichever date is the latest. For the purposes of computing the period, each fraction of a month counts as an entire month. If the taxpayer, after the tax has been paid, discovers additional liabilities which, when offset by any additional assets results in an overpayment of the tax, the excess payment will be refunded to the taxpayer upon filing with the department an amended inheritance tax return claiming a refund. No refund for excessive tax paid shall be made by the department unless an amended return is filed with the department within three years (five years for estates of decedents dying prior to July 1, 1984) after the tax payment upon which the claim is made became due, or one year after the tax was paid, whichever time is the later—see Iowa Code section 450.94(3).

86.3(4) *Supplemental assessments and refund adjustments.* The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

86.3(5) *Assessments—period of limitations.* Effective for estates of decedents dying on or after July 1, 1984, assessments for additional tax due must be made within the following periods of time:

a. Within three years after the return is filed for property reported to the department on the return. The three-year period of limitation does not begin until the return is filed. The time of the decedent's death is not relevant. For purposes of determining the period of limitations, the assessment period shall terminate on the same day of the month three years later which corresponds to the day and month the return was filed. If there is no numerically corresponding day three years after the return is filed, or if the expiration date falls on a Saturday, Sunday, or legal holiday, the assessment period expires the preceding day in case there is no corresponding day, or the next day following which is not a Saturday, Sunday, or legal holiday.

b. The period of time for making an assessment for additional tax is unlimited if a return is not filed with the department.

c. If a return is filed with the department, but property which is subject to taxation is omitted from the return, the three-year period for making an assessment for additional tax on the omitted property does not begin until the omitted property is reported to the department on an amended return. The omission of property from the return only extends the period of limitations for making an assessment for additional tax against the beneficiary, surviving joint tenant, or transferee whose share is increased by the omitted property. Other shares of the estate are not affected by the extended assessment period due to the omitted property. The inheritance tax is a separate succession tax on each share of the estate, not on the estate as a whole. *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906).

86.3(6) *Period of limitations—federal audits.*

a. Statute of limitations and federal audits in general. In the case of a federal audit, the department, notwithstanding the normal three-year audit period specified in Iowa Code paragraphs 450.94(5)*"a"* and *"b,"* shall have an additional six-month period for examination of the inheritance tax return to determine the correct tax due and for making an assessment for additional tax that may be due.

The additional six-month period begins on the date the taxpayer performs two affirmative acts: (1) notifies the department, and the department receives such a notification, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, gift, and generation skipping transfer taxes have been concluded and (2) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document concerning the concluded controversy. The additional six-month examination period does not begin until both of the acts are performed. See Iowa Code sections 622.105 and 622.106 for the mailing date as constituting the filing date and Iowa Code section 4.1(34) and *Emmetsburg Ready Mix Co. v. Norris,* 362 N.W.2d 498 (Iowa 1985) when the due date falls on a legal holiday.

b. Statute of limitations regarding federal audits involving real estate.

(1) In general. Effective for estates with decedents dying on or after July 1, 1999, in addition to the period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa inheritance tax purposes to the value accepted by the Internal Revenue Service for federal estate tax purposes. The department shall have an additional six months to make an examination and adjustment for the value of the real property.

(2) Beginning of the additional six-month period. The additional six-month period for assessment and adjustment begins on the date the taxpayer performs two affirmative acts: (a) notifies the department, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, gift, and generation skipping transfer taxes have been concluded and (b) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document. Such documents must indicate the final federal determination and final audit adjustments of all real property.

(3) Adjustment required. The department must make an adjustment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether any of the following have occurred: an inheritance tax clearance has been issued; an appraisal has been obtained on the real property indicating a contrary value; there has been an acceptance of another value for real property by the department; an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property.

(4) Refunds. Despite the time period for refunds set forth in Iowa Code section 450.94(3), the personal representative for the estate has six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the Internal Revenue Service to claim a refund from the department of an overpayment of tax due to the change in the valuation of real property by the Internal Revenue Service.

c. Effect of additional time periods. The additional six-month audit period set forth in *"a"* and *"b"* under this subrule does not limit or shorten the normal three-year examination period. As a result, a six-month additional examination period has no application if the additional six-month examination period would expire during the normal three-year audit period. If additional tax is found to be due, see paragraph 86.12(5)*"b"* for the inheritance tax lien filing requirements for securing the additional tax after an inheritance tax clearance has been issued. The six-month additional examination period means the department shall have at least six months to examine the return after the notification. The department will have more time if the normal three-year examination period expires after the six-month additional period for examination. After the expiration of the normal three-year examination period, and absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments for real property is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax laws that incorporate Internal Revenue Code provisions. See Iowa Code section 450.94(5), 701—86.9(450) and 701—86.12(450), and *Kelly-Springfield Tire Co. v. Iowa Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

This rule is intended to implement Iowa Code sections 422.25 and 422.30; section 450.37 as amended by 1999 Iowa Acts, chapter 151, section 47; and Iowa Code sections 450.53, 450.65, 450.71, 450.94, 450A.12 and 451.12.

701—86.4(450) Appeals. A determination made by the department of either the correct amount of the tax due, or the amount of refund for excessive tax paid, shall be final unless the taxpayer, or any other party aggrieved by the determination, appeals to the director for a revision of the department's determination. For notices of assessment issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of assessment notice or, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make a payment pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims. In the event of an appeal, the provisions of 701—Chapter 7 of the department's rules of practice and procedure before the department of revenue and finance and Iowa Code chapter 17A shall apply.

This rule is intended to implement Iowa Code chapter 17A and section 450.94.

701—86.5(450) Gross estate.

86.5(1) *Iowa real and tangible personal property.* Real estate and tangible personal property with a situs in the state of Iowa and in which the decedent had an interest at the time of death is includable in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common. Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers include, but are not limited to, transfers of real estate in which the grantor retained a life estate, life interest, interest or the power of revocation, property or interest in property in trust, and gifts made within three years of death in excess of the federal gift tax exclusion. These constitute transfers of property in which the decedent may not have an interest at death, but are includable in the gross estate for inheritance tax purposes. *In re Dieleman's Estate v. Dept. of Revenue,* 222 N.W.2d 459 (Iowa 1974); *In re English's Estate,* 206 N.W.2d 305 (Iowa 1973); and *Lincoln's Estate v. Briggs,* 199 N.W.2d 337 (Iowa 1972).

86.5(2) *Foreign real estate and tangible personal property.* Real estate and tangible personal property with a situs outside the state of Iowa are not subject to the Iowa inheritance tax and, therefore, are not includable in the decedent's gross estate for tax purposes. *Frick v. Pennsylvania,* 268 U.S. 473, 45 S. Ct. 603, 69 L.Ed. 1058 (1925); *In re Marx Estate,* 226 Iowa 1260, 286 N.W.2d 422 (1939).

86.5(3) *Intangible personal property—decedent domiciled in Iowa.* Intangible personal property, or interest therein, owned by a decedent domiciled in Iowa is includable in the gross estate for inheritance tax purposes regardless of the physical location of the evidence of the property or whether the account or obligation is with a non-Iowa financial institution. *Curry v. McCanless,* 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed 1339 (1939); *Lincoln's Estate v. Briggs,* 199 N.W.2d 337 (Iowa 1972).

86.5(4) *Intangible personal property—decedent domiciled outside Iowa.* Intangible personal property may have more than one inheritance tax situs and be subject to multiple state inheritance taxation. Therefore, it has been held that the situs of intangible personal property is the place where the owner is domiciled and also where the intangible has acquired a business situs or is located for state inheritance tax purposes. More than one state can subject the succession to such intangible property to tax. *State Tax Commission of Utah v. Aldrich,* 316 U.S. 174, 62 S. Ct. 1008, 86 L.Ed. 1358 (1942); *Curry v. McCanless,* 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed. 1339 (1939); *Chaffin v. Johnson,* 200 Iowa 89, 204 N.W. 424 (1925). Intangible personal property owned by a decedent domiciled outside Iowa may be subject to the Iowa inheritance tax and, therefore, includable in the gross estate if the physical evidence of the property has an Iowa situs or if the intangible property is an account or obligation of an Iowa financial institution. This intangible personal property is not subject to Iowa inheritance tax if the state of domicile subjects the property to a state death tax and either does not subject intangible personal property owned by a decedent domiciled in Iowa to a state death tax, or grants reciprocity to Iowa-domiciled decedents on like intangible personal property. Intangible personal property owned by a decedent domiciled outside Iowa is subject to the Iowa inheritance tax if the state of domicile does not grant an exemption or reciprocity to like intangible personal property owned by Iowa decedents, or does not impose a death tax on intangible property.

86.5(5) *Classification of property.* The property law of the state of situs determines whether property is classified as real, personal, tangible or intangible and also whether decedent had an interest in the property. *Dieleman's Estate v. Dept. of Revenue,* 222 N.W.2d 459 (Iowa 1974); *Williamson v. Youngs,* 200 Iowa 672, 203 N.W. 28 (1925).

86.5(6) *Insurance—in general.* Whether the proceeds or value of insurance is includable in the gross estate for inheritance tax purposes depends on the particular facts in each situation. Designated beneficiary and type of insurance (life, accident, health, credit life, etc.) are some of the factors that are considered in determining whether the value or proceeds are subject to tax. *In re Estate of Brown,* 205 N.W.2d 925 (Iowa 1973).

a. Insurance proceeds subject to tax. The proceeds of insurance on the decedent's life owned by the decedent and payable to the decedent's estate or personal representative is includable in the gross estate. Insurance owned by the decedent on the life of another is includable in the gross estate to the extent of the cash surrender value of the policy. The proceeds of all insurance to which the decedent had an interest, at or prior to death, but are payable for reasons other than death, are includable in the gross estate. *Bair v. Randall,* 258 N.W.2d 333 (Iowa 1977).

b. Insurance proceeds not taxable. Insurance on the decedent's life payable to a named beneficiary, including a testamentary trust, other than the insured, the estate, or the insured's personal representative, is not subject to Iowa inheritance tax. *In re Estate of Brown,* 205 N.W.2d 925 (Iowa 1973).

c. Insurance proceeds includable—depending on circumstances. Credit life insurance and burial insurance are offsets against the obligation. If the obligation is deducted in full or in part in computing the taxable shares of heirs or beneficiaries, the proceeds of the credit life and burial insurance are includable in the gross estate to the extent of the obligation. Insurance on the decedent's life and owned by the decedent, pledged as security for a debt is an offset against the debt if the insurance is the primary source relied upon by the creditor for the repayment of the obligation and is includable in the gross estate on the same conditions as credit life insurance. See *Estate of Carl M. Laartz* Probate No. 9641, District Court of Cass County, March 17, 1973; *Estate of Roy P. Petersen,* Probate No. 14025, District Court of Cerro Gordo County, May 16, 1974.

Insurance on the decedent's life, payable to a corporation or association in which the decedent had an ownership interest, while not subject to tax as insurance, may increase the value of the decedent's interest. *In re Reed's Estate,* 243 N.Y. 199, 153 N.E.47, 47 A.L.R. 522 (1926).

86.5(7) *Gifts in contemplation of death—for estates of decedents dying prior to July 1, 1984, only.* A transfer of property, or interests in property by a decedent, except in the case of a bona fide sale for fair consideration within three years of the grantor's death, made in contemplation of death, is includable in the decedent's gross estate. Any such transfer made within the three-year period prior to the grantor's death is presumed to be in contemplation of death, unless it is shown to the contrary. Whether a transfer is made in contemplation of death depends on the intention of the grantor in making the transfer and will depend on the facts and circumstances of each individual transfer.

a. Factors to be considered include, but are not limited to:

(1) The age and health of the grantor at the time of the transfer,

(2) Whether the grantor was motivated by living or death motives,

(3) Whether or not the gift was a material part of the decedent's property,

(4) Whether the gift was an isolated event or one of a series of gifts during the decedent's lifetime.

b. Factors which tend to establish that the motive for the gift was prompted by the thought of death include, but are not limited to:

(1) Made with the purpose of avoiding death taxes,

(2) Made as a substitute for a testamentary disposition of the property,

(3) Of such an amount that the remaining property of the grantor would not normally be sufficient to provide for the remaining years of the grantor and those of the grantor's household,

(4) Made with the knowledge that the grantor is suffering from a serious illness that is normally associated with a shortened life expectancy.

c. Factors which tend to establish that the gift was inspired by living motives include, but are not limited to:

(1) Made on an occasion and in an appropriate amount that is usually associated with such gift giving occasions as Christmas, birthdays, marriage, or graduation,

(2) Made because of the financial need of the donee and in an amount that is appropriate to the need,

(3) Made as a remembrance or reward for past services or favors in an amount appropriate to the occasion,

(4) Made to be relieved of the burden of management of the property given, retaining sufficient property and income for adequate support and maintenance.

For a gift to be determined to have been made in contemplation of death it is not necessary that the grantor be conscious of imminent or immediate death. However, the term means more than the general expectation of death which all entertain. It is a gift when the grantor is influenced to do so by such expectation of death, arising from bodily or mental condition, as prompts persons to dispose of their property to those whom they deem the proper object of their bounty. It is sufficient if the thought of death is the impelling cause for the gift. *U.S. v. Wells,* 283 U. S. 102, 51 S. Ct. 446, 75 L.Ed. 867 (1931); *In re Mann's Estate,* 219 Iowa 597, 258 N.W. 904 (1935).

d. Gifts made within three years of death—for estates of decedents dying on or after July 1, 1984. All gifts made by the donor within three years of death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax purposes. The motive, intention or state of mind of the donor is not relevant. Date of valuation for a gift in which there was a full transfer of ownership is valued at the date in which the gift is completed. However, for a gift of an interest in property that is less than a full transfer of ownership, which includes, but is not limited to, a life estate or conditional gift, the date of valuation is the date of the death of the decedent, unless alternative valuation is chosen. The fact alone that the transfer is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax purpose is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, is subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

EXAMPLE. The decedent-donor, A, died July 1, 1995. The three-year period during which gifts may be subject to inheritance tax begins July 1, 1992. During the calendar year 1992, A made a cash gift to nephew B of $11,000 on May 1, 1992, and a second gift to B of $4,000 on August 1, 1992. In this example, none of the $11,000 gift made on May 1, 1992, is includable for inheritance tax purposes because it was made before the three-year period began, based on A's date of death. All of the $4,000 gift made on August 1, 1992, is includable for inheritance tax purposes because it is in excess of the calendar year 1992 federal gift tax exclusion of $10,000.

(1) Split gift. At the election of the donor's spouse, a gift made by a donor to a person, other than the spouse, shall be considered, for inheritance tax purposes, as made one half by the donor and one half by the donor's spouse. This split gift election for inheritance tax purposes is subject to the same terms and conditions that govern split gifts for federal gift tax purposes under 26 U.S.C. Section 2513.

The consent of the donor's spouse signified under 26 U.S.C. Section 2513(b) shall also be presumed to be consent for Iowa inheritance tax purposes, unless the contrary is shown. If the split gift election is made, the election shall apply to all gifts made during the calendar year. Therefore, if the election is made, each spouse may use the annual exclusion ($10,000 for 1994) which shall be applied to one-half of the total value of all gifts made by both spouses during the calendar year to each donee.

Iowa Code section 450.12 and Internal Revenue Code Section 2053 provide that debts owing by the decedent to be allowable in computing the net estate must be the type of obligation of the decedent for which a claim could be filed and be enforced in the probate proceedings of the estate. *In re Estate of McMahon,* 237 Iowa 236, 21 N.W.2d 581 (1946); *In re Estate of Laartz,* Cass County District Court, Probate No. 9641 (1973); *In re Estate of Tracy,* Department of Revenue and Finance Hearing Officer Decision Docket No. 77-167-3-A (1977). Filing a claim in probate proceedings is not a prerequisite for the allowance of the liability as a deduction in computing the net estate. An allowable liability is deductible whether or not the liability is legally enforceable against the decedent's estate. Claims in probate founded on a promise or agreement are deductible only to the extent they were contracted bona fide and for an adequate and full consideration. *In re McAllister's Estate,* 214 N.W.2d 142 (Iowa 1974).

The debt must have ben paid prior to the filing of the inheritance tax return, or if the debt is not paid at the time the final inheritance tax return is filed (which is frequently the case in installment obligations) the burden is on the taxpayer to establish, if requested by the department, that the debt will be paid at a future date. The validity of a claim in probate based on a liability of the decedent is subject to review by the department. *In re Estate of Stephenson,* 234 Iowa 1315, 1319, 14 N.W.2d 684 (1944).

If any doubt or ambiguity exists whether an item is deductible or not, it is to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish that an item is deductible. *In re Estate of Waddington,* 201 N.W.2d 77 (Iowa 1972).

The department may require the taxpayer to furnish reasonable proof to establish the deductible items such as, but not limited to, canceled checks in payment of an obligation, copies of court orders allowing claims against the estate, attorney and fiduciary fees, allowances for the surviving spouse, and copies of notes and mortgages.

b. Mortgages—decedent's debt. A mortgage or other encumbrance securing a debt of the decedent on Iowa property in which the decedent had an interest is allowable as a deduction in determining the net estate in the same manner as an unsecured debt of the decedent, even though it may be deducted from different shares of the estate than unsecured debts. (See Iowa Code section 633.278.) However, if the debt of the decedent is secured by property located outside Iowa, which is not subject to Iowa inheritance tax, the debt is allowable as a deduction in determining the net estate, only in the amount the debt exceeds the value of the property securing the debt.

c. Mortgages—not decedent's debt. If the gross estate includes property subject to a mortgage or other encumbrance which secures a debt which is not enforceable against the decedent, the amount of the debt, including interest accrued to the day of death, is deductible, not as a debt of the decedent, but from the fair market value of the encumbered property. The deduction is limited to the amount the decedent would have had to pay to remove the encumbrance less the value, if any, of the decedent's right of recovery against the debtor. See *Home Owners Loan Corp. v. Rupe,* 225 Iowa 1044, 1047, 283 N.W. 108 (1938), for circumstances under which the right of subrogation may exist.

d. Mortgages—nonprobate property. A debt secured by property not subject to the jurisdiction of the probate court, such as, but not limited to, jointly owned property and property transferred within three years of death is deducted in the same manner as a debt secured by probate property. The fact the property is includable in the gross estate is the controlling factor in determining the deductibility of the debt (providing the debt is otherwise deductible).

e. Inheritance and accrued taxes.

(1) Inheritance tax. The inheritance tax imposed in the decedent's estate is not a tax on the decedent's property nor is it a state tax due from the estate. It is a succession tax on a person's right to take from the decedent. The tax is the obligation of the person who succeeds to property included in the gross estate. *Wieting v. Morrow,* 151 Iowa 590, 132 N.W. 193 (1911); *Waterman v. Burbank,* 196 Iowa 793, 195 N.W. 191 (1923). Therefore, inheritance tax is not a deduction in determining the net estate of the decedent in which the tax was imposed. However, if a taxpayer dies owing an inheritance tax imposed in another estate, the tax imposed in the prior estate, together with penalty and interest owing, if any, is a deduction as a state tax due in the deceased taxpayer's estate.

(2) Accrued taxes. In Iowa, property taxes accrue on the date that they are levied even though they are not due and payable until the following July 1. *In re Estate of Luke,* 184 N.W.2d 42 (Iowa 1971); *Merv E. Hilpipre Auction Co. v. Solon State Board,* 343 N.W.2d 452 (Iowa 1984).

Death terminates the decedent's taxable year for income tax purposes. Federal regulation Section 1.443-1(a)(2), 701—paragraph 89.4(9)*"b."* As a result, the Iowa tax on the decedent's income for the taxable year ending with the decedent's death is accrued on date of death.

In addition, any federal income tax for the decedent's final taxable year is owing at death, even though it is not payable until a later date. Therefore, both the decedent's state and federal income taxes, both for prior years and the year of death, are deductible in computing the taxable estate if unpaid at death.

f. Federal taxes. Deductible under this category are the federal estate taxes and federal taxes owing by the decedent including any penalty and interest accrued to the date of death. Prior to 1983, the federal estate tax was prorated based on the portion of federal estate tax attributable to Iowa property and that attributable to property located outside the state of Iowa. However, currently the deductibility of federal estate tax is treated like other liabilities of the estate. For estates with property located in Iowa and outside the state of Iowa, see the proration computation provided in 86.6(2). The deduction is limited to the net federal tax owing after all allowable credits, such as the federal credit for state death taxes paid, have been subtracted. Any penalty and interest imposed or accruing on federal taxes after the decedent's death is not deductible.

g. Funeral expenses. The deduction is limited to the expense of the decedent's funeral, which includes, but is not limited to, flowers, cost of meals, cards and postage. Expenses that are not deductible include, but are not limited to, family travel expenses. If the decedent at the time of death was liable for the funeral expense of another, such expense is categorized as a debt of the decedent and is deductible subject to the same conditions as other debts of the decedent. *In re Estate of Porter,* 212 Iowa 29, 236 N.W. 108 (1931). A devise in the decedent's will, or a direction in a trust instrument, to pay the funeral expense of a beneficiary upon death is an additional inheritance in favor of the beneficiary and not a funeral expense deductible in the estate of the testator or grantor. Funeral expense is the liability of the estate of the person who has died. *In re Estate of Kneebs,* 246 Iowa 1053, 70 N.W.2d 539 (1955).

What constitutes a reasonable expense for the decedent's funeral depends upon the facts and circumstances in each particular estate. Factors to be considered include, but are not limited to: the decedent's station in life and the size of the estate, *Foley v. Brocksmit,* 119 Iowa 457, 93 N.W. 344 (1903); and the decedent's known wishes (tomb rather than a grave), *Morrow v. Durant,* 140 Iowa 437, 118 N.W. 781 (1908). Funeral expense includes the cost of a tombstone or monument. *In re Estate of Harris,* 237 Iowa 613, 23 N.W.2d 445 (1946). A reasonable fee or honorarium paid to the officiating clergy is a deductible funeral expense. *In re Estate of Kneebs,* 246 Iowa 1053, 1058, 70 N.W.2d 539 (1955). It is not a prerequisite for deductibility that a claim for funeral expenses be filed and allowed in the probate proceedings. It is sufficient that the expense be paid whether or not the claim is legally enforceable against the decedent's estate. The deduction allowable is limited to the net expense of the decedent's funeral, after deducting any expense prepaid by the decedent, burial insurance or death benefit, such as the death benefit allowed by the veterans administration or the social security administration.

(5) Fair market value of choses in action. The fair market value of the decedent's interest in a right to sue for a debt or a sum of money often cannot be determined with certainty at the time of the decedent's death. The value of this right is dependent on many factors which include, but are not limited to, the following: the strength and credibility of the decedent's evidence; the statutory and case law supporting the decedent's claim or position; the ability of the opposing party to pay a judgment; the extent, if applicable, of the decedent's contributory negligence; and the other normal hazards of litigation. However, this lack of certainty does not mean the right to sue has no value at the time of the decedent's death. Evidence of what was actually received for this right by the decedent's estate or its beneficiary is evidence of the fair market value of the right at death.

This subrule can be illustrated by the following example:

The decedent died in a fire of uncertain origin that destroyed his dwelling. Due to the circumstances surrounding the fire, the estate's right of recovery from the fire insurance carrier was speculative and, therefore, the value of this right at death was unknown. After the estate was closed, the beneficiary of the estate settled the fire insurance claim for $15,000. The amount received in settlement of the claim can be considered as evidence of the fair market value of the right of action at death. *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977). In addition, interest on the unpaid tax begins and continues to accrue from the date of the decedent's death.

(6) Wrongful death proceeds are not included in the gross estate. *Estate of Dieleman v. Department of Rev.*, 222 N.W.2d 459 (Iowa 1974).

e. By agreement between the department, the estate and its beneficiaries. Iowa Code section 450.37 provides that the market value in the ordinary course of trade is to be determined by agreement between the estate and its beneficiaries and the department. The term "agreement" when used with reference to the value of an asset, whether it is real or personal property, has the same meaning as the term is used in the law of contracts. The agreement between the department, the estate and its beneficiaries may be contained in a single written instrument, or it may be made by an offer submitted by the estate and its beneficiaries and its acceptance by the department. The agreement establishing values for computing the tax may specify that the values as finally determined for federal estate tax purposes on all or a portion of the assets will be the values used in computing the tax.

(1) Offer by the estate and the beneficiaries. It is the duty of the taxpayer to list on the inheritance tax return the values of the assets in the gross estate which the estate and those beneficially entitled to the decedent's property are willing to offer as the values for computing the taxable shares in the estate. The value of the assets listed on the return will constitute an offer for the department to accept or reject. Counteroffers may be made in the event an offer is rejected. This rule applies equally to real and personal property.

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or
2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or
3. The department does not request an appraisal within 30 days after the return has been filed in the case of the value of real estate. Notice of appraisal must be served by certified mail and the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery. However, see 86.9(2)*"e"*(3) for the rule governing values listed as "unknown" or "undetermined." See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

(3) Values listed on the return as "undetermined" or "unknown." If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as "unknown" or "undetermined." The return must contain a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until 30 days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that both the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977), regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent's death.

f. Values established—no agreement.

(1) Real estate. If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under 86.9(2)*"e,"* the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. For the purposes of appraisal, "real estate or real property" means the land and appurtenances, including structures affixed thereto. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, is not controlling in determining values for inheritance tax purposes. *In re Estate of Giffen*, 166 N.W.2d 800 (Iowa 1969); *In re Estate of Lorimor*, 216 N.W.2d 349 (Iowa 1974). Appraisals of real estate must be made in fee simple including land, all appurtenances and structures affixed to the real estate. Discounts in the value of real estate are not to be considered in the valuation of real property for the purposes of an appraisal. Such discounts in valuation are to be resolved by mutual agreement through informal procedures between the personal representative of the estate and the department. If an agreement between the personal representative of the estate and the department cannot be obtained, then the valuation placed on the property by the department may be appealed by the personal representative of the estate pursuant to the procedures set forth in rule 701—86.4(450). If either the department or the estate does not agree with the results of an appraisal that is conducted pursuant to Iowa Code sections 450.27 through 450.36, either the department or the estate may file an objection to the appraisal pursuant to Iowa Code section 450.31. See 701—subrule 86.9(2) for additional factors to assist in the determination of fair market value of real property.

(2) Personal property. Effective for estates of decedents dying on or after July 1, 1983. If an agreement is not reached on the value of personal property under 86.9(2)*"e,"* the estate or any person beneficially receiving the personal property may appeal to the director under Iowa Code section 450.94, subsection 3, for a resolution of the valuation dispute, with the right of judicial review of the director's decision under Iowa Code chapter 17A.

g. Amending returns to change values.

(1) Amendment permitted or required. Unless value has been established by the appraisal or administrative proceedings, the inheritance tax return may be amended by the estate to change the value of an asset listed on the return as long as the amendment is filed before an agreement is made between the estate and the department as to the asset's value. The return must be amended to list the value of an asset omitted from the original return or to assign a value for an item listed on the original return as "unknown" or "undetermined."

If the facts and circumstances surrounding the value agreement would justify a reformation or rescission of the agreement under the law of contracts, the return may be amended by the estate, and must be amended at the department's request, to change the value of the item to its correct fair market value or its special use value as the case may be.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240-acre Iowa farm to B for life and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example, C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to Example 1 in subrule 86.11(3) with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E who own the remainder will come into possession or enjoyment of the 240-acre farm. No tax will be owing on the succeeding life estate because C receives nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

For another example of computing a contingent remainder interest see *In re Estate of Schnepp*, 258 Iowa 33, 138 N.W.2d 886 (1965).

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

701—86.12(450) The inheritance tax clearance.

86.12(1) *In general.* The inheritance tax clearance is a written certificate of the department documenting the satisfaction of the inheritance tax obligation of the persons succeeding to the property included in the gross estate and the personal representative of the estate, and also the obligation of the qualified heir, in case special use valuation is elected under Iowa Code chapter 450B. The clearance is either in the form of a full payment tax receipt or a statement that no tax is due on the shares of the estate. Even though the department of revenue and finance has issued an inheritance tax clearance, the tax may be subject to change as a result of any federal estate tax changes affecting the Iowa inheritance tax. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review,* 414 N.W.2d 113 (Iowa 1987).

86.12(2) *Limitations on the clearance.* Limitations on the inheritance clearance include, but are not limited to:

a. If special use valuation has been elected under Iowa Code chapter 450B, a clearance certifying all inheritance tax has been paid in full, or that no inheritance tax is due, does not extend to any additional inheritance tax that may be imposed under Iowa Code section 450B.3 by reason of the early disposition or early cessation of the qualified use of the real estate specially valued. Provided, this limitation shall be null and void if:

(1) The real estate specially valued remains in qualified use for the ten-year period after the decedent's death, or

(2) There is an early disposition or early cessation of the qualified use and any additional inheritance tax imposed by Iowa Code section 450B.3 is paid in full.

b. The clearance does not extend to property that is not reported on the return.

c. The clearance does not extend to a fraudulently filed return or a return which misrepresents a material fact.

d. The clearance does not release an underlying tax obligation that remains unpaid, even though a clearance may release the liens imposed by Iowa Code sections 450.7 and 450B.6.

86.12(3) *The tax paid in full clearance.* Effective for estates of decedents dying on or after July 1, 1983, the distinction between full payment and partial payment clearances is abolished. For estates of decedents dying on or after July 1, 1983, in which a tax is due, only full payment clearances will be issued. The full payment clearance will be issued only after all the tax, penalty and interest have been paid in full. Provided, if the tax has been paid in full on some, but not all of the shares in the estate, the department will, upon request, issue a full payment clearance limited to those shares on which the tax has been paid in full. The inheritance tax is a separate tax on each share of the estate and not one tax on the estate itself. *In re Estate of Stone,* 132 Iowa 136, 109 N.W. 455 (1906). However, see subrule 86.12(2), paragraph *"a,"* for the limitation on clearances if the estate elected the special use valuation under Iowa Code chapter 450B.

86.12(4) *The no tax due clearance.* If no tax is found to be due on any of the shares of the estate, the department will issue a clearance certifying that no tax is due, subject to the limitations in subrule 86.12(2).

86.12(5) *Clearance releases the lien.*

a. In general. Two inheritance tax liens have been created by statute to secure the payment of an inheritance tax. The lien created by Iowa Code section 450.7 secures the payment of the tax imposed by Iowa Code section 450.3, regardless of whether the tax is based on market value in the ordinary course of trade, the alternate value or special use value. Iowa Code section 450B.6 creates a second lien to secure the additional inheritance tax that may be due by reason of the early disposition or early cessation of the qualified use of special use valuation property.

b. The section 450.7 lien. Effective May 20, 1999, a ten-year statutory lien for inheritance tax on all estates is imposed regardless of whether the decedent died prior to or subsequent to July 1, 1995. A lien is imposed for the inheritance tax on all the property of the estate or owned by the decedent for a period of ten years from the date of death of the decedent, unless a remainder or deferred interest is at issue, then the statutory period for the lien may be extended beyond the ten-year limitation to accommodate the term of the interest. For exceptions and additional information, see Iowa Code section 450.7. A tax clearance releases the lien imposed by Iowa Code section 450.7 on all of the property in the gross estate that is reported on the return.

Effective for estates of decedents dying on or after July 1, 1984, if a tax, or additional tax, is found to be due after the issuance of an inheritance tax clearance, the lien under Iowa Code section 450.7 does not have priority against subsequent mortgages, purchases or judgment creditors, unless the department gives notice of the lien by recording the notice in the office of the recorder of the county where the estate is probated, or in the county where the property is located, if the estate has not been administered. As a result, if the department has issued an inheritance tax clearance, an examiner of real estate or personal property titles can rely on this clearance as a release of the inheritance tax lien even though additional tax may be due. This subrule only pertains to the security for the tax under the lien provisions of Iowa Code section 450.7. Other provisions for security for payment of the tax such as judgment liens, mortgages, bonds and distress warrants, are not affected by this subrule. See Iowa Code section 450B.6 and subrule 86.8(15) for the lien for additional tax on property which has been valued at its special use value.

This subrule can be illustrated by the following example:

EXAMPLE: Decedent A died August 15, 1994, a resident of Iowa. By will A devised a 160-acre farm to nephew B and all personal property to niece C. The net estate consisted of the farm with a fair market value of $2,000 per acre, or $320,000 and personal property worth $320,000. On May 24, 1995, the inheritance tax return was filed and tax of $88,000 ($44,000 for each beneficiary) was paid. The department issued its unqualified inheritance tax clearance on June 13, 1995. On July 5, 1995, C pledges some corporate stock inherited from A as security for a bank loan. On August 1, 1995, additional personal property was discovered worth $10,000 ($10,000 x 15% = $1,500) and an amended inheritance tax return was filed without remittance. On August 15, 1995, the department filed an inheritance tax lien for the $1,500 additional tax plus interest (no penalty was imposed because 90 percent of the tax was timely paid).

In this example, the bank's lien on the pledged corporate stock is superior to the inheritance tax lien under Iowa Code section 450.7, because at the time the stock was pledged (July 5, 1995), the department had not filed its lien for the additional tax owing. Since only C owed additional tax, B's share of the estate was not subject to the lien filed August 15, 1995.

c. The section 450B.6 lien. This lien has no application to estates of decedents dying prior to July 1, 1982. In estates of decedents dying on or after July 1, 1982, the lien only applies to the property which has been specially valued under Iowa Code chapter 450B. A clearance certifying full payment of the additional inheritance tax imposed by Iowa Code section 450B.3 releases the lien on the property which was subject to the additional tax. Since the lien imposed by Iowa Code section 450B.6 expires automatically ten years after the decedent's death on property remaining in qualified use during the ten-year period, a tax clearance is not required.

86.12(6) *Distribution of the clearance.* Effective for estates of decedents dying on or after July 1, 1983, only an original inheritance tax clearance will be issued by the department. The personal representative is required to designate on the return who is to receive the clearance. If the return fails to designate a recipient, the clearance will be sent to the clerk of the district court.

Rules 86.9(450) to 86.12(450) are intended to implement Iowa Code chapter 17A and sections 450.1 as amended by 1999 Iowa Acts, chapter 152, section 32, 450.7 as amended by 1999 Iowa Acts, chapter 151, section 45, 450.27 as amended by 1999 Iowa Acts, chapter 152, section 33, and Iowa Code sections 450.5, 450.58, 450.64, 450B.2, 450B.3, 450B.6, 633.477, and 633.479.

701—86.13(450) No lien on the surviving spouse's share of the estate. Effective for estates of decedents dying on or after January 1, 1988, no inheritance tax lien is imposed on the share of the decedent's estate passing to the surviving spouse. In addition, effective for estates of decedents dying on or after July 1, 1997, no inheritance tax lien is imposed on the share of the decedent's estate passing to the decedent's parents, grandparents, great-grandparents, and other lineal ascendants, children (including legally adopted children and biological children entitled to inherit under the laws of this state), grandchildren, great-grandchildren, and other lineal descendants and stepchildren.

This rule is intended to implement Iowa Code sections 450.7(1) and 450.12 as amended by 1997 Iowa Acts, Senate File 35.

701—86.14(450) Computation of shares. The following areas of the law should be applied when computing the shares of an estate for the purpose of Iowa inheritance tax:

86.14(1) *Right to take against the will.* In the event that a decedent dies with a will, a surviving spouse may elect to take against the will and receive a statutory share in real and personal property of the decedent as designated by statute. If a surviving spouse elects to take against the will, this election nullifies gifts to the surviving spouse set forth in the decedent's will. For details regarding this election and statutory share, see Iowa Code sections 633.236 to 633.259 and In the Matter of Campbell, 319 N.W.2d 275, 277 (Iowa 1982).

86.14(2) *Family settlements.* Beneficiaries of an estate may contract to divide real or personal property of the estate, or both, in a manner contrary to the will of the decedent. The court of competent jurisdiction may approve the settlement contract of the beneficiaries. However, the department is not a party to the contract and is not bound to compute the shares of the estate based on the settlement contract. Instead, the department must compute the shares of the estate based upon the terms of the decedent's will, unless a court of competent jurisdiction determines that the will should be set aside. See *In re Estate of Bliven*, 236 N.W.2d 366 (Iowa 1975).

86.14(3) *Order of abatement.* Shares to be received by the beneficiaries of an estate are subject to abatement for the payment of debts, charges, federal and state estate taxes in the order as provided in Iowa Code section 633.436.

86.14(4) *Contrary order of abatement.* An order of abatement contrary to that provided in Iowa Code section 633.436 is provided by statute. For instance, if a provision of a will, trust or other testamentary instrument explicitly directs an order of abatement contrary to Iowa Code section 633.436 or a court of competent jurisdiction determines order of abatement due to a devise that would result in an order of abatement contrary to Iowa Code section 633.436, then the order of abatement indicated is to be followed. For additional information regarding contrary provisions of abatement, see Iowa Code section 633.437. For details regarding marital share and contrary order of abatement see, Estate of Lois C. Olin, Docket No. 92-70-1-0437, Letter of Findings (June 1993).

86.14(5) *"Stepped-up" basis.* If a decedent's will provides that taxes are to be paid from the residue of the estate and not the respective beneficial shares, a "stepped-up" basis will be utilized when computing the shares which will result in the appropriate beneficiaries' shares to include the tax obligation that was paid as an additional inheritance. A "stepped-up" basis is based on gifts prior to the residual share.

EXAMPLE: Decedent's will gives $1,000 to a nephew and directs that the inheritance tax on this bequest be paid from the residue of the estate. The stepped-up share is computed as follows:

Tax: $1,000 x 10% = $100. Divide the tax by the difference between the tax rate and 100 percent (90 percent in this example): $100 divided by 90% = $111.11. Add the stepped-up tax of $111.11 to the original bequest of $1,000. This results in a stepped-up share of $1,111.11, which allows the nephew to keep $1,000 after the tax is paid.

86.14(6) *Antilapse provision and the exception to the antilapse statute.* Iowa Code sections 633.273 and 633.274 set forth guidance on the allocation of property in situations in which a lapse in inheritance may occur. Iowa Code section 633.273 provides that when a devisee predeceases a testator, the issue of the devisee inherits the property, per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary. However, Iowa Code section 633.274 is an exception to Iowa Code section 633.273. If the spouse of the testator predeceases the testator, the inheritance shall lapse, unless the terms of the will clearly and explicitly provide to the contrary. For details regarding the provisions, please see the cited statutes.

86.14(7) *Disclaimer.* A person who is to succeed to real or personal property may refuse to take the property by executing a binding disclaimer which relates back to the date of transfer. Unless the transferor of the property has otherwise provided, disclaimed property passes as if the disclaimant has predeceased the transferor. To be valid, a disclaimer must be in writing and state the property, interest or right being disclaimed, the extent the property, right, or interest is being disclaimed, and be signed and acknowledged by the disclaimant. The disclaimer must be received by the transferor or the transferor's fiduciary not later than nine months after the later of the date in which the property, interest or right being disclaimed was transferred or the date the disclaimant reaches 18 years of age. A disclaimer is irrevocable from the date of its receipt by the transferor or the transferor's fiduciary. For additional details regarding disclaimers, please see Iowa Code section 633.704.

86.14(8) *Right of retainer.* If a distributee of an estate is indebted to the estate, whether the decedent dies testate or intestate, the personal representative has the right to offset the distributee's share in the estate against the amount owed to the estate by the distributee. For additional information regarding this right of offset and retainer, see Iowa Code section 633.471.

86.14(9) *Deferred life estates and remainder interest.* A deferred estate generally occurs as the result of a decedent granting a life estate in property to one person with remainder of the property to another. In such cases, the determination of the tax on the remainder interest to be received by the remainderman may be deferred until the determination of the previous life estate pursuant to Iowa Code section 450.46. Tax on a remainder interest that has been deferred is valued pursuant to Iowa Code section 450.37, with no reduction based on the previous life estate. Tax due on a deferred interest must be paid before the last day of the ninth month from the date of the death of life tenant pursuant to Iowa Code section 450.46. Penalty and interest is not imposed if the tax is paid before the last day of the ninth month from the date of the death of life tenant. If the death of the decedent occurred before July 1, 1981, the tax due on a deferred interest must be paid before the last day of the twelfth month from the date of the death of life tenant. Deferment may be elected due to the fact that the remainder interest is contingent and because the value of the remainder interest may be significantly altered from the time of the decedent's death until the death of the life tenant. A request for deferment may be made on a completed department form and the completed form, with any required documentation, may be filed with the department on or before the due date of the inheritance tax return. Failure to file a completed department form requesting a deferral of tax on the remainder interest with the inheritance tax return will allow the department to provide an automatic deferral for qualifying remainder interests.

If deferral is chosen, an inheritance tax clearance cannot be issued for the estate. Expenses cannot be used to offset the value of the deferred remainder interest. Based upon Iowa Code section 450.12, deductible expenses must be expenses paid by the estate. Expenses incurred by a deferred remainder interest would not qualify based on Iowa Code section 450.12 as deductible expenses. Pursuant to Iowa Code section 450.52, the owner of a deferred remainder interest may choose to pay the tax on the present value of the remainder interest and have the lien on such an interest removed prior to the termination of the previous life estate. If early termination of the deferred remainder interest occurs, the value of the remainder interest will be reduced by the value of remaining previous life estate.

This rule is intended to implement Iowa Code chapter 450.

[Filed 4/10/81, Notice 3/4/81—published 4/29/81, effective 6/3/81]
[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]
[Filed 5/7/82, Notice 3/31/82—published 5/26/82, effective 6/30/82]
[Filed 9/23/82, Notice 8/18/82—published 10/13/82, effective 11/17/82]
[Filed 1/14/83, Notice 10/27/82—published 2/2/83, effective 3/9/83]
[Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]
[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]
[Filed 12/28/84, Notice 11/21/84—published 1/16/85, effective 2/20/85]
[Filed 1/10/85, Notice 12/5/84—published 1/30/85, effective 3/6/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 2/19/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 8/16/90, Notice 7/11/90—published 9/5/90, effective 10/10/90]
[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed 10/11/91, Notice 9/4/91—published 10/30/91, effective 12/4/91]
[Filed 10/9/92, Notice 9/2/92—published 10/28/92, effective 12/2/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 11/18/94, Notice 10/12/94—published 12/7/94, effective 1/11/95]
[Filed 5/5/95, Notice 3/29/95—published 5/24/95, effective 6/28/95]
[Filed 2/7/97, Notice 1/1/97—published 2/26/97, effective 4/2/97]
[Filed 5/16/97, Notice 4/9/97—published 6/4/97, effective 7/9/97]
[Filed 8/6/97, Notice 7/2/97—published 8/27/97, effective 10/1/97]
[Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]
[Filed 6/22/99, Notice 5/5/99—published 7/14/99, effective 8/18/99]
[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

CHAPTER 87
IOWA ESTATE TAX
[Prior to 12/17/86, Revenue Department[730]]

701—87.1(451) Administration.

87.1(1) *Definitions.* The following definitions cover 701—Chapter 87 and are in addition to the definitions contained in Iowa Code section 451.1.

"Administrator" means the administrator of the compliance division of the department of revenue and finance.

"Compliance division" is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

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

"Director" means the director of revenue and finance.

"Tax" means the Iowa estate tax imposed by Iowa Code chapter 451.

"Taxpayer" means the personal representative of the decedent's estate as defined in Iowa Code subsection 633.3(29) and any other person or persons liable for the payment of the federal estate tax under 26 U.S.C. Section 2002.

87.1(2) *Delegation of authority.* The director delegates to the administrator of the compliance division, subject always to the supervision and review by the director, the authority to administer the Iowa estate tax. This delegated authority specifically includes, but is not limited to: the determination of the correct Iowa estate tax liability; making assessments against the taxpayer for additional tax due; authorizing refunds of excessive tax paid; executing releases of the tax lien; and the determination of reasonable cause for failure to file and timely pay the tax due and granting extensions of time to file the return and pay the tax due. The administrator of the compliance division may delegate the examination and audit of tax returns to the supervisors, examiners, agents and any other employees or representatives of the department.

This rule is intended to implement Iowa Code sections 421.2, 421.4 and chapter 451.

701—87.2(451) Confidential and nonconfidential information.

87.2(1) *Confidential information.* Federal tax returns, federal return information, inheritance tax returns, and the books, records, documents and accounts of any person, firm or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the Iowa estate tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rule 701—6.3(17A).

87.2(2) *Information not confidential.* Copies of wills, probate inventories, trust instruments, deeds, release of a real estate lien, and other documents which are filed for public record are not deemed confidential by the department.

This rule is intended to implement Iowa Code chapter 22, and Iowa Code chapters 450 and 451 as amended by 1992 Iowa Acts, Second Extraordinary Session, chapter 1001.

701—87.3(451) Tax imposed, tax returns, and tax due.

87.3(1) *Tax imposed and tax due.* Iowa Code sections 451.2 and 451.8 impose a tax equal to the maximum amount of credit allowable under 26 U.S.C. Section 2011 of the Internal Revenue Code for state death taxes paid on property included in the gross estate of the decedent. The credit allowable under the federal statute is not limited to the Iowa inheritance tax imposed under Iowa Code chapter 450 on the property in the decedent's gross estate, but also includes any other estate, legacy or succession taxes imposed by the state on the property. The Iowa estate tax qualifies as an estate tax specified in the federal credit statute. However, the tax due and payable, as distinguished from the tax imposed, is the maximum credit allowable under 26 U.S.C. Section 2011, less the Iowa inheritance tax paid on the property included in the gross estate of the decedent.

Therefore, the Iowa estate tax due and payable is the amount which the maximum credit allowable under 26 U.S.C. Section 2011 exceeds the Iowa inheritance tax paid.

87.3(2) *Duty of the taxpayer.* The taxpayer does not have the option of electing on the federal estate return, to claim only the Iowa inheritance tax paid on property included in the gross estate of the decedent, or to claim the maximum credit allowed under 26 U.S.C. Section 2011 of the Internal Revenue Code. The maximum credit allowable under the federal statute must be claimed on the federal estate tax return. If the taxpayer has filed a federal estate tax return claiming an amount of credit less than the maximum credit allowable, the taxpayer has the duty to amend the federal estate tax return and claim the maximum credit allowable.

If there is a change in the amount of inheritance tax paid or in the amount of the maximum federal credit allowable for state death taxes paid (such as the result of a federal audit or an audit of the inheritance tax return) which results in an estate tax, or additional estate tax due, the taxpayer has the duty to promptly report the change to the department on an amended return, and pay the tax, or additional tax due, together with any penalty and interest. See Iowa Code section 451.8.

Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner or beneficiary.

87.3(3) *Form of return.* The final inheritance tax return form provided for in 701—subrule 86.2(2) shall be the return for reporting the Iowa estate tax due. The amount of the Iowa estate tax due shall be listed separately on the return from the amount of the inheritance tax shown to be due.

87.3(4) *Liability for the tax.* The personal representative of the decedent's estate and any person, including a trustee, in actual or constructive possession of any property included in the gross estate, have the duty to file the return with the department and pay the tax due. The shares of heirs and beneficiaries abate for the payment of the tax as provided in Iowa Code sections 633.436 and 633.437 in the same manner as they abate for the payment of the federal estate tax. See *Bergren v. Mason,* 163 N.W.2d 374 (Iowa 1968) for the proper method to abate shares to pay the federal estate tax.

Effective for estates with decedents dying on or after July 1, 1999, all the provisions of Iowa Code chapter 450 regarding liens, determination, imposition, payment, collection of inheritance tax, computation and imposition of penalty and interest upon delinquent taxes and the confidential aspects of the tax return also apply to the administration of estate tax imposed under this chapter, except to the extent that such rules may conflict with Iowa Code chapter 451 and the rules set forth in this chapter. The exceptions of the lien provisions found in Iowa Code section 450.7 do not apply to this chapter.

87.3(5) *Computation of the tax.*

a. Iowa decedent. If the decedent was a resident of Iowa at the time of death and all of the property included in the gross estate has a situs in Iowa, the total amount allowable as a credit under 26 U.S.C. Section 2001 shall be the tax imposed. If part of the gross estate of an Iowa resident decedent consists of property with a situs at death in a state other than Iowa, the tax imposed shall be prorated in the ratio that the Iowa property included in the gross estate bears to the total gross estate.

701—87.5(451) Appeals.

Rule 701—86.4(450), providing for an appeal to the director and a subsequent appeal to district court under the Iowa Administrative Procedure Act in inheritance tax disputes, shall also be the rule for appeals in Iowa estate tax disputes. See 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A and sections 450.94 and 451.12.

[Filed 4/23/81, Notice 3/18/81—published 5/13/81, effective 6/17/81]
[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]
[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]
[Filed 9/23/82, Notice 8/18/82—published 10/13/82, effective 11/17/82]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 10/13/89, Notice 9/6/89—published 11/1/89, effective 12/6/89]
[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed 10/9/92, Notice 9/2/92—published 10/28/92, effective 12/2/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 6/22/99, Notice 5/5/99—published 7/14/99, effective 8/18/99]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

701—89.7(422) Interest or refunds on net operating loss carrybacks.

89.7(1) Reserved.

89.7(2) *Interest on refunds and tax paid prior to due date.* For the purpose of determining the time interest begins to accrue, all income tax withheld, estimated tax paid and other tax paid prior to the due date shall be deemed to be paid on the last day the return is required to be filed disregarding any extensions of time to file the return and pay the tax.

89.7(3) *Interest on a net operating loss carryback—the second calendar month period—on or after April 30, 1981.* For net operating losses occurring in any of the taxable years ending on or after April 30, 1981, interest accrues on excess tax paid in a prior year, if the loss is carried back to such year, only after the close of the taxable year in which the loss occurs or on the first day of the second calendar month following the date the tax to be refunded was paid, whichever time is later.

This rule is intended to implement Iowa Code section 422.25.

701—89.8(422) Reportable income and deductions.

89.8(1) *Application of the Internal Revenue Code.* Iowa Code section 422.4(16) provides that taxable income of estates and trusts for Iowa income tax purposes is the same as taxable income for federal income tax purposes, subject to certain adjustments specified in Iowa Code sections 422.7 and 422.9. Therefore, the Internal Revenue Code is also Iowa law insofar as it relates to what constitutes gross income, allowable deductions and distributions, subject to the adjustments specified above. See *First National Bank of Ottumwa v. Bair,* 252 N.W.2d 723 (Iowa 1977).

For purposes of a distribution deduction under this chapter, an estate or trust shall receive a distribution deduction only for income taxable to Iowa. For example, municipal interest will be included in the distribution deduction because it is taxable to Iowa. U.S. government interest would not be included because it is not taxable to Iowa.

For tax years ending after August 5, 1997, if the trust is a qualified preneed funeral trust as set forth in Section 685 of the Internal Revenue Code and the trustee has elected the special tax treatment under Section 685 of the Internal Revenue Code, neither the trust nor the beneficiary is subject to Iowa income tax on income accruing to the trust.

89.8(2) *Authority of federal court cases, regulations and rulings.* The director has the responsibility to enforce and interpret the law relating to the taxes the department is obligated to administer, including those portions of the Internal Revenue Code which are Iowa law under Iowa Code section 422.4. Federal regulations may be interpreted by Iowa courts for state tax purposes. *In re Estate of Louden,* 249 Iowa 1393, 1396, 92 N.W.2d 409 (1958). However, the construction of statutes by a court of the jurisdiction where the statute originated properly commands consideration and is highly persuasive. *Eddy v. Short,* 190 Iowa 1376, 1383, 179 N.W. 818 (1920), *In re Estate of Millard,* 251 Iowa 1282, 1292, 105 N.W.2d 95 (1960). Therefore, while federal court cases, regulations and rulings interpreting the Internal Revenue Code will be accorded every consideration, the department has the right to make its own interpretation of the Internal Revenue Code as to what constitutes taxable income for Iowa tax purposes, consistent with Iowa statutes and court decisions. Also see 701—subrule 41.2.

89.8(3) *Reportable income in general—Iowa estates and trusts.* Estates of Iowa resident decedents and trusts with a situs in Iowa must report all income received from sources within and without Iowa, regardless of whether the income is from real, personal, tangible or intangible property. See 89.8(11)*"b"* for the credit allowable against the Iowa tax for income tax paid to another state or country on income reported to Iowa for taxation.

89.8(4) *Reportable income in general—foreign situs estates and trusts.* Estates and trusts with a situs outside Iowa must report only that portion of income which is derived from Iowa sources. Examples of Iowa source income include, but are not limited to: income from real and tangible personal property with a situs in Iowa, such as a farm and from a business located in Iowa; the capital gain portion of an installment sale contract of Iowa situs property; and wages, salaries and other compensation for services performed in Iowa, but received after the death of the decedent.

Foreign situs estates and trusts must report income from intangible personal property, such as annuities, interest on bank deposits and dividends, but only to the extent the income is derived from a business, trade, profession or occupation carried on in Iowa.

89.8(5) *Income from property subject to the jurisdiction of the probate court.*

a. Probate property subject to possession by the personal representative. Income received on probate property after the decedent's death is chargeable to the estate or to the person succeeding to the decedent's property depending on whether the personal representative has the right to, or has taken possession of, the probate property producing the income. (Rev. Ruling 57-133, 1-CB 200 (1957).) If the personal representative has taken possession of or has the right to possession of a specific item of probate property, the income from this property is estate income, even though the personal representative is bound by law to distribute the income during the course of administration to a beneficiary. *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978); *In re Estate of Herring,* 265 N.W.2d 740 (Iowa 1978). The personal representative is charged with the income from this property for each taxable year until the property is distributed or otherwise disposed of. Iowa Code section 633.351 (probate code) specifies the personal representative shall take possession of the decedent's personal property, except exempt property, and also the decedent's real estate, except the homestead, if any one of the following conditions are met: if there is no distributee present and competent to take possession; if the real estate is subject to a lease; or if the distributee is present and competent and gives consent to possession. *Colthurst v. Colthurst,* 265 N.W.2d 590 (Iowa 1978); *In re Estate of Peterson,* 263 N.W.2d 555 (Iowa Ct. of Appeals 1977). In addition, Iowa Code section 633.386 (probate code) gives the personal representative authority to lease real estate (and therefore to take possession) in order to pay the debts and charges of the estate.

89.10(3) *Requirements for a certificate of acquittance.* The issuance of an income tax certificate of acquittance is dependent upon full payment of the income tax liability of the estate or trust for the period of administration. This includes the obligation to withhold income tax on distributions to nonresident beneficiaries. In the case of an estate, the income tax liability of the decedent for both prior years and the year of death must be paid to the extent of the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's income tax liability according to the order of payment of an estate's debts and charges specified in Iowa Code section 633.425. If the probate property of the estate is insufficient to pay the decedent's income tax obligation in full, the department, in lieu of a certificate of acquittance, shall issue a certificate stating that the probate property is insufficient to pay the decedent's income tax liability and that the department does not object to the closure of the estate. In the event the decedent's income tax obligation is not paid in full, the closure of the decedent's estate does not release any other person who is liable to pay the decedent's income tax obligation.

89.10(4) *The extent of the certificate.* An income tax certificate of acquittance is a statement of the department certifying that all income taxes due from the estate or trust have been paid in full to the extent of the income and deductions reported to the department. The certificate fulfills the statutory requirements of Iowa Code section 422.27 and the Iowa income tax portion of the requirements of Iowa Code sections 633.477 and 633.479. Providing all other closure requirements are met, the certificate permits the closure of the estate or trust by the court. However, the certificate of acquittance is not a release of liability for any income tax or additional tax that may become due, such as the result of an audit by the Internal Revenue Service or because of additional income not reported. See 701—subrule 38.2(1) for the limitations on the period of time to conduct income tax audits.

89.10(5) *No income tax certificate of acquittance required—exception to general rule.* If all of the property included in the estate is held in joint tenancy with rights of survivorship by a husband and wife as the only joint tenants, then in this case the provisions of Iowa Code section 422.27, subsection 1, do not apply and an income tax certificate of acquittance from the department is not required.

This rule is intended to implement Iowa Code sections 422.27, 633.425, 633.477 and 633.479.

701—89.11(422) Appeals to the director. An estate or trust has the right to appeal to the director for a revision of an assessment for additional tax due, the denial or reduction of a claim for refund, the denial of a request for a waiver of a penalty and the denial of a request for an income tax certificate of acquittance. The beneficiary of an estate or trust has the right to appeal a determination of the correct amount of income distributed and a determination of the correct allocation of deductions, credits, losses and expenses between the estate or trust and the beneficiary. The personal representative of an estate and the trustee of a trust have the right to appeal a determination of personal liability for income taxes required to be paid or withheld and for a penalty personally assessed. An appeal to the director must be in writing and must be made within 60 days of the notice of assessment and the other matters which are subject to appeal or for assessments issued on or after January 1, 1995, if the beneficiary of an estate or trust, the personal representative of an estate, or the trustee of a trust fails to timely appeal a notice of assessment, the person may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. 701—Chapter 7 shall govern appeals to the director. See specifically rules 701—7.41(17A) to 7.54(17A) governing taxpayer protests.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 421.60 and 422.28.

[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]
[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]
[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]
[Filed 9/23/82, Notice 8/18/82—published 10/13/82, effective 11/17/82]
[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]
[Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]
[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed 8/16/91, Notice 7/10/91—published 9/4/91, effective 10/9/91]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 10/23/92, Notice 9/2/92—published 11/11/92, effective 12/16/92]
[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]
[Filed 11/18/94, Notice 10/12/94—published 12/7/94, effective 1/11/95]
[Filed 2/7/97, Notice 1/1/97—published 2/26/97, effective 4/2/97]
[Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]
[Filed 1/9/98, Notice 12/3/97—published 1/28/98, effective 3/4/98]
[Filed 6/22/99, Notice 5/5/99—published 7/14/99, effective 8/18/99]
[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]
[Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]

TREASURER OF STATE[781]

Editorially transferred from [830] to [781], IAC Supp. 1/28/87

CHAPTER 6
COORDINATION OF
BONDING ACTIVITIES

6.1(12) Scope
6.2(12) Definitions
6.3(12) Intention to issue obligations
6.4(12) Selection of vendors of professional services
6.5(12) Exceptions to vendor selection procedure
6.6(12) Investment of proceeds
6.7(12) Information to be provided to treasurer
6.8(12) Costs of vendor selection

CHAPTER 7
REPORTING ON STATE AND LOCAL
GOVERNMENT BONDING ACTIVITIES

7.1(12) Scope
7.2(12) Definitions
7.3(12) Form
7.4(12) Filing procedures
7.5(12) Who is required to file
7.6(12) Publication procedures

CHAPTER 8
ACCEPTING CREDIT CARD PAYMENTS

8.1(12) Scope
8.2(12) Definitions
8.3(12) Requirements for accepting credit card payments
8.4(12) Administrative procedures for accepting credit card payments
8.5(12) Rate adjustments
8.6(12) Accounting procedures

CHAPTER 9
UNCLAIMED PROPERTY

9.1(556) Availability of records

CHAPTER 10
INFORMAL CLAIMS
FOR SECOND INJURY FUND

10.1(85) Benefits of second injury fund

CHAPTER 11
Reserved

CHAPTER 12
TECHNICAL INVESTMENT
INFORMATION AND ASSISTANCE

12.1(12) Definitions
12.2(12) Availability of technical investment information

CHAPTER 13
DEPOSIT AND SECURITY OF PUBLIC
FUNDS IN BANKS

13.1(12C) Scope and transition procedures
13.2(12C) Definitions
13.3(12C) Forms
13.4(12C) Requirements for becoming an approved bank
13.5(12C) Duties of an approved bank
13.6(12C) Requirements for becoming an approved custodian
13.7(12C) Duties of the approved custodian
13.8(12C) Withdrawals, substitutions, and additions of pledged collateral
13.9(12C) Eligible collateral provisions
13.10(12C) Termination of approved custodian designation
13.11(12C) Sale or merger of an approved custodian
13.12(12C) Termination of "approved bank" designation
13.13(12C) Sale or merger of an approved bank
13.14(12C) Procedures upon default of an approved bank

4.8(2) Lenders shall renew LIFT targeted small business loans at the LIFT loan interest rate set and communicated monthly by the treasurer of state.

781—4.9(12) LIFT—rural small business transfer program.

4.9(1) Eligibility for this program is limited to borrowers who purchase an existing rural small business with annual sales of less than $2 million. The small business must be located in a community with a population of 5000 or less, for which local competition does not exist, and the loss of which will work a hardship on the rural community.

4.9(2) Combined net worth, as defined by this program, shall equal assets less liabilities for each owner of the business and persons borrowing for the business combined. Lenders shall not include the equity an owner or borrower may have in a personal residence for purposes of determining combined net worth.

4.9(3) Proceeds of these loans may be used for a portion of the business which is essential to its continued viability, including real estate where the business is located, fixtures attached to the real estate, equipment relied upon by the business, and the inventory for sale by the business.

4.9(4) The maximum amount that a borrower or business may borrow from this program is $50,000.

4.9(5) Proceeds may not be used to speculate in real estate or for real estate held for investment purposes. Proceeds may not be used to buy real estate for the purposes of renting or leasing.

4.9(6) Home-based businesses qualify as a LIFT rural small business transfer only if the person qualifies for a tax deduction for that portion of a home used for business pursuant to regulations of the Internal Revenue Service. Applicants who wish to borrow from the LIFT rural small business transfer program, who otherwise qualify, and who have home-based businesses or wish to begin a home-based business must establish to the satisfaction of the lender that they qualify for a tax deduction for that portion of their home they use or intend to use for their business pursuant to regulations of the Internal Revenue Service.

781—4.10(12) LIFT—traditional livestock producer's linked investment loan program.

4.10(1) A "qualified linked investment" means a linked investment in which a certificate of deposit is placed by the treasurer of state with an eligible lending institution under the traditional livestock producers linked investment program established under 1999 Iowa Acts, House File 779, section 4.

4.10(2) "Livestock operation" means an animal feeding operation as defined in Iowa Code section 455B.161 which states that an "animal feeding operation" means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. An animal feeding operation does not include a livestock market.

4.10(3) A borrower who qualifies for a qualified linked investment may use the loan proceeds for new or existing debt directly related to a livestock operation including but not limited to hogs, cattle, feed, supplies, veterinary services, equipment and machinery. For purposes of a qualified linked investment, cattle includes dairy cattle.

4.10(4) A borrower who qualifies for a qualified linked investment may not use the loan proceeds for new or existing debt for land, buildings, or vehicles. A borrower or lender may use land, buildings, or vehicles as collateral for a loan under this program.

4.10(5) The maximum amount that a borrower may borrow from this program is $100,000.

4.10(6) For a qualified linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed three years.

4.10(7) A borrower is not qualified for a qualified linked investment if the borrower is receiving interest assistance from the Farm Service Agency of the United States Department of Agriculture.

4.10(8) A lender shall use Form 655-0216 to determine and verify the borrower meets the gross income requirements of a qualified linked investment.

781—4.11(12) LIFT—value-added agriculture linked investment loan program.

4.11(1) "Value-added agriculture" means processing agricultural commodities raised in Iowa into a more highly valued state by the addition of capital and labor inputs in which the form of the original agricultural commodity is changed or the agricultural commodity is produced for a new market.

4.11(2) "Value-added project" means specific company or business operation that qualifies for the value-added linked investment program.

4.11(3) "Agricultural commodities" means corn, soybeans, oats, hay, hogs, cattle, dairy cattle, milk, sheep, chicken, turkey and eggs.

4.11(4) The treasurer of state recognizes this program is part of a state effort to develop and promote value-added agriculture. The treasurer will give stronger consideration to projects developed in conjunction with or recommended by the Iowa department of economic development, the department of agriculture and land stewardship or any other state-sponsored value-added program.

4.11(5) The value-added project, business or farming operation, borrower, and lender must be located in Iowa.

4.11(6) The borrower must be at least 18 years of age.

4.11(7) A borrower that is currently participating or that has previously participated in any other LIFT program in the state treasurer's office is not eligible.

4.11(8) A borrower who qualifies for a value-added linked investment loan may use the loan proceeds for new debt directly related to a value-added agriculture project approved by the state treasurer's office. The borrower may not refinance debt under this program.

4.11(9) A borrower who qualifies for a value-added linked investment loan may not use the loan proceeds for financing of vehicles.

4.11(10) The maximum amount any value-added project can receive from all borrowers shall be $1,000,000. The treasurer can increase this limit at the governor's request.

4.11(11) The maximum amount that a borrower may borrow from this program is $250,000.

4.11(12) For a value-added linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed five years.

4.11(13) A lender shall use Form 655-0217 to apply for the program and verify that the borrower qualifies for the program.

These rules are intended to implement Iowa Code sections 12.32 to 12.37 and Iowa Code Supplement sections 12.34, 12.34A, and 12.34B.

[Filed 11/22/89, Notice 7/26/89—published 12/13/89, effective 1/17/90]
[Filed 4/12/90, Notice 12/27/89—published 5/2/90, effective 6/6/90]
[Filed emergency 9/11/92—published 9/30/92, effective 9/11/92]
[Filed emergency 5/4/95—published 5/24/95, effective 5/5/95]
[Filed 11/17/95, Notice 10/11/95—published 12/6/95, effective 1/10/96]
[Filed emergency 6/30/97—published 7/30/97, effective 7/1/97]
[Filed emergency 6/25/99—published 7/14/99, effective 6/25/99]
[Filed emergency 12/8/99 after Notice 11/3/99—published 12/29/99, effective 12/10/99]

VETERANS AFFAIRS COMMISSION[801]

Created by 1992 Iowa Acts, chapter 1140, section 8
[Prior to 8/21/91, see Veterans Affairs Department[841]]
[Prior to 1/6/93, see Veterans Affairs Division[613]]

ARMED FORCES GRAVES REGISTRATION

801—1.7(35A,35B) Armed forces graves registration. Armed forces graves registration shall be completed as follows:

1.7(1) *Duties of the funeral director.* The funeral director who contracts to inter the deceased veteran shall complete Armed Forces Graves Registration Record, Form 582-1002, in duplicate, forwarding the original and copy to the county commission.

1.7(2) *Duties of the county commission.* The county commission shall record the information alphabetically, and by description of location in the cemetery where the veteran is buried, in a book prescribed by the commission and kept for that purpose in the office of the county commission. The county commission shall forward the original Armed Forces Graves Registration Record to the executive director at the address provided in subrule 1.3(1).

1.7(3) *Where filed.* The original Armed Forces Graves Registration Record shall be filed at the office of the executive director.

1.7(4) *Forms.* Additional Armed Forces Graves Registration Record forms may be obtained by contacting the executive director's office in accordance with subrule 1.3(1).

This rule is intended to implement Iowa Code sections 35A.3 and 35B.19.

801—1.8 and **1.9** Reserved.

WAR ORPHANS EDUCATIONAL AID

801—1.10(35,35A) War orphans educational aid. The war orphans educational aid program shall be administered in accordance with Iowa Code sections 35.9 and 35.10.

1.10(1) *Definition.* A war orphan is:

a. The child of a man or woman who died in service or as a result of such service during one of the following periods:

(1) World War I between April 6, 1917, and June 2, 1921, inclusive.

(2) World War II between September 16, 1940, and December 31, 1946, inclusive.

(3) The Korean Conflict between June 25, 1950, and January 31, 1955, inclusive.

(4) The Vietnam Conflict between August 5, 1964, and May 7, 1975, inclusive.

(5) The Persian Gulf Conflict between August 2, 1990, and the date the President or the Congress of the United States declares a permanent cessation of hostilities, inclusive.

(6) While serving in the military or naval forces of the United States, to include members of the reserve components performing service or duties required or authorized under Chapter 39, United States Code, and Title 32, United States Code, Sections 502 through 505.

(7) Active state service required or authorized under Iowa Code chapter 29A, or as a result of such service.

b. The child of a national guardsman or other members of reserve components who die or are killed in the performance of training or other duties ordered by competent federal or state authorities.

1.10(2) *Education requirement.* A war orphan shall have graduated from a high school or educational institution offering a course of training equivalent to high school training.

1.10(3) *Residency requirement.* A war orphan shall have lived in the state of Iowa for at least two years immediately preceding the filing of an application.

1.10(4) *Location of school.* A war orphan shall attend any educational or training institution of college grade or any business or vocational training school of standards approved by the commission located within the state of Iowa.

1.10(5) *Amount of payment.* The amount of war orphans educational aid allowed eligible war orphans is based upon an appropriation made by the Iowa legislature on an annual basis. In no case can payment of war orphans educational aid be in excess of $600 per person per year. Lifetime maximum is $3000 per person.

a. Payments are made directly to the school by quarters, semesters, or periods, however the school operates.

b. No payments are made directly to the war orphan.

c. Full-time students are honored for higher payments over part-time students. Payments are prorated by the commission on behalf of a war orphan on the basis of time spent in school.

d. The school shall submit triplicate billing to the executive director thereby certifying that a war orphan is in attendance and the number of hours.

1.10(6) *How aid may be used.* War orphans educational aid may be used for tuition, fees, books, board and room, or any other necessity for attendance at a school of learning and certified by said school to the executive director.

1.10(7) *Scholastic and financial standing.* War orphans educational aid is a gift from the state of Iowa to eligible war orphans and is given regardless of scholastic ability or financial standing.

1.10(8) *Unrestricted factors.* There are no restrictions on war orphans with respect to age, number of years they plan to attend a school of learning, or their marital status.

1.10(9) *Application.* War orphans educational aid applications can be acquired upon request from the executive director at the address as set out in subrule 1.3(1).

a. Applications shall be completed by the war orphan in ink, by typewriter, or computer and the application shall be returned to the executive director.

b. A copy of the war orphan's birth certificate and proof of death of the veteran parent shall accompany the application. Proof of death of the veteran while in service can be a telegram, letter, or certified copy from the Department of Defense. Proof of death after service is a copy of a death certificate.

1.10(10) *Verification.* A service-connected death of a war veteran shall be verified by the executive director with the Department of Veterans Affairs.

This rule is intended to implement Iowa Code sections 35.7, 35.9, 35.10 and 35.11.

801—1.11(35) Merchant marine war bonus. The merchant marine war bonus shall be administered in accordance with 1999 Iowa Acts, chapter 180, sections 2 and 5.

1.11(1) *Eligibility.* This rule applies to former members of the active, oceangoing merchant marines who served during World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, and who had maintained residence in this state for a period of at least six months immediately before entering the merchant marine service, and who were discharged under honorable conditions.

1.11(2) *Application procedures.* The application is available at the commission of veterans affairs. The application may be submitted to the commission with name, address and telephone number, along with required document DD-214.

1.11(3) *Department processing and investigation.*

a. The time period for filing applications shall be from July 1, 1999, to July 1, 2004.

b. The executive director of the commission of veterans affairs will approve or disapprove the application.

1.11(4) *Appeals procedure.* Decisions of the executive director are subject to review by the commission. Applicants may appeal the decisions of the commission as provided by Iowa Code section 17A.19.

1.11(5) *Office address.* The office of the commission of veterans affairs is located at 7700 NW Beaver Drive, Building A6A, Johnston, Iowa 50131-1902.

1.11(6) *Qualified recipient and amount of payment.* The former merchant marine or surviving unremarried widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid and entitled to receive from moneys appropriated for that purpose the sum of $12.50 for each month that the person was on active duty in the merchant marine service, all before December 31, 1946, not to exceed a total sum of $500.

801—1.12 to 1.14 Reserved.

TRAINING FOR COUNTY COMMISSIONS

801—1.15(35A,35B) Training for county commissions. The commission shall provide training for officers in accordance with Iowa Code section 35A.3.

1.15(1) An officer shall attend an annual school of instruction. After attending the annual school of instruction, the officer must take and satisfactorily pass a written test prescribed by the commission. The commission shall issue a certificate of training to the officer upon completion of the annual school of instruction. Newly appointed officers must complete the annual school of instruction within one year from the date of appointment.

1.15(2) An officer must maintain certification to remain in office. To maintain certification, an officer shall attend an annual school of instruction. The commission shall issue a certificate of training to the officer upon completion of the annual school of instruction.

1.15(3) The annual school of instruction and all associated training materials will be provided at the expense of the commission.

1.15(4) Subject to available appropriation, travel and lodging expenses incurred in attending the annual school of instruction shall be eligible for reimbursement by the respective county from the appropriation authorized in Iowa Code section 35B.14.

1.15(5) Attendance at training courses sponsored and directed by veteran organizations other than the commission may not be substituted for the annual school of instruction.

1.15(6) The executive director shall maintain documentation regarding the school of instruction including, but not limited to, agendas, presentation dates, attendees, test results, and issuance of certificates of training.

1.15(7) Inquiries regarding an annual school of instruction shall be directed to the executive director at the address set out in subrule 1.3(1). The executive director shall answer such inquiries.

1.15(8) Disputes regarding the annual school of instruction, certificates of training and related matters shall be reviewed by the chairperson of the commission and a decision rendered by same. Disputes which remain unresolved shall be referred to the commission. The decision of the commission shall be final.

These rules are intended to implement Iowa Code chapters 35 and 35A and sections 35B.6, 35B.11, 35D.1, 35D.13, 35D.16, and 35D.17.

[Filed 5/10/79, Notice 3/7/79—published 5/30/79, effective 7/5/79]
[Filed emergency 6/19/79—published 7/11/79, effective 8/8/79]
[Filed emergency 8/5/91—published 8/21/91, effective 8/21/91]
[Filed emergency 12/18/92—published 1/6/93, effective 1/1/93]
[Filed 12/19/96, Notice 10/23/96—published 1/15/97, effective 2/19/97]
[Filed 7/24/98, Notice 1/28/98—published 8/12/98, effective 9/16/98]
[Filed emergency 12/3/99—published 12/29/99, effective 12/3/99]

ELDORA TRAINING SCHOOL
See JUVENILES

ELECTIONS
See also ETHICS AND CAMPAIGN DISCLOSURE; POLITICS; VOTER REGISTRATION COMMISSION
Ballots
Absentee **189**—16.1; **721**—21.1(7,14), 21.2, 21.300, 21.301, 21.359–21.361, 22.50–22.52, 22.250, 22.251, 22.461, 22.462
Boxes, emergency **721**—22.231
Commissioner duties **721**—22.431
Commodity referendums **21**—20.4
Credit unions **189**—chs 12, 16, 19
Defective **721**—22.201(1), 22.240(3), 22.261
Gambling **721**—21.820(3,4)
Lake districts, benefited recreational, trustees **721**—21.830
Layout **721**—ch 21
Local option tax **721**—21.801
Paper **721**—22.100, 22.102, 22.221, 22.232, 22.431
Portable vote **721**—22.100
Sample **401**—5.19, 5.20; **721**—22.221
Secrecy **721**—21.359, 22.221, 22.232, 22.461(3)
Special **721**—21.4(2), 22.221, 22.240(4)
Stamping **721**—21.1(15)
Tabulation **721**—22.52, 22.101, 22.200, 22.201, 22.231, 22.232(4,5), 22.240, 22.342, 22.431(4), 22.461(5,6)
Telephone, enhanced 911 emergency service referendum) **721**—21.810
Test **721**—22.11
Beef industry council **101**—ch 4
Benefited recreational lake districts **721**—21.830
Boundary changes, municipal **263**—3.31, 4.1, 4.4; **721**—21.400
Campaign funds, *see ETHICS AND CAMPAIGN DISCLOSURE*
Checkoffs, *see CHECKOFFS*
City
Charter commission, appointment petition **721**—21.402
Ward seats, signatures **721**—21.400

ELECTIONS (cont'd)

Nomination papers **721**—1.4(4)
Petitions, charter commissions, appointment **721**—21.402
Postponement **721**—21.1(6–10)
Proxies, domestic stock insurers **191**—ch 7
Public officials, retirement benefit waivers **581**—21.11(9)
Referendums, agricultural products, *see CHECKOFFS*
Registers **821**—ch 5
Repeat **721**—21.1(6,15)
Results **721**—21.1(9), 21.810(3)*b,c*, 21.820(5), 21.830(3), 22.240, 22.241, ch 24
Schools
  Candidates, committee **351**—4.1(2)*b*, 6.1
  Directors **351**—12.1(1); **721**—21.500
  Infrastructure projects, taxation **701**—108.2; **721**—21.803
Supervisors, county, *see COUNTIES*
Telephone, enhanced 911 emergency service referendum **721**—21.810
Unions **621**—chs 4, 5
Utilities, rate regulation **199**—7.13
Voting
  Absentee **721**—21.1(7,14), 21.300, 21.359–21.361, *see also Ballots above*
  Employees, leaves **581**—14.13; **681**—3.147
  Forms, *see Forms above*
  Information, corporations **351**—4.82
  Recount **721**—21.25
  Registration **701**—39.3(5); **721**—21.1(6), 21.4, 21.300(2)*e*, 21.300(5)*a*, 21.300(10), 21.301, ch 23; **821**—chs 1–11; **877**—ch 24, *see also VOTER REGISTRATION COMMISSION*
  Systems, alternative **721**—ch 22, *see also Examiners Board, Voting Machines/Systems above*
  Voter identification **721**—21.3

ELECTRICAL SAFETY CODE
Generally **199**—11.1, ch 25; **661**—16.200

ELECTRICITY/STEAM
Effluent/pretreatment standards **567**—62.4(23,49)
Sales/use tax **701**—15.3(4), 16.20, 17.2, 17.3, 17.9(5), 17.31, 18.30(3), 18.39, 18.56, 18.58, 26.16, *see also TAXATION: Sales and Use: Utilities*

ELECTRIC UTILITIES

ELECTRIC UTILITIES (cont'd)
Commerce department, utilities division

EMERGENCY MEDICAL CARE

See also AMBULANCES/RESCUE VEHICLES; DEFIBRILLATION

EMPLOYERS
See EMPLOYMENT

EMPLOYMENT
See also LABOR SERVICES DIVISION; PERSONNEL DEPARTMENT; PUBLIC EMPLOYMENT RELATIONS BOARD (PERB); REGENTS BOARD; SMALL BUSINESS; TAXATION; WORK AND TRAINING PROGRAMS; WORKFORCE DEVELOPMENT BOARD/CENTER ADMINISTRATION; WORKFORCE DEVELOPMENT DEPARTMENT
Affirmative action/equal opportunity **161**—8.6, 8.7, 8.65; **223**—35.6(6)*e*; **281**—94.2, ch 95; **283**—12.2(6); **321**—2.5, 3.4, 4.22, 6.1(5,6); **429**—ch 5; **441**—1.3(2)*e*, 105.3, 114.7(1)*a*, 150.3(3), 150.5(3), 150.7(3), 150.22(5), 152.2(8), 153.57(1)*h*; **481**—62.9(1)*g*, 65.9(1)*g*; **541**—ch 4; **581**—5.1(3), 10.1(3), 19.1(1), ch 20; **641**—72.4(4); **643**—3.21(8)*b*, 6.3(2)*b*; **681**—3.1, 3.69(1), ch 7, 8.6(3); **761**—125.1; **877**—8.1, 12.19
Agencies/services **161**—8.2, 8.65(5); **875**—1.3, 1.23(16), ch 38, *see also EMPLOYMENT AGENCIES*
Aid to dependent children, *see FAMILY INVESTMENT PROGRAM (FIP)*
Aliens **871**—23.18(4), 24.60, 25.3(1)*i*; **877**—8.1, 8.7
Appeals/hearings
- Blind department **111**—ch 8
- Board, employment appeal **481**—1.8; **486**—chs 1–8, 10, 11, *see also EMPLOYMENT APPEAL BOARD*
- Dismissals **486**—ch 6; **581**—9.2, 11.3(7), ch 12
- Inspections and appeals **481**—1.6"10"
- Job Training Partnership Act (JTPA) program **877**—12.4(4), 12.14(4)*d*(2), 12.18(4–7)
- Labor services **875**—9.10
- Personnel department **481**—1.6"10"; **486**—ch 5; **581**—3.5, 4.4(7)*a*, 5.2(6), 6.5"10," 8.5, 8.7, 8.9, 8.10, 8.13, 9.1, 9.2, 9.9, 10.4, 11.1(1)*a*, 11.2(5), 11.3(6)*c*(3)"6," 11.3(7), ch 12, 15.13(7), 21.9
- Public employment relations board (PERB) **621**—ch 11
- Regents **681**—3.14, 3.26, 3.37, 3.127–3.129, 7.6(2)*h*, 8:6(4), 9.1(3)*a*, 11.1(4), 11.5, 12.10, 12.11
- Unemployment, *see Unemployment Compensation below*
- Vocational rehabilitation clients **281**—56.14
- Workers' compensation division **876**—ch 4

Apprenticeships **261**—ch 11; **281**—21.72–21.74, 48.2
Blind **111**—chs 7, 8, 10; **871**—24.13(4)*g*