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

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

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

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in the first column below correspond to the divider tabs in the IAC binders. Obsolete pages of the IAC are listed in the "Remove Old Pages" column. New and replacement pages included in this Supplement are listed in the "Insert New Pages" column. Carefully remove and insert pages as directed.

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UPDATING INSTRUCTIONS
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[Previous Supplement dated 3/8/00]

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*These pages may be archived for tracing the history of a rule.

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

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

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

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

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

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

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

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

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

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

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

9.5(5) *Hearing.*

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

b. Hearing time frames.

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

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

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

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

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

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

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

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

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

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

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

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

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

9.6(3) Notice of person's rights in the discovery process shall be given to the person from whom discovery is sought. This notice is sufficient if it sets out in brief the person's rights under these rules: to object to the discovery method; to seek a protective order; and to legal counsel.

9.6(4) A rule in this chapter requiring a matter to be under oath may be satisfied by an unsworn written statement in substantially the following form: "I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

"

_____ _____

Date Signature

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

161—9.10(216) Requests for admission.

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

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

Notice of the effect of an admission shall be given to the person from whom the admission is sought.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

161—9.20(216) Reading and signing depositions.

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

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

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

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

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

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

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

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

161—9.23(216) Deposition subpoena.

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

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

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

161—9.25(216) Irregularities and objections.

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

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

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

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

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

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

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

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REAL ESTATE COMMISSION[193E]

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

CHAPTER 3
PRELICENSE EDUCATION AND CONTINUING EDUCATION

CHAPTER 4
INVESTIGATIONS AND DISCIPLINARY PROCEDURES

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

CHAPTER 1
BUSINESS CONDUCT
[Prior to 6/15/88, see Real Estate Commission[700] Ch 1]

193E—1.1(543B) Definitions.

"Advance fees" shall mean any fees charged for services to be paid in advance of the rendering of such services including, without limitation, any fees charged for listing, advertising, or offering for sale or lease any real property, but excluding any fees paid solely for advertisement in a newspaper of general circulation.

"Affiliated licensee" means a broker associate or salesperson, as defined in Iowa Code section 543B.5, who is under the supervision of a broker.

"Brokerage agreement" means a contract between a broker and a client which establishes the relationship between the parties as to the brokerage services to be performed.

"Buyer" includes a purchaser, tenant, vendee, lessee, party to an exchange, or grantee of an option. Selected rules in this chapter will at times refer separately to "buyers" and "tenants" to clarify licensee's duties and obligations.

"Client" means a party to a transaction who has an agency agreement with a broker for brokerage services.

"Common source information companies" means any individual, corporation, limited liability company, business trust, estate, trust, partnership, association, or any other legal entity (except any government or governmental subdivision or agency, or any officer or employee thereof acting in such individual's official capacity) that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

"Confidential information" means information made confidential by statute, regulation, or express instructions from the client. Confidential information:

1. Shall include, but not be limited to, the following:

- Information concerning the client that, if disclosed to the other party, could place the client at a disadvantage when bargaining;
- That the seller or landlord is willing to accept less than the asking price or lease price for the property;
- That the buyer or tenant is willing to pay more than the asking price or lease price for the property;
- What the motivating factors are for the party selling or leasing the property;
- What the motivating factors are for the party buying or leasing the property;
- That the seller or landlord will agree to sale, lease, or financing terms other than those offered;
- That the buyer or tenant will agree to sale, lease, or financing terms other than those offered;
- The seller's or landlord's real estate needs;
- The buyer's or tenant's real estate needs;
- The seller's or landlord's financial information, except the seller's ability to sell and the landlord's ability to lease are considered a material fact;
- The buyer's or tenant's financial qualifications, except the buyer's ability to buy and the tenant's ability to lease are considered a material fact.

2. Does not include "material adverse facts" as defined in Iowa Code Supplement section 543B.5.

3. Shall not be disclosed unless:

- The client to whom the information pertains provides informed written consent to disclose the information;
- The disclosure is required by statute or regulation, or failure to disclose the information would constitute fraudulent representation;
- The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee; or
- The disclosure is necessary to defend the licensee against an accusation of wrongful conduct in an actual or threatened judicial proceeding, an administrative proceeding before the commission, or in a proceeding before a professional committee.

"Consumer" means a person seeking or receiving real estate brokerage services.

"Contract between the buyer and seller" includes an offer to purchase, a sales contract, an option, a lease-purchase option, an offer to lease, or a lease.

"Customer" means a consumer of real estate services in connection with a real estate transaction who is not being represented by the licensee, but for whom the licensee may perform ministerial acts. A customer may be a client of another broker, may not have yet decided whether or not to be represented by any broker, or may have chosen not to be represented by any broker.

"Dual agent" means a licensee who, with the written informed consent of all the parties to a contemplated real estate transaction, has entered into a brokerage agreement with and therefore represents both the seller and buyer or both the landlord and tenant in the same in-house transaction.

"Firm" means a licensed partnership, association, or corporation.

"Licensee" means a designated broker as defined in Iowa Code Supplement section 543B.5, a broker associate as defined in Iowa Code section 543B.5(1), and a salesperson as defined in 543B.5(3).

"Listing broker" means the real estate broker who obtains a listing of real estate or of an interest in a residential cooperative housing corporation.

"Ministerial acts" means those acts that a licensee may perform for a consumer that are informative in nature and do not rise to the level of specific assistance on behalf of a consumer. For purposes of this rule, ministerial acts include, but are not limited to, the following:

1. Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;
2. Responding to telephone inquiries from a consumer concerning the price or location of property;
3. Attending an open house and responding to questions about the property from a consumer;
4. Setting an appointment to view property;
5. Responding to questions of consumers walking into a licensee's office concerning brokerage services offered or particular properties;
6. Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
7. Describing a property or the property's condition in response to a consumer's inquiry;
8. Completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client;
9. Showing a client through a property being sold by an owner on the owner's own behalf; or
10. Referring a person to another broker or service provider.

"Referral fee" or *"finder's fee"* means any fee or other valuable consideration paid by a licensee to any unlicensed person or entity for the purpose of procuring prospects for the sale, exchange, purchase, rental or leasing of real estate.

"Seller" includes an owner, landlord, vendor, lessor, party to an exchange, or grantor of an option. Selected rules in this chapter will at times refer separately to "sellers" and "landlords" to clarify licensee's duties and obligations.

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

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

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

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

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

c. A broker shall not commingle personal funds in a trust account; provided, however, that not more than $500 of the broker's personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account.

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

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

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

b. In the absence of a pending civil action or written agreement, it shall not be grounds for disciplinary action where, upon passage of 30 days from the date of the dispute, a broker disburses the earnest money deposit to a buyer or lessee in a transaction based upon a good faith decision that a contingency has not been met, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known address, setting forth the broker's proposed action and the grounds for the decision.

c. In the absence of a pending civil action or written agreement, it shall not be grounds for a disciplinary action where, upon passage of six months from the date of the dispute, a broker disburses the earnest money deposit to a seller or lessor in a transaction based upon a good faith decision that the buyer or lessee has failed to perform as agreed, but disbursement shall be made only after the broker has given 30 days' written notice by certified mail to all parties concerned at their last-known address, setting forth the broker's proposed action and grounds for the decision.

d. The dispute must be legitimate; if a buyer or a seller, or a lessee or lessor, demands the return of the earnest money deposit, the broker shall consult with the other party who may agree or disagree with the return.

e. The commission will not take disciplinary action against a broker who in good faith disburses trust account moneys pursuant to this rule. Nothing in this rule requires a broker to remove money from the broker's trust account when the disposition of such money is disputed by the parties to the transaction.

f. Property management account funds may be withdrawn at any time for the purpose of returning the funds to the payee in accordance with the terms of the contract or receipt.

g. Property management funds may be withdrawn when and if the broker reasonably believes, from evidence available, that the tenant has obtained a rental through information supplied by or on behalf of the broker.

When an offer is withdrawn or the acceptance is revoked without liability pursuant to Iowa Code chapter 558A, any earnest money deposit shall be promptly returned to the buyer without delay. The seller's consent and agreement to release the funds is not required. A copy of the written revocation or withdrawal shall be retained with the trust account supporting documents.

1.27(8) Under no circumstances is the broker entitled to withhold any portion of the earnest money when a transaction fails to consummate even if a commission is earned. The earnest money must be disposed of as provided in subrule 1.27(7) and the broker shall pursue any claim for commission or compensation against the broker's principal.

1.27(9) In the event all funds being held by the broker for a transaction cannot be disbursed at the time of closing, the broker shall obtain an escrow agreement signed by both parties which shall direct the broker regarding the future disbursement of the funds.

1.27(10) A trust account may bear interest to be disbursed to the buyers or sellers with the written approval of all parties to the contract or to the owner if the trust account is for a property management account and the management contract so specifies, or as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2). The account shall be a separate account from the account(s) which is to accrue interest to the state. The broker shall not benefit from interest received on funds of others in the broker's possession. Interest shall be disbursed to the owner or owners of the funds at the time of settlement of the transaction or as agreed in the management contract and shall be properly accounted for on closing statements. Service charges for the account are a business expense of the broker and shall not be deducted from the proceeds.

1.27(11) Unclaimed trust funds shall be paid to the treasurer of the state of Iowa in accordance with Iowa Code chapter 556 entitled "Disposition of Unclaimed Property."

1.27(12) Broker, broker associate, or salesperson acting as a principal. Where a licensee acts as a principal in the sale, lease, rental or exchange of property owned by the licensee and receives payments, rent, or security deposits from the purchaser, these funds must be deposited into the broker's trust account when the licensee is acting in the capacity of a real estate broker, broker associate or salesperson.

1.27(13) When a broker, broker associate, or salesperson is acting as a principal in the sale, rental, lease, or exchange of property owned by the licensee, the use of the broker's trust account is not required if all of the following exist:

a. The sale, rental, or exchange is strictly, clearly and totally a "by owner" transaction;

b. No commission or other compensation is paid to or received by the licensee; and

c. The licensee does not function as a real estate licensee in any capacity throughout the transaction.

1.27(14) Whenever a licensee is in doubt as to whether activities as a principal require that funds received be deposited into the broker's trust account, the safest course of action is to account for those funds through a broker's trust account.

1.27(15) Every broker shall retain for a period of at least five years true copies of all business books; accounts, including voided checks; records; contracts; closing statements; disclosures; signed documents; and correspondence relating to each real estate transaction that the broker has handled and each property managed. The records shall be made available for inspection by the commission, staff, and its authorized representatives at all times during usual business hours at the broker's regular place of business. If the brokerage closes, the records shall be made available for inspection by the commission, staff, and its authorized representatives upon request.

193E—1.28(543B) Closing transactions. It shall be mandatory for every broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete detailed statement, showing all of the receipts and disbursements handled by the broker. Also, the broker shall at the same time deliver to the buyer a complete statement showing all moneys received in the transaction from the buyer and how and for what the same were disbursed. The broker shall retain all trust account records and a complete file on each transaction for a period of at least five years after the date of the closing which shall include one copy of the listing, any offers to purchase, all correspondence pertinent to the transaction, and the closing statement. The listing broker shall be responsible for the closing even though the closing may be completed by another licensee. If the closing transaction is handled through an unlicensed escrow agent and the escrow agent renders a closing statement, the listing broker shall ensure that funds which the broker has received or paid as part of the transaction are accounted for properly.

1.28(1) In the case of a cooperative sale between brokers, the listing broker may elect to close the transaction. If the listing broker so elects, the selling broker shall have the purchaser make the earnest money check payable to the listing agent's trust account and shall immediately deliver the earnest money check along with the offer to purchase to the listing agent. The offer to purchase shall designate that the earnest money is to be held in trust by the listing agent. When cash is accepted as earnest money by the selling agent, the selling agent must deposit the money in the selling broker's trust account in accordance with commission rule, and then immediately transfer the earnest money deposit to the listing agent by issuing a check drawn on the selling broker's trust account.

1.28(2) Anything other than cash or an immediately cashable check shall not be accepted as earnest money unless that fact is communicated to the seller prior to the acceptance of the offer to purchase, and is stated in the offer to purchase.

1.28(3) Brokers acting as agents for the buyer in a specific real estate transaction shall have the same requirements for retention of copies as stated in rule 1.28(543B), except a buyer's agent who is not a party to the listing contract is not required to retain a copy of the listing contract or the seller's settlement statement.

193E—1.29(543B) Salesperson shall not handle closing. A salesperson shall not handle the closing of any real estate transaction except under the direct supervision or with the consent of the employing broker.

193E—1.40(543B) Disclosure of licensee interest, acting as a principal, and status as a licensee required. A licensee shall not act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family, including but not limited to a spouse, parent, child, grandparent, grandchild, brother, or sister, or on behalf of the brokerage, or on behalf of an organization or business entity in which the licensee has an interest, including an affiliated business arrangement as defined in subrule 1.50(1), unless the licensee provides written disclosure of that interest to all parties to the transaction. Disclosure required under this rule must be made at the time of or prior to the licensee's providing specific assistance to the party or parties to the transaction. Copies of the disclosure may be provided in person or by mail, as soon as reasonably practical. If no specific assistance is provided, disclosure shall be provided prior to the parties' forming a legally binding contract, either prior to an offer being made by the buyer or tenant or prior to an acceptance by the seller or landlord, whichever comes first.

1.40(1) *Licensee acting as a principal.* A licensee shall not acquire any interest in any property directly or indirectly nor shall the licensee sell any interest in which the licensee directly or indirectly has an interest without first making written disclosure of the licensee's true position clear to the other party. Satisfactory proof of this fact must be produced by the licensee upon request of the commission. Whenever a licensee is in doubt as to whether an interest, relationship, association, or affiliation requires disclosure under this rule, the safest course of action is to make the written disclosure.

1.40(2) *Status as a licensee.* Before buying, selling, or leasing real estate as described above, the licensee shall disclose in writing any ownership, or other interest, which the licensee has or will have and the licensee's status to all parties to the transaction. An inactive status license shall not exempt a licensee from providing the required disclosure.

1.40(3) *Dual capacity.* The licensee shall not act in a dual capacity of agent and undisclosed principal in any transaction.

193E—1.41(543B) Rebates and inducements. With proper written disclosure, rebates and inducements may be paid to a party to the transaction, consistent with Iowa Code sections 543B.6 and 543B.34(9a), provided such party does not engage in any activity that requires a real estate license. A rebate or inducement shall not be made without the required written disclosures to the parties as provided in 193E—1.42(543B).

1.41(1) A licensee shall not pay a commission, any part of the commission, or valuable consideration to an unlicensed third party for performing brokerage functions or engaging in any activity that requires a real estate license. Referral fees or finder's fees paid to unlicensed third parties for performing brokerage activities, or engaging in any activity that requires a real estate license, are prohibited.

1.41(2) In a listing contract, the broker is principal party to the contract. The broker may, with proper disclosure, pay a portion of the commission earned to an unlicensed seller or landlord that is a principal party to the listing contract. This will be deemed a reduction in the amount of the earned commission.

1.41(3) Payment to an unlicensed buyer or tenant is often referred to as "rebating." A broker's intention to pay money or costs associated with a transaction to a buyer or tenant may be advertised and promoted as a sales inducement. The payment to the buyer or tenant is permissible, when disclosed, because the broker is licensed and authorized to negotiate and the buyer or tenant may negotiate on the buyer's or tenant's own account.

1.41(4) A licensee may present a gratuitous gift, such as flowers or a door knocker, to the buyer or tenant subsequent to closing and not promised or offered as an inducement to buy or lease. The permission and disclosure requirements of 193E—1.42(543B) do not apply as long as any client relationship has terminated.

1.41(5) A licensee may present free gifts, such as prizes, money, or other valuable consideration, to a potential party to a transaction or lease, prior to signing a contract to purchase or lease and not promised or offered as an inducement to buy or lease. It is the licensee's responsibility to ensure that the promotion is in compliance with other Iowa laws, such as gaming regulations. The permission and disclosure requirements of 193E—1.42(543B) do not apply as long as no client relationship has been established with the buyer or lessee.

1.41(6) The offering by a licensee of a free gift, prize, money, or other valuable consideration as an inducement shall be free from deception and shall not serve to distort the true value of the real estate service being promoted.

1.41(7) No broker shall pay a commission, referral or finder's fee, or other valuable consideration to another broker knowing that a portion will be paid to an unlicensed person or party for performing any activity for which a real estate license is required, or which otherwise constitutes a commission, referral or finder's fee, or other valuable consideration, requested after a bona fide offer to purchase has been accepted or a bona fide listing agreement or buyer's brokerage agreement has been signed, or which constitutes an undisclosed rebate or inducement.

1.41(8) A licensee may make donations to a charity, or other not-for-profit organization, for each listing or closing, or both, that the licensee has during a specific time period. The receiving entity may be selected by the licensee or by a party to the transaction. The contribution may be in the name of the licensee or in the name of a party to the transaction. Contributions are permissible only if the following conditions are met:

a. There are no restrictions placed on the payment;

b. The donation is for a specific amount;

c. The receiving entity does not act or participate in any manner that would require a license;

d. The licensee exercises reasonable care to ensure that the organization or fund is a bona fide nonprofit;

e. The licensee exercises reasonable care to ensure that the promotional materials clearly explain the terms under which the donations will be made; and

f. All required disclosures are made.

193E—1.42(543B) Brokerage agreements. All brokerage agreements shall be written and cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement, unless the terms of the agreement state otherwise. Upon termination of association or employment with the principal broker, the affiliated broker associate or salesperson shall not take or use any written brokerage agreements secured during the association or employment. Said brokerage agreements remain the property of the principal broker and may be canceled only by the broker and the client.

1.42(1) Every written brokerage agreement shall include, at a minimum, the requirements set forth in Iowa Code Supplement section 543B.57 and the following provisions:

a. A statement disclosing the brokerage policy on cooperating with and compensating other brokerages whether the brokerage is acting as subagent or the other parties' agent in the sale, lease, rental, or purchase of real estate, including whether the brokerage intends to share the compensation with other brokerages. Such disclosure shall serve to inform the client of any policy that would limit the participation of any other brokerage;

b. All listing contracts and all brokerage agency contracts shall comply with Iowa real estate law and commission rules including, but not limited to, 193E—1.23(543B) Listings, 1.30(543B) Property management, and 1.20(543B) Terms and conditions.

1.42(2) No licensee shall make or enter into a brokerage agreement that specifies a net sale, lease, rental, or exchange price to be received by an owner and the excess to be received by the licensee as a commission.

1.42(3) The taking of a net brokerage agreement shall be unprofessional conduct and a practice that is harmful or detrimental to the public and shall constitute a violation of Iowa Code sections 543B.29(3) and 543B.34(8).

1.42(4) Duration of relationship. The relationships shall commence at the time of the brokerage agreement and shall continue until closing of the transaction or performance or completion of the agreement by which the broker was engaged within the term of the agreement. If the transaction does not close, or the agreement for which the broker was engaged is not performed or completed for any reason, the relationship shall end at the earlier of the following:

a. Any date of expiration agreed upon by the parties;

b. Any termination by written agreement of the parties.

1.42(5) Obligation terminated. In addition to any continuing duty or obligation provided in the written agreement or pursuant to Iowa law and commission rules, a broker or brokerage engaged as a seller's or landlord's agent, buyer's or tenant's agent, subagent, or dual agent and affiliated licensees shall have the duty after termination, expiration, completion, or performance of the brokerage agreement, to:

a. Account for all moneys and property related to and received during the engagement; and

b. Keep confidential all information received during the course of the engagement which was made confidential by request or instructions from the engaging party or is otherwise confidential by statute or rule.

1.42(6) Compensation. In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, or by the sharing or splitting of a commission or compensation between brokers.

a. Payment of compensation shall not be construed to determine or establish an agency relationship. The payment of compensation to a broker does not determine whether a brokerage relationship has been created between any broker and a seller, landlord, buyer, or tenant paying such compensation.

b. Written permission of the client is required as follows:

(1) A seller's or landlord's agent may share the commission or other compensation paid by such seller or landlord with another broker, with the written consent of the seller or landlord.

(2) A buyer's or tenant's agent may share the commission or other compensation paid by such buyer or tenant with another broker, with the written consent of the buyer or tenant.

(3) Without the written approval of the client, a seller's or landlord's agent shall not propose to the buyer's or tenant's agent, that such seller's or landlord's agent may be compensated by sharing compensation paid by such buyer or tenant.

(4) Without the written approval of the client, a buyer's or tenant's agent shall not propose to the seller's or landlord's agent, that such buyer's or tenant's agent may be compensated by sharing compensation paid by such seller or landlord.

c. A broker may be compensated by more than one party for services in a transaction, if the parties have consented in writing to such multiple payments prior to entering into a contract to buy, sell, lease, or exchange.

d. A licensee shall not accept, receive or charge an undisclosed commission for a transaction.

e. A licensee shall not give or pay an undisclosed commission to any other licensee for a transaction, except payment for referrals to other licensees, including franchise affiliates, to provide real estate brokerage services, if there is no direct or beneficial ownership interest of more than 1 percent in the business entity providing the service.

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

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

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

i. The provisions of these rules and subrules do not apply to a gratuitous gift, such as flowers or a door knocker, to a buyer or tenant subsequent to closing and not promised or offered as an inducement to buy or lease as long as any client relationship has terminated.

j. The provisions of these rules and subrules do not apply to a free gift, such as prizes, money, or other valuable consideration, to a potential party to a transaction or lease prior to signing a contract to purchase or lease and not promised or offered as an inducement to sell, buy, or lease as long as no client relationship has been established with the buyer or lessee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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CHAPTER 14
ORGANIZATION AND OPERATION OF TERRACE HILL

[Prior to 5/31/89, see Historical Division[223] Ch 25]
[Prior to 2/16/94, see Historical Division[223] Ch 55]

401—14.1(18) Definitions. The definitions listed in Iowa Code section 17A.2 shall apply for terms as used throughout this chapter. In addition, the following definitions shall apply:

"Administrator" means the administrator of Terrace Hill.

"Commission" means the Terrace Hill commission as established by Iowa Code section 18.8A.

"Facility" means the Terrace Hill mansion, carriage house, grounds, and all related property.

"Foundation" means the Terrace Hill Foundation, a nonprofit corporation which solicits contributions and raises funds for the renovation and improvement of the facility.

"Society" means the Terrace Hill Society, an unofficial organization which raises funds and provides volunteers for restoration and landscape projects of Terrace Hill.

401—14.2(18) Mission statement. The Terrace Hill commission exists in accordance with Iowa Code section 18.8A to preserve, maintain, renovate, landscape, and administer the Terrace Hill facility. The commission has authority to approve the ongoing expenditures for preservation, renovation, and landscaping of Terrace Hill and seeks necessary funds for these activities. Terrace Hill is maintained as the official residence for the governor of Iowa and serves as a facility for public and private functions.

401—14.3(18) Terrace Hill commission.

14.3(1) *Function.* The Terrace Hill commission exists to establish policy and procedures for the renovation, interpretation, operation and fiscal management of the facility.

14.3(2) *Composition.* The commission consists of nine members appointed by the governor in accordance with Iowa Code section 18.8A. The governor's spouse shall serve as an ex-officio voting member of the commission.

14.3(3) *Meetings.* The commission shall meet at the call of the chair. Seven members present and voting constitutes a quorum and an affirmative vote of six members is required for approval of an item.

All meetings are open to the public under Iowa Code chapter 21, and in accordance with Robert's Rules of Order, Revised Edition. Public notice of all meetings shall be distributed to the news media. The tentative agenda for meetings shall be posted in the governor's office at the State Capitol at least 24 hours prior to the commencement of any meeting in accordance with Iowa Code chapter 21.

14.3(4) *Committees—appointment.* Committees of the commission may be appointed on an ad hoc basis by the chairperson of the board. Nonboard members may be appointed to committees as nonvoting members.

401—14.4(18) Gifts, bequests, endowments. The commission, acting on behalf of the society and the foundation, may accept private gifts, bequests, and endowments with such gifts credited to the account of the society. Accepted gifts, bequests, and endowments shall be used in accordance with the desire of the donor as expressed at the time of the donation. Undesignated funds shall be credited to the general fund of the society and used for projects and activities of the commission or society.

401—14.5(18) Public and private grants and donations. The commission, society, or foundation may apply for and receive funds from public or private sources. Receipts from these grants shall be credited to the appropriate account and shall be used in accordance with all stipulations of the grant contract.

401—14.6(18) Sale of mementos. The commission may sell mementos or other items relating to Iowa and its culture at its facilities.

14.6(1) *Operator of gift shop.* The commission may enter into an agreement with the society for operation of the gift shop including facilities, merchandise, and promotion. The commission shall require an accounting of all receipts and expenditures of the gift shop.

14.6(2) *Income.* All receipts shall be deposited in the account of the society. The society shall provide a quarterly financial statement to the commission.

401—14.7(18) Facilities management.

14.7(1) Address. Terrace Hill is located at 2300 Grand Avenue, Des Moines, Iowa 50312. Telephone number (515)281-3604.

14.7(2) Hours of operation. Terrace Hill is open to the public a minimum of 20 hours per week and is closed the months of January and February. Specific hours and days shall be posted at the facility. The hours shall be approved by the commission. Changes in the hours shall be effective upon 30 days' notice as posted.

14.7(3) Fees. Fees may be charged and collected by the commission and shall be administered according to Iowa Code section 18.8A. Fees may be charged for, but are not limited to, admission, special events, use of images, and technical services. All fees charged shall be approved by the commission and shall become effective upon 30 days' notice. This notice shall be a public posting in the facility. All fees shall be permanently posted.

14.7(4) Smoking. Smoking shall be prohibited in all designated areas of the facility. Smoking areas shall be approved by the commission.

14.7(5) Food and drink. Consumption of food and beverages shall be prohibited in the facility except in specific areas as designated by the commission.

14.7(6) Use of alcoholic beverages. Alcoholic beverages may be served at functions at the facility only with the use of an approved caterer. Interested caterers shall contact the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

14.7(7) All individuals and groups renting the facility for any use shall agree in writing to abide by the "hold harmless" clause specified in the letter of agreement.

All individuals or groups renting the facility shall be liable for any or all damages to the facility. The renter shall be billed for the cost of the repairs, extraordinary cleaning and, if necessary, the collection costs.

14.7(8) Public functions may be held at the facility when the governor has an immediate interest or the function meets the special events criteria established by the commission. The criteria require that the event be in accordance with the mission of the facility. Weddings and wedding receptions are strictly prohibited, except in the case of the immediate family of the current governor. Inquiries shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

401—14.8(18) Tours.

14.8(1) *Group tours.* Reservations shall be required for tour groups of ten or more. Requests for reservations shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

14.8(2) *Fees.* An admission fee is charged at Terrace Hill. There shall be no charge for school groups. The fee schedule shall be permanently posted at the site. Inquiries concerning fees shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

14.8(3) *Parking.* Designated parking has been established by the commission. Vehicles are not permitted in the east driveway.

14.8(4) *Pets.* Pets are not permitted at the facility with exception of those belonging to the governor, or those assisting the hearing or visually impaired.

These rules are intended to implement Iowa Code section 18.8A.

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CHAPTER 15
Reserved

CHAPTER 10
LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM
[Prior to 9/24/86, Energy Policy Council[380] Ch 14]

427—10.1(216A,PL97-35,PL98-558) Purpose. Pursuant to the requirements of the Department of Health and Human Services (DHHS) and the Social Security Administration (SSA), as set forth in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, PL 97-35 as amended by PL 98-558, and Iowa Code section 216A.92, the department of human rights, division of community action agencies (DHR, CAA), will administer the low-income home energy assistance program (LIHEAP).

LIHEAP is designed to aid qualifying low-income Iowa households (homeowners and renters) in the payment of a portion of their residential heating costs for the winter heating season, to encourage regular utility payments, to promote energy awareness and to encourage reduction of energy usage through energy efficiency, client education, and weatherization.

427—10.2(216A,PL97-35,PL98-558) Program criteria.

10.2(1) Households with incomes at or below the annually determined guidelines, but not to exceed 150 percent of the Office of Management and Budget's federal poverty income guidelines, revisions of which are published annually in the Federal Register, may be eligible for assistance under LIHEAP. To receive benefits, an application must be made, eligibility determined, and program funds available before any payments may be made.

10.2(2) All payments are contingent upon the availability of federal funds.

10.2(3) The amount of assistance a household may receive depends upon available funding,total household income, household size, dwelling type, type of primary heating fuel the household uses, other targeting factors enumerated in the payment matrix, and whether a household qualifies for a crisis assistance award as described in 10.14(216A,PL97-35,PL98-558) in addition to the basic energy assistance payment.

10.2(4) Residents of publicly assisted housing units who are not billed directly for their primary heating source by a utility company and whose rent is established as a percentage of their income are not eligible for assistance.

10.2(5) All clients applying for this program will simultaneously be making application for weatherization assistance, and 427—Chapter 5 shall govern such weatherization applications.

10.2(6) Both owner-occupied and renter-occupied households will be assisted.

427—10.3(216A,PL97-35,PL98-558) Local administering agencies.

10.3(1) The department of human rights shall administer the LIHEAP program by contracting with local administering agencies (LAAs) meeting program and fiscal guidelines as required by federal law.

10.3(2) Outreach activities. The LAAs will be required to sign a contract which specifies required and allowable program activities, including Department of Health and Human Services regulations, special conditions, transfer of electronic data to fuel vendors and the state, program and fiscal reporting to department of human rights, and audit requirements.

10.3(3) Each LAA will ensure that eligible households are made aware of this program. In addition to its normal outreach functions, each LAA will authorize its workers to take applications in a potential client's home as well as at local community, church, and elderly centers. The program is to be made easily accessible to all who are eligible, especially the elderly and disabled. All LAAs are required to visit each elderly meal site in their geographic area to publicize the Energy Assistance program. When taking applications at a location other than an outreach office, the date and time of the visit should be publicized at least one week in advance.

Applications may be made by mail. A notice of the appeal and hearing procedure must be posted at each intake site, and a copy of the appeal and hearing procedure and any other state-required handouts must be given to each client at the time of application.

427—10.4(216A,PL97-35,PL98-558) Application period. Clients may apply for energy assistance between the first working day of October and the last working day of February each year. Applications will be processed and the applicant and the appropriate energy suppliers notified of eligibility within 30 days of the date of application to comply with the terms of the winter moratorium on disconnections. For calendar year 2000 only, the application period shall be extended to the last working day of March.

427—10.5(216A,PL97-35,PL98-558) Income.

10.5(1) Proof of income eligibility is required. All income shall be verified for each household member based on the 3-month or 12-month period immediately preceding the application date or the most recent calendar year. Verification of income shall be made through documentary evidence in the possession of the applicant household. If documentary evidence is not available from the household, verification shall be obtained from the source of income.

10.5(2) Household income refers to total annual cash receipts before taxes from all sources, with the exceptions noted below. Income includes money, wages and salaries before any deductions; net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership after deductions for business expenses); net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Family Investment Program, Supplemental Security Income, emergency assistance money payments, nonfederally funded general assistance or general relief money payments), training stipends; alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions (including military retirement pay), regular insurance or annuity payments; college or university scholarships, assistantships; dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

10.5(3) For program eligibility purposes, income does not include the following: capital gains, any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, housing assistance, and other income, the exclusion of which is required by law.

10.5(4) Further income criteria and guidelines are contained in the Iowa state plan for the Low-Income Home Energy Assistance Program and the Low-Income Home Energy Assistance Program Procedures Manual as described in 10.6(216A,PL97-35,PL98-558).

c. Each administering agency must;

(1) Accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served by such entity; and

(2) Provide to low-income individuals who are physically infirm the means to submit applications for energy crisis benefits without leaving their residences; or to travel to the sites at which such applications are accepted by such entity.

10.13(4) *Crisis appeal procedure.* Any household which has been denied crisis assistance may utilize the regular appeal procedure.

10.13(5) *Crisis payments.* A combination of one or more of the following crisis payments may be made to an eligible household to resolve a crisis situation:

a. In a life-threatening situation, an additional payment of up to $200 may be made after regular benefits have been exhausted to ensure an uninterrupted supply of fuel. This portion of the crisis program begins the first working day of November and ends the last working day of March.

b. Payment for repair or replacement of furnace/heating systems for eligible homeowners. A maximum payment of $1000 per household may be made. This component of the crisis program begins the first working day of October and ends the last working day of September.

c. Payment for obtaining temporary shelter, purchase of blankets or heaters. A maximum of $200 per household may be made. This component of the crisis program begins the first working day of October and ends the last working day of March.

d. Bill payment buy-down to avoid disconnection or to ensure reconnection. A payment of up to $100 each year may be made to heat or electric vendors to buy down an account balance upon which an eligible client will be required to arrange a bill payment plan. Applications will be accepted from the first working day of April until the last working day of October.

427—10.14(216A,PL97-35,PL98-558) Client services/assessment and resolution. Client services for assessment and resolution of energy management problems, including budget counseling, energy education, arranging deferred or budget payments, staying disconnects or negotiating payments or reconnections, will be made available to all energy assistance recipients on a year-round basis.

427—10.15(216A,PL97-35,Pl98-558) Appeal and hearing procedures. The following appeal and hearing procedures shall be used.

10.15(1) When an applicant is denied assistance or believes that the assistance amount was incorrectly determined, the applicant has 30 calendar days from the date of the approval or denial letter to appeal that decision by mailing or delivering the request for appeal to the LAA.

10.15(2) If the local administering agency neither approves nor denies the application within 30 calendar days of receipt of a complete application, the applicant may treat the failure to act as a denial. The applicant then has 30 additional calendar days to appeal.

10.15(3) To appeal, the applicant (claimant) must contact the agency at which the application was made and tell the agency of the wish to appeal, what action the applicant would like taken, and any other information which might affect the decision. All appeals must be in writing. Those claimants unable to read or write shall have the LAA assist them in reading, writing, or understanding appeals, hearings, and their associated procedures.

10.15(4) The LAA will act on the claimant's request and notify the claimant of the result in writing within seven calendar days of the date an appeal was requested (postmark date if sent in mail).

10.15(5) If the claimant does not agree with the decision reached, the claimant may write the LAA again within 17 calendar days of the decision (postmark date if sent in mail) and request that a state hearing be held. The claimant must explain in writing why the agency's decision is being appealed and include any information which might affect the decision.

10.15(6) The agency will then forward all information about the request for a hearing to the state and a hearing will be scheduled. The claimant will receive written notice of a state scheduled hearing from the Iowa department of inspections and appeals. The notice will include the date, time, and place of the hearing. State hearings may be held by telephone at a mutually convenient time. Prior to the hearing the agency will provide an opportunity for the claimant to review the case file and any written evidence that will be used in the hearing. All hearings will be conducted in accordance with Iowa department of inspections and appeals contested case hearings, 481—Chapter 10.

427—10.16(216A,PL97-35,PL98-558) Further criteria. The low-income home energy assistance program state plan, the low-income home energy assistance program procedures manual and assistance award criteria for the program are incorporated by reference as part of these rules. These documents as well as delegate agreements and department of human rights reporting forms are on file at the address below and are available for public inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Copies of these documents may be obtained at cost by contacting the Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-3943.

These rules are intended to implement Iowa Code section 216A.92 and PL97-35 as amended by PL98-558.

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NOTE: See Energy Policy Council[380] Chapter 14, prior to 9/24/86

j. The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use to achieve compliance with the acid rain emissions limitations.

22.105(3) *Hazardous air pollutant early reduction application.* Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with its Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4)*"d."*

22.105(4) *Acid rain application content.* The acid rain application content shall be as prescribed in the acid rain rules found at rules 22.128(455B) and 22.129(455B).

567—22.106(455B) Title V permit fees.

22.106(1) *Fee established.* Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than $29 per ton without adopting the change pursuant to formal rule making.

22.106(2) *Fee calculation.* The fee amount shall be calculated based on the first 4,000 tons of each regulated air pollutant or contaminant emitted each year from each major source.

22.106(3) *Fee and documentation due dates.*

a. The fee shall be submitted annually by July 1. The fee shall be submitted with four copies of the following forms:

1. Form 1.0 "Facility identification";
2. Form 5.0 "Title V annual emissions summary/fee"; and
3. Part 3 "Application certification."

b. Four copies of the following forms shall be submitted annually by March 31 documenting actual emissions for the previous calendar year:

1. Form 1.0 "Facility identification";
2. Form 4.0 "Emission unit—actual operations and emissions" for each emission unit;
3. Form 5.0 "Title V annual emissions summary/fee"; and
4. Part 3 "Application certification."

If there are any changes to the emission calculation form, the department shall make revised forms available to the public by January 1. If revised forms are not available by January 1, forms from the previous year may be used and the year of emissions documented changed. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

22.106(4) *Phase I acid rain sources.* No fee shall be required to be paid for emissions which occur during the years 1993 through 1999 inclusive, with respect to any Phase I acid rain affected unit under Section 404 of the Act.

22.106(5) *Operation in Iowa.* The fee for a portable emissions unit or stationary source which operates both in Iowa and out of state shall be calculated only for emissions from the source while operating in Iowa.

22.106(6) *Title V deferred stationary sources.* No fee shall be required to be paid for emissions until the year in which sources deferred under subrule 22.101(2) are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.

22.106(7) *Insignificant activities.* No fee shall be required to be paid for insignificant activities, as defined in rule 22.103(455B).

567—22.107(455B) Title V permit processing procedures.

22.107(1) *Action on application.*

a. Conditions for action on application. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under rule 22.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under rule 22.112(455B), the permitting authority has complied with the requirements for public participation under subrule 22.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under subrule 22.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The administrator has received a copy of the proposed permit and any notices required under subrule 22.107(7), and has not objected to issuance of the permit under subrule 22.107(7) within the time period specified therein;

(6) If the administrator has properly objected to the permit pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, or subrule 22.107(7), then the permitting authority may issue a permit only after the administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

b. Time for action on application. The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section 112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

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◊Two ARCs

e. Vinyl chloride. Ethylene dichloride purification and the oxychlorination reactor in ethylene dichloride plants. Vinyl chloride formation and purification in vinyl chloride plants. Any of the following involving polyvinyl chloride plants: reactor; stripper; mixing, weighing, and holding containers; monomer recovery system; sources following the stripper(s). Any of the following involving ethylene dichloride, vinyl chloride, and polyvinyl chloride plants: relief valve discharge; fugitive emission sources. (Subpart F)

f. Equipment leaks of benzene (fugitive emission sources). Any pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems which handle benzene. (Subpart J)

g. Equipment leaks of volatile hazardous air pollutants (fugitive emission sources). Any pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems which handle volatile hazardous air pollutants. (Subpart V)

h. Inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities. Each metallic arsenic production plant and each arsenic trioxide plant that processes low-grade arsenic bearing materials by a roasting condensation process. (Subpart P)

i. Inorganic arsenic emissions from glass manufacturing plants. Each glass melting furnace (except pot furnaces) that uses commercial arsenic as a raw material. (Subpart N)

j. Inorganic arsenic emissions from primary copper smelters. Each copper converter at any new or existing primary copper smelter except as noted in 40 CFR §61.172(a). (Subpart O)

k. Benzene emissions from coke by-product recovery plants. Each of the following sources at furnace and foundry coke by-product recovery plants: tar decanters, tar storage tanks, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing, final coolers, final-cooler cooling towers, and the following equipment that is intended to operate in benzene service: pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by 40 CFR §61.135.

The provisions of this subpart also apply to benzene storage tanks, BTX storage tanks, light-oil storage tanks, and excess ammonia-liquor storage tanks at furnace coke by-product recovery plants. (Subpart L)

l. Benzene emissions from benzene storage vessels. Unless exempted, each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified in ASTM D 836-84 for Industrial Grade Benzene, ASTM D 835-85 for Refined Benzene-485, ASTM D 2359-85a for Refined Benzene-535, and ASTM D 4734-87 for Refined Benzene-545. These specifications are incorporated by reference as specified in 40 CFR §61.18. (Subpart Y)

m. Benzene emissions from benzene transfer operations. Unless exempted, the total of all loading racks at which benzene is loaded into tank trucks, rail cars, or marine vessels at each benzene production facility and each bulk terminal. (Subpart BB)

n. Benzene waste operations. Unless exempted, the provisions of this subrule apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by any of these listed facilities. (Subpart FF)

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended through June 29, 1999, are adopted by reference, except 40 CFR §§63.6(g) and (h)(9), 63.7(c)(2)(i), 63.7(e)(2)(ii) and (f), 63.8(f), 63.10(f), 63.12, 63.14, 63.15, 63.40(a), 63.42(a) and (b), 63.43(c) and (f) to (m), 63.177, 63.560(b) and (e)(2) and (3), 63.562(c) and (d), 63.772, 63.777, 63.1157, 63.1158, 63.1161(d)(1), 63.1162(a)(2) to (5), 63.1162(b)(1) to (3), 63.1165, 63.1282, and 63.1287 and shall apply to the following affected facilities. The corresponding 40 CFR Part 63 Subpart designation is in parentheses. 40 CFR Part 63 Subpart B incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purpose of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an "area source" means any stationary source of hazardous air pollutants that is not a major stationary source as defined in this paragraph. Paragraph 23.1(4)*"a,"* general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

a. General provisions. General provisions apply to owners or operators of affected activities or facilities except when otherwise specified in a particular subpart or in a relevant standard. (Subpart A)

b. Requirements for control technology determinations for major sources in accordance with Clean Air Act Sections 112(g) and 112(j). (Subpart B)

(1) Section 112(g) requirements. For the purposes of this subparagraph, the definitions shall be the same as the definitions found in 40 CFR 63.2 and 40 CFR 63.41 as amended through December 27, 1996. The owner or operator of a new or reconstructed major source of hazardous air pollutants must apply maximum achievable control technology (MACT) for new sources to the new or reconstructed major source. If the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to Section 112(d), Section 112(h), or Section 112(j) of the Clean Air Act and incorporated in another subpart of 40 CFR Part 63, excluded in 40 CFR 63.40(e) and (f), or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998, then the major source in question is not subject to the requirements of this subparagraph. The owner or operator of an affected source shall apply for a construction permit as required in 567—paragraph 22.1(1)*"b."* The construction permit application shall contain an application for a case-by-case MACT determination for the major source.

(2) Section 112(j) requirements. The owner or operator of a new or existing major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the U.S. Environmental Protection Agency has failed to promulgate an emission standard within 18 months of the deadline established under 112(d) must submit an application for a Title V permit or an application for a significant permit modification or for an administrative amendment, whichever is applicable. The application must be made in accordance with procedures established under Title V, by the Section 112(j) deadline. In addition, the owner or operator of a new emission unit may submit an application for a Notice of MACT Approval before construction.

c. Reserved.

d. Compliance extensions for early reductions of hazardous air pollutants. Compliance extensions for early reductions of hazardous air pollutants are available to certain owners or operators of an existing source who wish to obtain a compliance extension from a standard issued under Section 112(d) of the Act. (Subpart D)

e. Reserved.

f. Emission standards for organic hazardous air pollutants from the synthetic chemical manufacturing industry. These standards apply to chemical manufacturing process units that are part of a major source. These standards include applicability provisions, definitions and other general provisions that are applicable to Subparts F, G, and H of 40 CFR 63. (Subpart F)

g. Emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater. These standards apply to all process vents, storage vessels, transfer racks, and wastewater streams within a source subject to Subpart F of 40 CFR 63. (Subpart G)

h. Emission standards for organic hazardous air pollutants for equipment leaks. These standards apply to emissions of designated organic hazardous air pollutants from specified processes that are located at a plant site that is a major source. Affected equipment includes: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems and control devices or systems required by this subpart that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63. In organic hazardous air pollutant or in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAPs as determined according to the provisions of 40 CFR Part 63.161. The provisions of 40 CFR Part 63.161 also specify how to determine that a piece of equipment is not in organic HAP service. (Subpart H)

i. Emission standards for organic hazardous air pollutants for certain processes subject to negotiated regulation for equipment leaks. These standards apply to emissions of designated organic hazardous air pollutants from specified processes (defined in 40 CFR 63.190) that are located at a plant site that is a major source. Subject equipment includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems at certain source categories. These standards establish the applicability of Subpart H for sources that are not classified as synthetic organic chemical manufacturing industries. (Subpart I)

j. Reserved.

k. Reserved.

l. Emission standards for coke oven batteries. These standards apply to existing coke oven batteries, including by-product and nonrecovery coke oven batteries and to new coke oven batteries, or as defined in the subpart. (Subpart L)

m. Perchloroethylene air emission standards for dry cleaning facilities. These standards apply to the owner or operator of each dry cleaning facility that uses perchloroethylene. New and existing major source dry cleaning facilities are required to control emissions to the level of the maximum achievable control technology (MACT). New and existing area source dry cleaning facilities are required to control emissions to the level achieved by generally available control technologies (GACT) or management practices. All coin-operated dry cleaning machines are exempt from the requirements of this subpart. (Subpart M)

n. Emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks. These standards limit the discharge of chromium compound air emissions from existing and new hard chromium electroplating, decorative chromium electroplating, and chromium anodizing tanks at major and area sources. (Subpart N)

o. Emission standards for hazardous air pollutants for ethylene oxide commercial sterilization and fumigation operations. New and existing major source ethylene oxide commercial sterilization and fumigation operations are required to control emissions to the level of the maximum achievable control technology (MACT). New and existing area source ethylene oxide commercial sterilization and fumigation operations are required to control emissions to the level achieved by generally available control technologies (GACT). Certain sources are exempt as described in 40 CFR 63.360. (Subpart O)

p. Emission standards for primary aluminum reduction plants. These standards apply to each new or existing potline, paste production plant, or anode bake furnace associated with a primary aluminum reduction plant, and for each new pitch storage tank associated with a primary aluminum production plant, except existing furnaces not located on the same site as the primary aluminum reduction plant. (Subpart LL)

q. Emission standards for hazardous air pollutants for industrial process cooling towers. These standards apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals on or after September 8, 1994, and are either major sources or are integral parts of facilities that are major sources. (Subpart Q)

r. Emission standards for hazardous air pollutants for sources categories: gasoline distribution: (Stage 1). These standards apply to all existing and new bulk gasoline terminals and pipeline breakout stations that are major sources of hazardous air pollutants or are located at plant sites that are major sources. Bulk gasoline terminals and pipeline breakout stations located within a contiguous area or under common control with a refinery complying with 40 CFR Subpart CC are not subject to 40 CFR Subpart R standards. (Subpart R)

s. Emission standards for hazardous air pollutants for pulp and paper (noncombustion). These standards apply to pulping and bleaching process sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. Affected sources include pulp mills and integrated mills (mills that manufacture pulp and paper/paperboard) that chemically pulp wood fiber (using kraft, sulfite, soda, or semichemical methods); pulp secondary fiber; pulp nonwood fiber; and mechanically pulp wood fiber. (Subpart S)

t. Emission standards for hazardous air pollutants: halogenated solvent cleaning. These standards require batch vapor solvent cleaning machines and in-line solvent cleaning machines to meet emission standards reflecting the application of maximum achievable control technology (MACT) for major and area sources; area source batch cold cleaning machines are required to achieve generally available control technology (GACT). The subpart regulates the emissions of the following halogenated hazardous air pollutant solvents: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, and chloroform. (Subpart T)

u. Emission standards for hazardous air pollutants: Group I polymers and resins. Applicable to existing and new major sources that emit organic HAP during the manufacture of one or more elastomers including but not limited to producers of butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polybutadiene rubber/styrene butadiene rubber by solution, polysulfide rubber, styrene butadiene rubber by emulsion, and styrene butadiene latex. MACT is required for major sources. (Subpart U)

v. Reserved.

w. Emission standards for hazardous air pollutants for epoxy resins production and nonnylon polyamides production. These standards apply to all existing, new and reconstructed manufacturers of basic liquid epoxy resins and manufacturers of wet strength resins that are located at a plant site that is a major source. (Subpart W)

x. National emission standards for hazardous air pollutants from secondary lead smelting. These standards apply to all existing and new secondary lead smelters sources which use blast, reverberatory, rotary, or electric smelting furnaces for lead recovery of scrap lead that are located at major or area sources. The provisions apply to smelting furnaces, refining kettles, agglomerating furnaces, dryers, process fugitive sources, and fugitive dust. Excluded from the rule are primary lead smelters, lead refiners, and lead remelters. Hazardous air pollutants regulated under this standard include but are not limited to lead compounds, arsenic compounds, and 1,3-butadiene. (Subpart X)

y. Emission standards for marine tank vessel loading operations. This standard requires existing and new major sources to control emissions using maximum achievable control technology (MACT) to control hazardous air pollutants (HAP). (Subpart Y)

z. Reserved.

aa. Emission standards for hazardous air pollutants for phosphoric acid manufacturing. These standards apply to all new and existing major sources of phosphoric acid manufacturing. Affected processes include, but are not limited to, wet process phosphoric acid process lines, superphosphoric acid process lines, phosphate rock dryers, phosphate rock calciners, and purified phosphoric acid process lines. (Subpart AA)

ab. Emission standards for hazardous air pollutants for phosphate fertilizers production. These standards apply to all new and existing major sources of phosphate fertilizer production plants. Affected processes include, but are not limited to, diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings. (Subpart BB)

ac. National emission standards for hazardous air pollutants: petroleum refineries. These standards apply to petroleum refining process units and colocated emission points at new and existing major sources. Affected sources include process vents, equipment leaks, storage vessels, transfer operations, and wastewater streams. The standards also apply to marine tank vessel and gasoline loading racks. Excluded from the standard are catalyst regeneration from catalytic cracking units and catalytic reforming units, and vents from sulfur recovery units. Compliance with the standard includes emission control and prevention. (Subpart CC)

ad. Emission standards for hazardous air pollutants for off-site waste and recovery operations. This rule applies to major sources of HAP emissions which receive certain wastes, used oil, and used solvents from off-site locations for storage, treatment, recovery, or disposal at the facility. Maximum achievable control technology (MACT) is required to reduce HAP emissions from tanks, surface impoundments, containers, oil-water separators, individual drain systems and other material conveyance systems, process vents, and equipment leaks. Regulated entities include but are not limited to businesses that operate any of the following: hazardous waste treatment, storage, and disposal facilities; Resource Conservation and Recovery Act (RCRA) exempt hazardous wastewater treatment facilities other than publicly owned treatment works; used solvent recovery plants; RCRA exempt hazardous waste recycling operations; used oil re-refineries. The regulations also apply to federal agency facilities that operate any of the waste management or recovery operations. (Subpart DD)

ae. Emission standards for magnetic tape manufacturing operations. These standards apply to major sources performing magnetic tape manufacturing operations. (Subpart EE)

af. Reserved.

ag. National emission standards for hazardous air pollutants for source categories: aerospace manufacturing and rework facilities. These standards apply to major sources involved in the manufacture, repair, or rework of aerospace components and assemblies, including but not limited to airplanes, helicopters, missiles, and rockets for civil, commercial, or military purposes. Hazardous air pollutants regulated under this standard include chromium, cadmium, methylene chloride, toluene, xylene, methyl ethyl ketone, ethylene glycol, and glycol ethers. (Subpart GG)

ah. Emission standards for hazardous air pollutants for oil and natural gas production. These standards apply to all new and existing major sources of oil and natural gas production. Affected sources include, but are not limited to, processing of liquid or gaseous hydrocarbons, such as ethane, propane, butane, pentane, natural gas, and condensate extracted from field natural gas. (Subpart HH)

ai. Emission standards for hazardous air pollutants for shipbuilding and ship repair (surface coating) operations. Requires existing and new major sources to control hazardous air pollutant (HAP) emissions using the maximum achievable control technology (MACT). (Subpart II)

aj. Emission standards for hazardous air pollutants for hazardous air pollutant (HAP) emissions from wood furniture manufacturing operations. These standards apply to each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source. (Subpart JJ)

ak. Emission standards for hazardous air pollutants for the printing and publishing industry. Existing and new major sources are required to control hazardous air pollutants (HAP) using the maximum achievable control technology (MACT). Affected units are publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing. (Subpart KK)

al. to *ar.* Reserved.

as. Emission standards for closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)*"a,"* general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart SS)

at. Emission standards for equipment leaks—control level 1. These provisions apply to the control of air emissions from equipment leaks for which another paragraph under this rule references the use of this paragraph for such emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)*"a,"* general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart TT)

au. Emission standards for equipment leaks—control level 2 standards. These provisions apply to the control of air emissions from equipment leaks for which another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)*"a,"* general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart UU)

av. Reserved.

aw. Emission standards for storage vessels (tanks)—control level 2. These provisions apply to the control of air emissions from storage vessels for which another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards for storage vessels are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)*"a,"* general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart WW)

ax. Reserved.

ay. Emission standards for hazardous air pollutants: generic maximum achievable control technology (Generic MACT). These standards apply to new and existing major sources of acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production and polycarbonate (PC) production. Affected processes include, but are not limited to, producers of homopolymers and copolymers of alternating oxymethylene units, acrylic fiber, modacrylic fiber synthetics composed of acrylonitrile (AN) units, hydrogen fluoride and polycarbonate. (Subpart YY)

az. to *bb.* Reserved.

bc. Emission standards for hazardous air pollutants for steel pickling—HCL process facilities and hydrochloric acid regeneration plants. Unless exempted, these standards apply to all new and existing major sources of hydrochloric acid process steel pickling facilities and hydrochloric acid regeneration plants. Affected processes include, but are not limited to, equipment and tanks configured for the pickling process, including the immersion, drain and rinse tanks and hydrochloric acid regeneration plants. (Subpart CCC)

bd. Emission standards for hazardous air pollutants for mineral wool production. These standards apply to all new and existing major sources of mineral wool production. Affected processes include, but are not limited to, cupolas and curing ovens. (Subpart DDD)

be. and *bf.* Reserved.

bg. Emission standards for hazardous air pollutants for pharmaceutical manufacturing. These standards apply to producers of finished dosage forms of drugs, for example, tablets, capsules, and solutions, that contain an active ingredient generally, but not necessarily, in association with inactive ingredients. Pharmaceuticals include components whose intended primary use is to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The regulations do not apply to research and development facilities. (Subpart GGG)

bh. Emission standards for hazardous air pollutants for natural gas transmission and storage. These standards apply to all new and existing major sources of natural gas transmission and storage. Natural gas transmission and storage facilities are those that transport or store natural gas prior to its entering the pipeline to a local distribution company. Affected sources include, but are not limited to, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors and delivery systems. (Subpart HHH)

bi. Emission standards for hazardous air pollutants for flexible polyurethane foam production. These standards apply to producers of slabstock, molded, and rebond flexible polyurethane foam. The regulations do not apply to processes dedicated exclusively to the fabrication (i.e., gluing or otherwise bonding foam pieces together) of flexible polyurethane foam or to research and development. (Subpart III)

bj. Emission standards for hazardous air pollutants: Group IV polymers and resins. Applicable to existing and new major sources that emit organic HAP during the manufacture of the following polymers and resins: acrylonitrile butadiene styrene resin (ABS), styrene acrylonitrile resin (SAN), methyl methacrylate acrylonitrile butadiene styrene resin (MABS), methyl methacrylate butadiene styrene resin (MBS), polystyrene resin, poly (ethylene terephthalate) resin (PET), and nitrile resin. MACT is required for major sources. (Subpart JJJ)

bk. Reserved.

bl. Emission standards for hazardous air pollutants for Portland cement manufacturing operations. These standards apply to all new and existing major and area sources of Portland cement manufacturing unless exempted. Cement kiln dust (CKD) storage facilities, including CKD piles and landfills, are excluded from this standard. Affected processes include, but are not limited to, all cement kilns and in-line kiln/raw mills, unless they burn hazardous waste. (Subpart LLL)

bm. Emission standards for hazardous air pollutants for pesticide active ingredient production. These standards apply to all new and existing major sources of pesticide active ingredient production that manufacture organic pesticide active ingredients (PAI), including herbicides, insecticides and fungicides. Affected processes include, but are not limited to, processing equipment, connected piping and ducts, associated storage vessels, pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves and connectors. Exempted sources include research and development facilities, storage vessels already subject to another 40 CFR Part 63 NESHAP, production of ethylene, storm water from segregated sewers, water from fire-fighting and deluge systems (including testing of such systems) and various spills. (Subpart MMM)

bn. Emission standards for hazardous air pollutants for wool fiberglass manufacturing. These standards apply to all new and existing major sources of wool fiberglass manufacturing. Affected processes include, but are not limited to, all glass-melting furnaces, rotary spin (RS) manufacturing lines that produce bonded building insulation, flame attenuation (FA) manufacturing lines producing bonded pipe insulation and new FA manufacturing lines producing bonded heavy-density products. (Subpart NNN)

bo. Reserved.

bp. Emission standards for hazardous air pollutants for polyether polyols production. These standards apply to all new and existing major sources of polyether polyols. Polyether polyols are compounds formed through polymerization of ethylene oxide, propylene oxide or other cyclic ethers with compounds having one or more reactive hydrogens to form polyethers. Affected processes include, but are not limited to, storage vessels, process vents, heat exchange systems, equipment leaks and wastewater operations. (Subpart PPP)

bq. to *bs.* Reserved.

bt. Emission standards for hazardous air pollutants for primary lead smelting. These standards apply to all new and existing major sources of primary lead smelting. Affected processes include, but are not limited to, sintering machines, blast furnaces, dross furnaces and process fugitive sources. (Subpart TTT)

bu. to *bw.* Reserved.

bx. Emission standards for hazardous air pollutants for ferroalloys production: ferromanganese and silicomanganese. These standards apply to all new and existing major sources of ferroalloys production of ferromanganese and silicomanganese. Affected processes include, but are not limited to, submerged arc furnaces, metal oxygen refining (MOR) processes, crushing and screening operations, and fugitive dust sources. (Subpart XXX)

23.1(5) *Emission guidelines.* The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through November 24, 1998, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. Emission guidelines for municipal solid waste landfills (Subpart Cc). Emission guidelines and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills shall be in accordance with federal standards established in Subparts Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) and WWW (Standards of Performance for Municipal Solid Waste Landfills) of 40 CFR Part 60.

(1) Definitions. For the purpose of 23.1(5) *"a,"* the definitions have the same meaning given to them in the Act and 40 CFR Part 60, Subparts A (General Provisions), B, and WWW, if not defined in this subparagraph.

"Municipal solid waste landfill" or *"MSW landfill"* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill or a lateral expansion.

(2) Designated facilities.

1. The designated facility to which the emission guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.

2. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, Subpart WWW (40 CFR 60.750).

3. For MSW landfills subject to 567—subrule 22.101(1) only because of applicability to subparagraph 23.1(5)"*a*"(2), the following apply for obtaining and maintaining a Title V operating permit under 567—22.104(455B):

The owner or operator of an MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain an operating permit for the landfill.

The owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on or before June 22, 1998, becomes subject to the requirements of 567—subrule 22.105(1) on September 20, 1998. This requires the landfill to submit a Title V permit application to the Air Quality Bureau, Department of Natural Resources, no later than September 20, 1999.

The owner or operator of a closed MSW landfill does not have to maintain an operating permit for the landfill if either of the following conditions are met: the landfill was never subject to the requirement for a control system under subparagraph 23.1(5)"*a*"(3); or the owner or operator meets the conditions for control system removal specified in 40 CFR § 60.752(b)(2)(v).

(3) Emission guidelines for municipal solid waste landfill emissions.

1. MSW landfill emissions at each MSW landfill meeting the conditions below shall be controlled. A design capacity report must be submitted to the director by November 18, 1997.

The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

The landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. All calculations used to determine the maximum design capacity must be included in the design capacity report.

The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or more. If the MSW landfill's design capacity exceeds the established thresholds in 23.1(5)"*a*"(3)"1," the NMOC emission rate calculations must be provided with the design capacity report.

2. The planning and installation of a collection and control system shall meet the conditions provided in 40 CFR 60.752(b)(2) at each MSW landfill meeting the conditions in 23.1(5)"*a*"(3)"1."

3. MSW landfill emissions collected through the use of control devices must meet the following requirements, except as provided in 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency.

An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18; a control system designed and operated to reduce NMOC by 98 weight percent; or an enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

(4) Test methods and procedures. The following must be used:

1. The calculation of the landfill NMOC emission rate listed in 40 CFR 60.754, as applicable, to determine whether the landfill meets the condition in 23.1(5)"*a*"(3)"3";

2. The operational standards in 40 CFR 60.753;

3. The compliance provisions in 40 CFR 60.755; and

4. The monitoring provisions in 40 CFR 60.756.

(5) Reporting and record-keeping requirements. The record-keeping and reporting provisions listed in 40 CFR 60.757 and 60.758, as applicable, except as provided under 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency, shall be used.

(6) Compliance times.

1. Except as provided for under 23.1(5)*"a"*(6)"2," planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under 23.1(5)*"a"*(3) shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions greater than or equal to 50 megagrams per year.

2. For each existing MSW landfill meeting the conditions in 23.1(5)*"a"*(3)"1" whose NMOC emission rate is less than 50 megagrams per year on August 20, 1997, installation of collection and control systems capable of meeting emission guidelines in 23.1(5)*"a"*(3) shall be accomplished within 30 months of the date when the condition in 23.1(5)*"a"*(3)"1" is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).

23.4(13) *Painting and surface-coating operations.* No person shall allow, cause or permit painting and surface-coating operations in a manner such that particulate matter in the gas discharge exceeds 0.01 grain per standard cubic foot of exhaust gas.

This rule is intended to implement Iowa Code section 455B.133.

567—23.5(455B) Anaerobic lagoons.

23.5(1) Applications for construction permits for animal feeding operations using anaerobic lagoons shall meet the requirements of rules 567—65.9(455B) and 65.15(455B) to 65.17(455B).

23.5(2) Criteria for approval of industrial anaerobic lagoons.

a. Lagoons designed to treat 100,000 gpd or less.

(1) The sulfate content of the water supply shall not exceed 250 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.

b. Lagoons designed to treat more than 100,000 gpd.

(1) The sulfate content of the water supply shall not exceed 100 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.

This rule is intended to implement Iowa Code section 455B.133.

567—23.6(455B) Alternative emission limits (the "bubble concept"). Emission limits for individual emission points included in 23.3(455B) (except 23.3(2)*"d,"* 23.3(2)*"b"*(3), and 23.3(3)*"a"*(3)) and 23.4(455B) (except 23.4(12)*"b"* and 23.4(6)) may be replaced by alternative emission limits. The alternative emission limits must be consistent with 567—22.7(455B) and 567—subrule 25.1(12). Under this rule, less stringent control limits where costs of emission control are high may be allowed in exchange for more stringent control limits where costs of control are less expensive.

Rules 23.3(455B) to 23.6(455B) are intended to implement Iowa Code section 455B.133.

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◊Two ARCs

10.5(7) Collection for a surcharge shall terminate at the end of 24 months if E911 service is not initiated for all or a part of the E911 service area as stated in Iowa Code subsection 34A.6(1). The E911 program manager for good cause may grant an extension.

a. The administrator shall provide 100 days' prior written notice to the joint E911 service board or the operating authority and to the service provider(s) collecting the fee of the termination of surcharge collection.

b. Individual subscribers within the E911 service area may petition the joint E911 service board or the operating authority for a refund. Petitions shall be filed within one year of termination. Refunds may be prorated and shall be based on funds available and subscriber access lines billed.

c. At the end of one year from the date of termination, any funds not refunded and remaining in the E911 service fund and all interest accumulated shall be retained by the joint E911 service board. However, if the joint E911 service board ceases to operate any E911 service, the balance in the E911 service fund shall be payable to the state emergency management division. Moneys received by the division shall be used only to offset the costs for the administration of the E911 program.

605—10.6(34A) Waivers, variance request, and right to appeal.

10.6(1) All requests for variances or waivers shall be submitted to the E911 program manager in writing and shall contain the following information:

a. A description of the variance(s) or waiver(s) being requested.

b. Supporting information setting forth the reasons the variance or waiver is necessary.

c. A copy of the resolution or minutes of the joint E911 service board meeting which authorizes the application for a variance or waiver.

d. The signature of the chairperson of the joint E911 service board.

10.6(2) The E911 program manager may grant a variance or waiver based upon the provisions of Iowa Code chapter 34A or other applicable state law.

10.6(3) Upon receipt of a request for a variance or waiver, the E911 program manager shall evaluate the request and schedule a review within 20 working days of receipt of the request. Review shall be informal and the petitioner may present materials, documents and testimony in support of the petitioner's request. The E911 program manager shall determine if the request meets the criteria established and shall issue a decision within 20 working days. The E911 program manager shall notify the petitioner, in writing, of the acceptance or rejection of the petition. If the petition is rejected, such notice shall include the reasons for denial.

605—10.7(34A) Enhanced wireless 911 service plan. Each joint E911 service board, the department of public safety, the E911 communications council, and wireless service providers shall cooperate with the E911 program manager in preparing an enhanced wireless 911 service plan for statewide implementation of enhanced wireless 911 phase I and phase II implementation.

10.7(1) *Plan specifications.* The enhanced wireless 911 service plan shall include, at a minimum, the following information:

1. Maps showing geographic area to be served by each PSAP receiving enhanced wireless 911 telephone calls.
2. A list of all public and private safety agencies within the enhanced wireless 911 service area.
3. The geographic location of each PSAP receiving enhanced wireless 911 calls and the name of the person responsible for the management of the PSAP.
4. A set of guidelines for determining eligible cost for wireless service providers, wire-line service providers, and public safety answering points.

5. A statement of estimated charges for the implementation and operation of enhanced wireless 911 phase I and phase II service, detailing the equipment operated or needed to operate enhanced wireless 911 service, including any technology upgrades necessary to provide service. Charges must be directly attributable to the implementation and operation of enhanced wireless 911 service. Charges shall be detailed showing item(s) or unit(s) of cost, or both, and include estimated charges from:

- Wireless service providers.
- Wire-line service providers for implementation and operation of enhanced wireless 911 service.
- Public safety answering points.

6. A schedule for the implementation of enhanced wireless 911 phase I and phase II service.

10.7(2) *Adoption by reference.* The "Wireless Enhanced 911 Implementation and Operation Plan," effective February 1, 2000, and available from the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference.

605—10.8(34A) E911 surcharge (wireless).

10.8(1) The E911 program manager shall adopt a monthly surcharge of up to 50 cents to be imposed on each wireless communications service number provided in this state. The amount of wireless surcharge to be collected may be adjusted once yearly, but in no case shall the surcharge exceed 50 cents per month, per customer service number.

10.8(2) The amount of wireless surcharge to be collected during a fiscal year shall be determined by the administrator's best estimation of enhanced wireless 911 costs for the ensuing fiscal year. The E911 program manager shall base the estimated cost on information provided by the E911 communications council, wireless service providers, vendors, public safety agencies, joint E911 service boards and any other appropriate parties or agencies involved in the provision or operation of enhanced wireless 911 service. The E911 communications council shall also provide a recommended monthly wireless surcharge for the ensuing fiscal year.

10.8(3) The E911 program manager shall order the imposition of surcharge uniformly on a statewide basis and simultaneously on all wireless communications service numbers by giving at least 100 days' prior notice to wireless carriers to impose a monthly surcharge as part of their periodic billings. The 100-day notice to wireless carriers shall also apply when making an adjustment in the wireless surcharge rate.

10.8(4) The wireless surcharge shall be 50 cents per month, per customer service number until changed by rule.

10.8(5) The wireless carrier shall list the surcharge as a separate line item on the customer's billing. If the wireless carrier receives a partial payment of a monthly bill, the payment shall first be applied to the amount owed the wireless carrier with the remainder being applied to the surcharge. The wireless carrier shall bill and collect for a full month's surcharge in cases of a partial month's service. The wireless carrier is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing.

10.8(6) Remaining surcharge funds shall be remitted on a calendar-quarter basis within 20 days following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

605—10.9(34A) Wireless E911 emergency communications fund.

10.9(1) Wireless E911 surcharge money, collected and remitted by wireless service providers, shall be placed in a fund within the state treasury under the control of the administrator.

10.9(2) Iowa Code section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this subrule. However, moneys in the fund may be combined with other moneys in the state treasury for purposes of investment.

605—10.16(34A) Confidentiality. All financial or operations information provided by a wireless service provider to the E911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and Iowa Administrative Code 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts collected from said wireless service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the administrator if the aggregated information does not reveal any information attributable to an individual wireless service provider.

These rules are intended to implement Iowa Code chapter 34A.

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CHAPTERS 11 to 99
Reserved

CHAPTER 3
LICENSE FEES, RENEWAL DATES, FEES FOR DUPLICATE LICENSES AND CERTIFICATION OF EXAMINATION SCORES

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 4]

657—3.1(147,155A) Renewal date and fee—late application. A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license. The license renewal form shall be issued upon payment of a $100 fee plus applicable surcharge pursuant to 657—30.8(155A).

Failure to renew the license before July 1 following expiration shall require a renewal fee of $200 plus applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before August 1 following expiration shall require a renewal fee of $300 plus applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before September 1 following expiration shall require a renewal fee of $400 plus applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before October 1 following expiration shall require an appearance before the board and a renewal fee of $500 plus applicable surcharge pursuant to 657—30.8(155A). In no event shall the fee for late renewal of the license exceed $500 plus applicable surcharge pursuant to 657—30.8(155A). The provisions of Iowa Code section 147.11 shall apply to a license which is not renewed within five months of the expiration date.

This rule is intended to implement Iowa Code sections 147.10, 147.80, 147.94, 155A.11, and 155A.39.

657—3.2(155A) Fees. Only original license certificates issued by the board of pharmacy examiners for licensed pharmacists are valid. Additional original license certificates for licensed pharmacists may be obtained from the board of pharmacy examiners for a prepaid fee of $5 each.

This rule is intended to implement Iowa Code section 155A.10.

657—3.3(147) Certification of examination scores. Certification of examination scores shall be made upon request at no charge.

657—3.4(155A) Pharmacy license—general provisions. General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed on January 1 of each year. All areas where prescription drugs are dispensed or nonproduct pharmacy services are provided by a pharmacist will require a general pharmacy license, a hospital pharmacy license, or a nonresident pharmacy license. Nonresident pharmacy license applicants shall comply with board rules regarding nonresident pharmacy license except where specific exemptions have been granted. Applicants for general or hospital pharmacy license shall comply with board rules regarding general or hospital pharmacy license except where specific exemptions have been granted. Applicants who are granted exemptions shall be issued a "general pharmacy license with exemption," a "hospital pharmacy license with exemption," a "nonresident pharmacy license with exemption," or a "limited use pharmacy license with exemption" and shall comply with the provisions set forth by that exemption. A written request for exemption from certain licensure requirements, submitted pursuant to the procedures and requirements of 657—1.3(17A,124,126,147,155A,205,272C), will be determined on a case-by-case basis. Limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, and veterinary pharmacy practice. Applications for limited use pharmacy license for these and other limited use practice settings shall be determined on a case-by-case basis.

3.4(1) *Application form.* Application shall be on forms provided by the board. The application form for a pharmacy license shall indicate whether a pharmacy is a sole proprietorship (100 percent ownership) and give the name and address of the owner; or if a partnership, the names and addresses of all partners; or if a limited partnership, the names and addresses of the partners; or if a corporation, the names and addresses of the officers and directors. In addition, the form shall require the name, signature, and license number of the pharmacist in charge, the names and license numbers of all pharmacists engaged in practice in the pharmacy, the names and registration numbers of all pharmacy technicians working in the pharmacy, and the average number of hours worked by each pharmacist and pharmacy technician.

3.4(2) *Fee.* The fee for a new or renewal license shall be $100. Failure to renew the license before January 1 following expiration shall require a renewal fee of $200. Failure to renew the license before February 1 following expiration shall require a renewal fee of $300. Failure to renew the license before March 1 following expiration shall require a renewal fee of $400. Failure to renew the license before April 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of a pharmacy license exceed $500.

3.4(3) *Change of owner—closed pharmacy.* When a pharmacy changes ownership, a new completed application shall be filed with the board, and the old license returned. A fee of $100 will be charged for issuance of a new license. Closed pharmacies must remit their pharmacy licenses to the board office within ten days of closing.

3.4(4) *Change of name.* When a pharmacy changes names, a new completed application shall be filed with the board and the old license returned to the board office. A fee of $100 will be charged for issuance of a new license.

3.4(5) *Change of location.* When a pharmacy changes location, a new completed application shall be filed with the board and the old license returned to the board office. A fee of $100 will be charged for issuance of a new license. A change of location will require an on-site inspection of the new location.

3.4(6) *Change of pharmacist in charge.* When the pharmacist in charge position becomes vacant, a newly completed application shall be filed with the board within 90 days of the vacancy indicating the name of the new pharmacist in charge and the old license returned to the board office. A fee of $100 will be charged for issuance of a new license.

3.4(7) *Change of pharmacists.* Rescinded IAB 7/16/97, effective 8/20/97.

657—3.5(155A) Wholesale drug license — renewal and fees. A wholesale drug license shall be renewed no later than January 1 of each year. The fee for a new or renewal license shall be $100.

Failure to renew the license before January 1 following expiration shall require a renewal fee of $200. Failure to renew the license before February 1 following expiration shall require a renewal fee of $300. Failure to renew the license before March 1 following expiration shall require a renewal fee of $400. Failure to renew the license before April 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of a wholesale drug license exceed $500.

This rule is intended to implement Iowa Code sections 155A.13, 155A.14, and 155A.17.

657—3.6(124,147,155A) Returned check fee. A fee of $20 may be charged for any check returned for any reason. If a license, registration, or permit had been issued by the board office based on a check for the payment of fees and the check is later returned by the bank, the board shall request payment by certified check, cashier's check, or money order. If the fees, including returned check fee, are not paid within 15 calendar days of notification of the returned check, the license, registration, or permit is no longer in effect and the status reverts to what it would have been had the license, registration, or permit not been issued. Late payment penalties will be assessed, as provided in board rules, for subsequent requests to renew or reissue the license, registration, or permit.

This rule is intended to implement Iowa Code sections 124.301, 147.100, 155A.6, 155A.11, 155A.13, 155A.13A, 155A.14, and 155A.17.

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CHAPTER 4
PHARMACIST-INTERN REGISTRATION AND MINIMUM STANDARDS FOR EVALUATING PRACTICAL EXPERIENCE

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 3]

657—4.1(155A) Definitions.

"Pharmacist-intern" means a person enrolled in a college of pharmacy or actively pursuing a pharmacy degree, who is registered with the Iowa board of pharmacy examiners. The purpose of this registration is to obtain instruction in the practice of pharmacy from a preceptor pursuant to the requirements of Iowa Code section 155A.6. Registration is required of all students enrolled in Iowa colleges of pharmacy after they have successfully completed one semester in a college of pharmacy.

"Pharmacist preceptor" or *"preceptor"* means a pharmacist licensed to practice pharmacy whose license is current and in good standing. Preceptors shall meet the conditions and requirements of rule 4.9(155A). No pharmacist shall serve as a preceptor while the pharmacist's license to practice pharmacy is the subject of disciplinary sanction by a pharmacist licensing authority.

657—4.2(155A) Goal and objectives of internship.

4.2(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, responsibilities, and ability to safely, efficiently, and effectively practice pharmacy under the laws and rules of the state of Iowa.

4.2(2) The objectives of internship are as follows:

a. Managing drug therapy to optimize patient outcomes. The pharmacist-intern shall evaluate the patient and patient information to determine the presence of a disease or medical condition, to determine the need for treatment or referral, and to identify patient-specific factors that affect health, pharmacotherapy, or disease management; ensure the appropriateness of the patient's specific pharmacotherapeutic agents, dosing regimens, dosage forms, routes of administration, and delivery systems; and monitor the patient and patient information and manage the drug regimen to promote health and ensure safe and effective pharmacotherapy.

b. Ensuring the safe and accurate preparation and dispensing of medications. The pharmacist-intern shall perform calculations required to compound, dispense, and administer medication; select and dispense medications; and prepare and compound extemporaneous preparations and sterile products.

c. Providing drug information and promoting public health. The pharmacist-intern shall access, evaluate, and apply information to promote optimal health care; educate patients and health care professionals regarding prescription medications, nonprescription medications, and medical devices; and educate patients and the public regarding wellness, disease states, and medical conditions.

d. Adhering to professional and ethical standards. The pharmacist-intern shall comply with professional, legal, moral, and ethical standards relating to the practice of pharmacy and the operation of the pharmacy.

e. Understanding the management of pharmacy operations. The pharmacist-intern shall develop a general understanding of the business procedures of a pharmacy and develop knowledge concerning the employment and supervision of pharmacy employees.

657—4.3(155A) 1500-hour requirements. Internship credit may be obtained only after internship registration with the board and successful completion of one semester in a college of pharmacy. Internship shall consist of a minimum of 1500 hours, 1000 hours of which may be a college-based clinical program approved or accepted by the board. Programs shall be structured to provide experience in community, institutional, and clinical pharmacy practices. The remaining 500 hours shall be acquired under the supervision of the preceptor in a licensed pharmacy or other board-approved location, at a rate of no more than 48 hours per week. At least 250 hours shall be earned in a traditional licensed general or hospital pharmacy where the goal and objectives of internship in rule 657—4.2(155A) apply. Internship credit toward the stipulated 500 hours will not be allowed if it is acquired concurrent with academic training. "Concurrent time" means internship experience acquired while the person is a full-time student carrying, in a given school term, at least 75 percent of the average number of credit hours per term needed to graduate and receive an entry level degree in pharmacy. Credit toward the 500 hours will be granted for experience gained during recognized holiday periods, such as spring break and Christmas break. The competencies in subrule 4.2(2) shall not apply to college-based clinical programs.

657—4.4(155A) Iowa colleges of pharmacy clinical internship programs. The board shall periodically review the clinical component of internship programs of the colleges of pharmacy located in Iowa. The board reserves the right to set conditions relating to the approval of such programs.

657—4.5(155A) Requirements for internships obtained under other state programs. Graduates from out-of-state colleges of pharmacy will be deemed to have met Iowa internship requirements upon presentation of documents attesting to completion of their state internship requirements. Graduates of colleges of pharmacy in states which have no internship requirements must meet the requirements established for Iowa college of pharmacy graduates.

657—4.6(155A) Registration and reporting.

4.6(1) *Registration requirements and term of registration.* Every person shall register before beginning the person's internship experience, whether or not for the purpose of fulfilling the requirements of rule 4.3(155A). Colleges of pharmacy located in Iowa shall certify to the board the names of students who have successfully completed one semester in the college of pharmacy. Registration shall remain in effect as long as the board is satisfied that the intern is pursuing a degree in pharmacy in good faith and with reasonable diligence. A pharmacist-intern may request the intern's registration be extended beyond the automatic termination of such registration pursuant to the procedures and requirements of 657—1.3(17A),124,126,147,155A,205,272C). Registration shall automatically terminate upon the earliest of any of the following:

a. Licensure to practice pharmacy in any state;

b. Lapse, exceeding one year, in the pursuit of a degree in pharmacy; or

c. One year following graduation from the college of pharmacy.

4.6(2) *Identification, reports, and notifications.* Credit for internship time will not be granted unless registration and other required records and affidavits are completed.

a. The pharmacist-intern shall be so designated in all relationships with the public and health professionals. The intern shall wear a badge or name tag with the intern's name and designation, pharmacist-intern or pharmacy student, clearly and visibly imprinted thereon.

b. Registered interns shall notify the board office within ten days of a change of name, employment or residence.

c. Notarized affidavits of experience in non-college-sponsored programs shall be filed with the board office within 90 days after the successful completion of internship. These affidavits shall include certification of competencies and shall certify only the number of hours and dates of training which are nonconcurrent with college of pharmacy enrollment as provided in rule 4.3(155A).

4.6(3) *No credit prior to registration.* Credit will not be given for internship experience obtained prior to registration as a pharmacist-intern. Credit for Iowa college-based clinical programs (1000 hours) will not be granted unless registration is completed before the student begins the program.

4.6(4) *Nontraditional internship.* Credit shall not be given for internship experience obtained at a nontraditional site or program unless the board, prior to the intern's beginning the period of internship, approves the program. Internship training at any site which is not licensed as a general or hospital pharmacy is considered nontraditional internship. Written application for approval of a nontraditional internship program shall include site or program specific competencies, consistent with the goal and objectives of internship in 657—4.2(155A), to be attained during that internship. Application shall be on forms provided by the board. A preceptor supervising a nontraditional internship program shall be a pharmacist, and the requirements of 657—4.9(155A) shall apply to all preceptors.

657—4.7(155A) Foreign pharmacy graduates. Foreign pharmacy graduates who are candidates for licensure in Iowa will be required to obtain a minimum of 1500 hours of internship in a licensed pharmacy or other board-approved location. These candidates must register with the board as per rule 4.6(155A). Internship credit will not be granted until the candidate has been issued an intern registration card. Applications for registration must be accompanied by documentation that the foreign pharmacy graduate has passed the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), the Test of Spoken English (TSE), and the Test of English as a Foreign Language (TOEFL). The board may waive any or all of the 1500 hours if they determine that the candidate's experience as a practicing pharmacist in the foreign country meets the goals and objectives established in rule 4.2(155A).

657—4.8(155A) Fees. The fee for registration as a pharmacist-intern is $10, plus applicable surcharge pursuant to 657—30.8(155A), which fee shall be payable with the application.

657—4.9(155A) Preceptor requirements.

4.9(1) A preceptor shall be a licensed pharmacist in good standing pursuant to the definition of pharmacist preceptor in 657—4.1(155A).

4.9(2) A preceptor shall be responsible for initialing and dating those competencies the intern attained under the supervision of the preceptor and for completing the affidavit certifying the number of hours and the dates of each internship training period under the supervision of the preceptor.

4.9(3) A preceptor may supervise no more than two pharmacist-interns concurrently.

4.9(4) A preceptor shall be responsible for all functions performed by a pharmacist-intern.

657—4.10(155A) Denial of pharmacist-intern registration. The board may deny an application for registration as a pharmacist-intern for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A or 205, or any rule of the board.

657—4.11(155A) Discipline of pharmacist-interns.

4.11(1) The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205, or any rule of the board.

4.11(2) The board may impose the following disciplinary sanctions:

a. Revocation of a pharmacist-intern registration.

b. Suspension of a pharmacist-intern registration until further order of the board or for a specified period.

c. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.

d. Such other sanctions allowed by law as may be appropriate.

These rules implement Iowa Code section 155A.6.

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c. Container specification.
d. Copy of a sample label.
e. Initials of the packager.
f. Initials of the supervising pharmacist.
g. Quantity per container.
h. Internal control number or date.

8.3(2) *Label information.* Each prepackaged container shall bear a label containing the following information:

a. Name.
b. Strength.
c. Internal control number or date.
d. Expiration date (if any).
e. Auxiliary labels, as needed.

657—8.4(155A) Pharmacist identification and notification.

8.4(1) *Display of pharmacist license.* Each pharmacist, during any period the pharmacist is working in a pharmacy, shall display an original license to practice pharmacy in a position visible to the public. A current license renewal certificate, which certificate may be a photocopy of an original renewal certificate, shall be displayed with the original license.

8.4(2) *Pharmacist temporary absence.* In the case of the temporary absence of the pharmacist, hospital pharmacies excepted, the pharmacy shall notify the public that the pharmacist is temporarily absent and that no prescriptions will be dispensed until the pharmacist returns.

8.4(3) *Identification codes.* A permanent log of the initials or identification codes which will identify each dispensing pharmacist by name shall be maintained and available for inspection and copying by the board or its representative. The initials or identification code shall be unique to ensure that each pharmacist can be identified. Identical initials or identification codes shall not be used.

8.4(4) *Nonpermanent employee pharmacists.* The pharmacy shall maintain a log of all licensed pharmacists who have worked at that pharmacy and who are not regularly employed at that pharmacy. Such log shall be available for inspection and copying by the board or its representative.

This rule is intended to implement Iowa Code section 155A.13.

657—8.5(147,155A) Unethical conduct or practice. The provisions of this rule apply to licensed pharmacies, licensed pharmacists and registered pharmacist-interns.

8.5(1) *Misrepresentative deeds.* A pharmacist shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

8.5(2) *Undue influence.*

a. A pharmacist shall not accept professional employment or share or receive compensation in any form arising out of, or incidental to, the pharmacist's professional activities from a prescriber of prescription drugs or any other person or corporation in which one or more such prescribers have a proprietary or beneficial interest sufficient to permit them to directly or indirectly exercise supervision or control over the pharmacist in the pharmacist's professional responsibilities and duties or over the pharmacy wherein the pharmacist practices.

b. The prohibition in paragraph *"a"* shall not apply until April 23, 2006, to a pharmacist who is working at a prescriber-owned pharmacy location licensed as of April 23, 1981.

c. A prescriber may employ a pharmacist to provide nondispensing, drug information, or other cognitive services.

8.5(3) *Excessive rental fees.* A pharmacist shall not lease space for a pharmacy from a prescriber of prescription drugs or a group, corporation, association, or organization of such prescribers or in which prescribers have majority control or have directly or indirectly a majority beneficial or proprietary interest on a percentage of income basis. A pharmacist shall not pay rent for space which rent is not reasonable according to commonly accepted standards of the community.

8.5(4) *Nonconformance with law.* A pharmacist shall not knowingly serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

8.5(5) *Confidentiality.* In the absence of express consent from the patient or order or direction of a court, except where the best interests of the patient require, a pharmacist shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist, or a person duly authorized by law to receive such information, any of the following:

a. The contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient;

b. The nature, extent, or degree of illness suffered by any patient; or

c. Any medical information furnished by the prescriber.

This shall not prevent pharmacists from transferring a prescription to another pharmacy, providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which copy is marked "For Information Purposes Only," providing drug therapy information to physicians for their patients, or providing information to the board or its representative.

Disposal of any materials containing or including patient-specific or confidential information shall be conducted in a manner to preserve patient confidentiality.

657—8.20(155A) Patient counseling.

8.20(1) Upon receipt of a new prescription drug order and following a review of the patient's record, a pharmacist shall counsel each patient or patient's caregiver. The counseling shall be on matters which, in the pharmacist's professional judgment, will enhance or optimize drug therapy. Appropriate elements of patient counseling may include:

a. The name and description of the drug;

b. The dosage form, dose, route of administration, and duration of drug therapy;

c. Intended use of the drug, if known, and expected action;

d. Special directions and precautions for preparation, administration, and use by the patient;

e. Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

f. Techniques for self-monitoring drug therapy;

g. Proper storage;

h. Prescription refill information;

i. Action to be taken in the event of a missed dose;

j. Pharmacist comments relevant to the individual's drug therapy including any other information peculiar to the specific patient or drug.

8.20(2) If in the pharmacist's professional judgment oral counseling is not practicable, the pharmacist may use alternative forms of patient information. "Not practicable" refers to patient variables including, but not limited to, the absence of the patient or patient's caregiver, the patient's or caregiver's hearing impairment, or a language barrier. "Not practicable" does not include pharmacy variables such as inadequate staffing, technology failure, or high prescription volume. Alternative forms of patient information may include written information leaflets, pictogram labels, video programs, or information generated by electronic data processing equipment. When used in place of oral counseling, alternative forms of patient information shall advise the patient or caregiver that the pharmacist may be contacted for consultation in person at the pharmacy by toll-free telephone or collect telephone call. A combination of oral counseling and alternative forms of counseling is encouraged.

8.20(3) Patient counseling, as described above, shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.

8.20(4) A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation. A patient or caregiver's refusal of consultation shall be documented by the pharmacist. The absence of any record of a refusal of the pharmacist's attempt to counsel shall be presumed to signify that the offer was accepted and that counseling was provided.

657—8.21(155A) Skin puncture for patient training. A licensed pharmacist may perform skin puncture for purposes of training patients to withdraw their blood in order to perform self-assessment tests to monitor medical conditions including, but not limited to, diabetes. This does not preclude a pharmacist from performing venipuncture as authorized by institutional or clinic privileges.

657—8.22(155A) Blood pressure measurement. A licensed pharmacist may take a person's blood pressure and may inform the person of the results, render an opinion as to whether the reading is within a high, low, or normal range, and may advise the person to consult a physician of the person's choice.

657—8.23(155A) Compounding. Rescinded IAB 10/25/95, effective 1/1/96.

657—8.24(155A) Manufacturing. Rescinded IAB 10/25/95, effective 1/1/96.

Rules 8.18(155A) to 8.24(155A) are intended to implement Iowa Code sections 155A.11, 155A.13, 155A.17, 155A.35, 272C.2, and 272C.3.

657—8.25 to **8.28** Reserved.

657—8.29(155A,126) IV infusion products. Rescinded IAB 10/25/95, effective 1/1/96.

657—8.30(126,155A) Sterile products.

8.30(1) *Definitions.* For the purpose of this rule, the following definitions shall apply:

"Aseptic preparation" is the technique involving procedures designed to preclude contamination by microorganisms during processing.

"Batch preparation" is the compounding or repackaging of multiple units, in a single process, by the same operator.

"Class 100 condition" means an environment whose air particle count does not exceed a total of 100 particles of 0.5 microns and larger per cubic foot.

"Compounding" is the constitution, reconstitution, combination, dilution, or another process causing a change in the form, composition, or strength of any ingredient or any other attribute of a product.

"Critical area" is an area where sterilized products or containers are exposed to the environment during aseptic preparation.

"Hazardous drug" is a pharmaceutical that is antineoplastic, carcinogenic, mutagenic, or teratogenic.

"Home care patient" is a patient in the home environment or an institutionalized patient receiving products from a pharmacy located outside the institution.

"Repackaging" is the subdivision or transfer from a container or device into a different container or device.

"Sterile product" is a drug or nutritional substance free from living microorganisms that is compounded or repackaged by pharmacy personnel, using aseptic technique and other quality assurance procedures.

8.30(2) *Personnel.*

a. Pharmacist.

(1) Each pharmacy shall have a pharmacist responsible for supervising the preparation of IV infusion products compounded within the pharmacy.

(2) The pharmacist shall have the responsibility for admixture of infusion products, including education and training of personnel concerning proper aseptic technique, incompatibility, and provision of proper incompatibility information.

(3) When any part of these processes is not under direct pharmacy supervision, the pharmacist shall have the responsibility for providing written guidelines and for approving the procedures to ensure that all pharmaceutical requirements are met.

b. Pharmacy technicians.

(1) Pharmacy technicians shall receive documented on-the-job training and related education commensurate with the tasks they are to perform prior to the regular performance of those tasks.

(2) Pharmacy technicians shall receive regular and documented in-service education and training to supplement initial training.

(3) Pharmacy technicians shall understand and follow written policies and procedures for handling and preparing IV infusion products.

(4) Only technical functions can be performed by pharmacy technicians and only under the supervision of a pharmacist.

(5) A pharmacist shall ensure the accuracy of IV infusions prepared by pharmacy technicians prior to administration or dispensing to the patient.

8.32(4) *Storage.* The emergency/first dose drug supply shall be stored in an area suitable to prevent unauthorized access and to ensure a proper environment for preservation of medications contained therein as required in official compendia. The provider pharmacist, as defined in subrule 8.32(2), is responsible for establishing procedures to maintain the security of the emergency/first dose drug supply.

8.32(5) *Labeling—exterior.* The exterior of an emergency/first dose drug supply shall be labeled clearly and shall unmistakably indicate that it is an emergency/first dose drug supply. Such label shall also contain a listing of the name, strength, and quantity of the drugs contained therein and an expiration date of the supply based upon the earliest expiration date of any drug contained in the supply.

8.32(6) *Labeling—interior.* All drugs contained in the emergency/first dose drug supply shall be labeled in accordance with subrule 8.3(2) or 657—subrule 23.12(2), as appropriate.

8.32(7) *Removal of medication.* Medication shall be removed from the emergency/first dose drug supply only pursuant to a valid prescription order and by authorized personnel or by the provider pharmacist. The provider pharmacy shall be notified that medication was administered to a specific patient prior to the administration of a second dose. Upon notification, the provider pharmacist shall perform drug use review to assess the appropriateness of drug therapy for the patient.

8.32(8) *Notifications.* Whenever an emergency/first dose drug supply is opened or has expired, the provider pharmacy shall be notified and the pharmacist shall be responsible for replacing the medication within 72 hours to prevent risk of harm to patients. Policy must be developed by the provider pharmacist to address notification, record keeping, and documentation procedures for use of the supply.

8.32(9) *Procedures.*

a. The consultant or provider pharmacist shall, in communication with the director of nursing of the facility and the medical director of the facility, or their respective designees, develop and implement written policies and procedures to ensure compliance with this rule.

b. The provider pharmacy shall keep a complete record of each controlled substance stored in the emergency/first dose drug supply and the number of doses provided.

c. The facility shall keep a complete record of the use of controlled substances from the emergency/first dose drug supply for two years, including the patient's name, the date of use, the name of the drug used, the strength of the drug, the number of doses used, the name of the prescriber authorizing the administration, and the initials of the person administering the dose.

8.32(10) *Penalty.* If any of the provisions of this rule are violated, the board may suspend, revoke, or otherwise discipline a pharmacy's license and a pharmacist's license and may modify, suspend, or revoke the controlled substances registrations of the pharmacy and the noncompliant facility.

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CHAPTER 9
DISCIPLINE

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 10]
Rescinded IAB 5/19/99, effective 6/23/99; see 657—Chapter 35

CHAPTER 36
DISCIPLINE

657—36.1(147,155A,272C) Authority and grounds for discipline.

36.1(1) The board has the authority to impose discipline for any violations of Iowa Code chapters 124, 124A, 124B, 126, 147, 155A, 205, and 272C or the rules promulgated thereunder.

36.1(2) The board has the authority to impose the following disciplinary sanctions:

a. Revocation of a registration or of a license to operate a pharmacy or to practice pharmacy.

b. Suspension of a registration or of a license to operate a pharmacy or to practice pharmacy until further order of the board or for a specified period.

c. Nonrenewal of a registration or of a license to operate a pharmacy or to practice pharmacy.

d. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.

e. Probation.

f. Require additional education or training.

g. Require a reexamination.

h. Order a physical or mental examination.

i. Impose civil penalties not to exceed $25,000.

j. Issue citation and warning.

k. Such other sanctions allowed by law as may be appropriate.

l. Suspend for a specified period of time the licensee's privilege to participate in the medical assistance program operated by the state.

m. Deny, suspend, or revoke a wholesale drug license.

n. Refuse, suspend, or revoke a precursor substance permit.

36.1(3) The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

a. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.

b. The facts of the particular violation.

c. Any extenuating circumstances or other countervailing considerations.

d. Number of prior violations or complaints.

e. Seriousness of prior violations or complaints.

f. Whether remedial action has been taken.

g. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee, registrant, or permittee.

36.1(4) The board may impose any of the disciplinary sanctions set out in subrule 36.1(2), including civil penalties in an amount not to exceed $25,000, when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

a. Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice pharmacy, to operate a pharmacy doing business in this state, or to operate as a wholesale drug distributor doing business in this state or in making an application for a registration to practice as a pharmacist-intern or a pharmacy technician, and includes false representations of a material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making such application, or attempting to file or filing with the board any false or forged diploma, certificate, affidavit, identification, or qualification in making such application for a license or registration in this state.

b. Professional incompetency. Professional incompetency includes but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

(2) A substantial deviation by a pharmacist from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances.

(3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

(1) The inability of a licensee or registrant to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

(2) The excessive use of drugs which may impair a licensee's or registrant's ability to practice with reasonable skill or safety.

e. Conviction of a felony. A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

f. Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a pharmacist having made deceptive or untrue representations as to competency to perform professional services which the pharmacist is not qualified to perform by virtue of training or experience.

g. Use of untrue or improbable statements in advertisements.

h. Distribution of intoxicating liquors or drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes, but is not limited to, the disposition of drugs in violation of Iowa Code chapters 155A, 124, and 126.

i. Willful or repeated violations of the provisions of Iowa Code chapter 147 or Iowa Code chapter 272C. Willful or repeated violations of these Acts include, but are not limited to, a pharmacist's, pharmacist-intern's, or pharmacy technician's intentionally or repeatedly violating a lawful rule or regulation promulgated by the board of pharmacy examiners or the state department of public health or violating a lawful order of the board in a disciplinary hearing or violating the provisions of Title IV (Public Health) of the Code of Iowa, as amended.

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

k. Failure to notify the board within 30 days after a final decision entered by the licensing authority of another state, territory, or country which decision resulted in a license or registration revocation, suspension, or other disciplinary sanction.

l. Knowingly aiding, assisting, procuring, or advising another person to unlawfully practice pharmacy or to unlawfully perform the functions of a pharmacy technician.

m. Inability of a licensee or registrant to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

"Medical examination fees" means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee or registrant when the examination or evaluation is conducted pursuant to an order of the board.

"Transcript" means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

"Witness fees" means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa, for purposes of providing testimony on the part of the state of Iowa. For the purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

36.17(2) The board may charge a fee not to exceed $75 for conducting a disciplinary hearing which results in disciplinary action taken by the board against the license or registration. In addition to the fee, the board may recover from the licensee or registrant costs for the following procedures and personnel:

a. Transcript.

b. Witness fees and expenses.

c. Depositions.

d. Medical examination fees incurred relating to a person licensed or registered under Iowa Code chapters 147, 154A, 155, or 169.

36.17(3) Fees and costs assessed by the board pursuant to subrule 36.17(2) shall be calculated by the board's executive secretary/director and shall be entered as part of the board's final disciplinary order. The board's final disciplinary order shall specify the time period in which the fees and costs shall be paid by the licensee or registrant.

36.17(4) Fees and costs collected by the board pursuant to subrule 36.17(2) shall be allocated pursuant to rule 641—173.20(272C). The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

36.17(5) Failure of a licensee or registrant to pay the fees and costs assessed herein in the time specified in the board's final disciplinary order shall constitute a violation of a lawful order of the board.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23 as amended by 1998 Iowa Acts, chapter 1202, 124.301, 124.304, 124B.12, 126.16 to 126.18, 155A.6, 155A.12, 155A.13, 155A.13A, 155A.15 to 155A.18, 155A.25, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

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871—23.38(96) Denial of claim for refund or credit. A claim shall be denied if an employing unit within 30 days after written demand by the department fails to submit reasonable proof to support the validity and amount of the claim or fails to request an extension of time in which to submit the required information.

871—23.39(96) Issuance of a duplicate credit memo.

23.39(1) Upon notification by an employer that a credit memo previously issued cannot be located, the department may send Form 68-0602, Duplicate Credit Memo Request, to be filled out and signed by the employer and returned to the department. In lieu of Form 68-0602, the department may, at its option, accept a written statement signed by the employer stating that the credit memo cannot be located and requesting a duplicate.

23.39(2) If an employer secures a duplicate credit memo and then locates the original the employer shall submit for cancellation the unused credit memo. If the employer uses both credit memos as payment on any contribution report(s) the employer shall be liable to the department for the amount of the duplicate credit memo so used.

871—23.40(96) Computation of rates for private sector employer.

23.40(1) *Experience rating.* For calendar year 1988 and subsequent years, an employer's experience rate shall be computed by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer's five-year average annual taxable payroll to arrive at the benefit ratio. This ratio shall be applied to the appropriate rate table, as determined by the department, to determine the employer's contribution rate for the next calendar year.

23.40(2) *Administrative contribution surcharge.*

a. For calendar years 1988 through 2001, each employer except a governmental entity and a 501(c)(3) nonprofit organization will have an administrative contribution surcharge added to the contribution rate. The administrative contribution surcharge shall be a percentage, rounded to the next highest one-hundredth of 1 percent, of the taxable wage base in effect for the rate year following the computation date, which is equal to one-tenth of 1 percent of the Federal Unemployment Tax Act (FUTA) taxable wage base in effect on the computation date.

b. A portion of each payment received from an employer shall be considered administrative contribution surcharge and shall be credited to the administrative contribution surcharge fund. The administrative contribution surcharge shall be collectible, and interest shall accrue on unpaid surcharge at the same rate, as on regular contributions.

c. The portion of the employer's payment credited to the administrative contribution surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

d. The administrative contribution surcharge fund shall be a separate and distinct fund from the unemployment compensation fund. Interest earned on the moneys in the administrative contribution surcharge fund shall be credited to the administrative contribution surcharge fund. Moneys in the administrative contribution surcharge fund shall be appropriated by the general assembly. As a condition for the expenditure of $200,000 from the fund to conduct labor availability surveys, all communities scheduled to be surveyed shall contribute a percentage of the cost of completing the community surveys as agreed to by the department and each community to be surveyed.

23.40(3) *Temporary emergency surcharge beginning January 1, 1983.* If it becomes necessary to implement a temporary emergency surcharge on all employers, except zero rated employers, governmental employers, and 501(c)(3) nonprofit organizations, for any quarter to pay interest on moneys borrowed from the federal government to pay unemployment insurance benefits, the emergency surcharge shall be collected and credited in the following manner:

a. The emergency surcharge rate shall be added to the employer's regular contribution (tax) rate for the quarter. The add-on rate shall be a uniform percentage of each affected employer's regular contribution rate rounded to the nearest one-hundredth of a percent. The affected employers will be notified by the department of the surcharge by any appropriate means available at the time.

b. A portion of each payment that is received from an employer for a quarter in which the emergency surcharge is in effect shall be considered as being temporary emergency surcharge and shall be credited to the temporary emergency surcharge fund.

c. The portion of the employer's payment credited to the temporary emergency surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

d. The temporary emergency surcharge shall be used to pay the interest accrued on the trust fund money advanced to the department of workforce development by the federal government.

e. The director of the department of workforce development shall prescribe the manner and the amount of the surcharge to be collected.

This rule is intended to implement Iowa Code sections 96.7(2), 96.7(11), 96.7(12) and 96.19(8) and 1994 Iowa Acts, chapter 1187.

871—23.41(96) Computation date defined. The computation date for the succeeding year's contribution rate shall be July 1. The rate computation shall include the wages reported for the quarter ending June 30 immediately preceding the computation date, benefit charges based on benefit warrants issued on or before June 30 immediately preceding the computation date, and contributions paid by September 30 immediately following the computation date.

This rule is intended to implement Iowa Code section 96.19(8).

871—23.42(96) Crediting of interest earned on the unemployment trust fund. Interest received on moneys deposited with the Secretary of the Treasury of the United States shall be credited to the unemployment compensation fund.

This rule is intended to implement Iowa Code section 96.9(2)*"c."*

871—23.43(96) Charging of benefits to employer accounts.

23.43(1) *How charged.* Benefits paid to an eligible claimant shall be charged against the base period wage credits in the same inverse chronological order as the wages on which such wage credits are based were paid to the claimant.

23.43(2) *Formula for charging employer accounts.*

a. Wage credits in the most recent quarter of the base period will be used first and when wage credits in this quarter are exhausted, wage credits for the next most recent quarter will be used until each of the four quarters in the base period is exhausted or until the claimant is paid an amount not to exceed the claimant's maximum benefit amount.

b. Each employer who has wage credits in the quarter of the base period currently being used will be charged the employer's proportional share of each payment. The proportional share to be charged to each employer in the quarter will be the employer's percentage of the total wage credits in the quarter.

23.43(3) *Rule of two affirmances.*

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

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◊ Two ARCs

*Rules **645**—chs 6–17 apply to all professional licensure boards

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