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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

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

191—35.34(514C) Provider access. A carrier subject to this chapter shall allow a female enrollee direct access to obstetrical and gynecological services from network or participating providers. The carrier shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

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

191—35.35(509) Reconstructive surgery.

35.35(1) A carrier or organized delivery system that provides medical and surgical benefits with respect to a mastectomy shall provide the following coverage in the event an enrollee receives benefits in connection with a mastectomy and elects breast reconstruction:

- a. Reconstruction of the breast on which the mastectomy has been performed;
- b. Surgery and reconstruction of the other breast to produce a symmetrical appearance; and
- c. Prostheses and coverage of physical complications at all stages of a mastectomy including lymphedemas.

35.35(2) The benefits under this rule shall be provided in a manner determined in consultation with the attending physician and the enrollee. The coverage may be subject to annual deductibles and co-insurance provisions that are consistent with other benefits under the plan or coverage.

35.35(3) Written notice of the availability of coverage in this rule shall be provided to the enrollee upon enrollment and then annually.

35.35(4) A carrier or organized delivery system shall not deny an enrollee eligibility or continued eligibility to enroll or renew coverage under the terms of the health insurance solely for the purpose of avoiding the requirements of this rule. A carrier or organized delivery system shall not penalize, reduce or limit the reimbursement of an attending provider or induce the provider to provide care in a manner inconsistent with this rule.

This rule is intended to implement Public Law 105-277.

CONSUMER GUIDE

191—35.36(514K) Purpose. These rules implement Iowa Code Supplement section 514K.1(2) which requires the commissioner and the director of public health to annually publish a consumer guide. These rules apply to all carriers providing health insurance coverage in the individual, small employer group and large group markets that utilize a preferred provider arrangement and to all health maintenance organizations.

191—35.37(514K) Information filing requirements.

35.37(1) Each health maintenance organization shall annually file with the division no later than July 1 the following information by plan as requested by the division:

- a. Health plan employer data information set (HEDIS).
- b. Network composition.
- c. Other information determined to be beneficial to consumers including but not limited to consumer survey information.

35.37(2) Each preferred provider organization health network shall annually file with the division no later than July 1 the following information by plan as requested by the division:

- a. Reportable information as defined by a nationally recognized accreditation organization for preferred provider organization health networks.
- b. Network composition.
- c. Other information determined to be beneficial to consumers including but not limited to consumer survey information.

35.37(3) Each health maintenance organization and insurer using a preferred provider organization health network shall transmit the requested information by electronic mail or diskette in a format prescribed by the division.

191—35.38(514K) Limitation of information published. The division may establish limits on the data to be collected and published in the event the division believes the information is not statistically relevant and would not be beneficial to consumers.

These rules are intended to implement Iowa Code Supplement section 514K.1(2).

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*See IAB Insurance Division

19.4(5) Customer's receipt for a deposit. Each utility shall issue a receipt of deposit to each customer from whom a deposit is received, and shall provide means whereby a depositor may establish claim if the receipt is lost.

19.4(6) Deposit refund. A deposit shall be refunded after 12 consecutive months of prompt payment (which may be 11 timely payments and one automatic forgiveness of late payment), unless the utility is entitled to require a new or additional deposit. For refund purposes, the account shall be reviewed after 12 months of service following the making of the deposit and for each 12-month interval terminating on the anniversary of the deposit. However, deposits received from customers subject to the exemption provided by subrule 19.3(7), including surety deposits, may be retained by the utility until final billing. Upon termination of service, the deposit plus accumulated interest, less any unpaid utility bill of the customer, shall be reimbursed to the person who made the deposit.

19.4(7) Unclaimed deposits. The utility shall make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility shall maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4, at which time the record and deposit, together with accrued interest less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section 556.11.

19.4(8) Customer bill forms. Each customer shall be informed as promptly as possible following the reading of the customer's meter, on bill form or otherwise, the following:

- a. The reading of the meter at the beginning and at the end of the period for which the bill is rendered.
- b. The dates on which the meter was read at the beginning and end of the billing period.
- c. The number and kind of units metered.
- d. The applicable rate schedule or identification of the applicable rate schedule.
- e. The account balance brought forward and the amount of each net charge for rate-schedule-priced utility service, sales tax, other taxes, late payment charge, and total amount currently due. In the case of prepayment meters, the amount of money collected shall be shown.
- f. The last date for timely payment shall be clearly shown and shall be not less than 20 days after the bill is rendered.
- g. A distinct marking to identify an estimated bill.
- h. A distinct marking to identify a minimum bill.
- i. Any conversions from meter reading units to billing units, or any calculations to determine billing units from recording or other devices, or any other factors, such as sliding scale or automatic adjustment and amount of sales tax adjustments used in determining the bill.

19.4(9) Customer billing information alternate. A utility serving fewer than 5000 gas customers may provide the information in 19.4(8) on bill form or otherwise. If the utility elects not to provide the information of 19.4(8) on the bill form, it shall advise the customer, on the bill form or by bill insert, that such information can be obtained by contacting the utility's local office.

19.4(10) Payment agreements.

a. Availability—customer.

(1) When a residential customer cannot pay in full a delinquent bill for utility service and will be disconnected, a utility shall offer the customer an opportunity to enter into a reasonable agreement to pay that bill unless the customer is in default on a payment agreement.

(2) When a disconnected or potential customer for residential service has an outstanding debt to the utility for utility service, cannot pay the debt in full, and is not in default on a payment agreement, the utility must consider a request for a payment agreement.

b. Reasonableness. Whether a payment agreement is reasonable will be determined by considering the current household income, ability to pay, payment history including prior defaults on similar agreements, the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household. The utility may require the person to confirm financial difficulty with an acknowledgment from the department of human services or another agency.

c. *Terms.* The agreement may require the customer to bring the account to a current status by paying specific amounts at scheduled times. The utility shall offer customers or disconnected customers the option of spreading payments evenly over at least 12 months. Payments for potential customer agreements may be spread evenly over at least 6 months.

The agreement shall also include provision for payment of the current account. The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules.

When the customer makes the agreement in person, a signed copy of the agreement shall be provided to the customer, disconnected customer or potential customer.

The utility may offer the customer the option of making the agreement over the telephone or through electronic transmission. When the customer makes the agreement over the telephone or through electronic transmission, the utility will render to the customer a written document reflecting the terms and conditions of the agreement within three days of the date the parties entered into the oral agreement. The document will be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the document shall be considered rendered to the customer when delivered to the last-known address of the person responsible for payment for the service. The document shall state that unless the customer notifies the utility within ten days from the date the document is rendered, it will be deemed that the customer accepts the terms as reflected in the written document. The document stating the terms and agreements shall include the address and a toll-free number where a qualified representative can be reached. By making the first payment, the customer confirms acceptance of the terms of the oral agreement.

Second agreement. If a customer has retained service from November 1 through April 1 but is in default of a payment agreement, the utility may offer the customer a second payment agreement that will divide the past-due amount into equal monthly payments with the final payment due by the fifteenth day of the next October. The utility may also require the customer to enter into a level payment plan to pay the current bill.

The customer who has been in default of a payment agreement from November 1 to April 1 may be required to pay current bills based on a budget estimate of the customer's actual usage, weather-normalized, during the prior 12-month period or based on projected usage if historical use data is not available.

d. *Refusal by utility.* If the utility intends to refuse a payment agreement offered by a customer, it must provide a written refusal to the customer. That refusal, with explanation, must be made within 30 days of mailing of the initial disconnection notice. A customer may protest the utility's refusal by filing a written complaint, including a copy of the utility's refusal, with the board within 10 days after receipt of the written refusal. If the utility intends to refuse a payment agreement to a disconnected or potential customer, it must provide a written refusal within 10 days of the application for payment agreement.

19.4(11) Bill payment terms. The bill shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the bill shall be considered rendered when delivered to the last-known address of the party responsible for payment. There shall be not less than 20 days between the rendering of a bill and the date by which the account becomes delinquent. Bills for customers on more frequent billing intervals under subrule 19.3(7) may not be considered delinquent less than 5 days from the date of rendering. However, a late payment charge may not be assessed if payment is received within 20 days of the date the bill is rendered.

The date of delinquency for all residential customers or other customers whose consumption is less than 250 ccf per month shall be changeable for cause in writing; such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment. In no case, however, shall the utility be required to delay the date of delinquency more than 30 days beyond the date of preparation of the previous bill.

In any case where net and gross amounts are billed customers, the difference between net and gross is a late payment charge and is valid only when part of a delinquent bill payment. A utility's late payment charge shall not exceed 1.5 percent per month of the past due amount. No collection fee may be levied in addition to this late payment charge. This rule does not prohibit cost-justified charges for disconnection and reconnection of service.

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b. A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than 12 days from the date of mailing to comply. The new or additional deposit shall be payable at any of the utility's business offices or local authorized agents. An appropriate receipt shall be provided. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

c. No deposit shall be required as a condition for service other than determined by application of either credit rating or deposit calculation criteria, or both, of the filed tariff.

d. The total deposit for any residential or commercial customer for a place which has previously received service shall not be greater than the highest billing of service for one month for the place in the previous 12-month period. The deposit for any residential or commercial customer for a place which has not previously received service, or for an industrial customer, shall be the customer's projected one-month usage for the place to be served as determined by the utility, or as may be reasonably required by the utility in cases involving service for short periods or special occasions.

20.4(4) *Interest on customer deposits.* Interest shall be paid by the rate-regulated utility to each customer required to make a deposit. On or after April 21, 1994, rate-regulated utilities shall compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent, relative to an account treated as an uncollectible account, is the most recent date the account became delinquent.

20.4(5) *Customer deposit records.* Each utility shall keep records to show:

a. The name and address of each depositor.

b. The amount and date of the deposit.

c. Each transaction concerning the deposit.

20.4(6) *Customer's receipt for a deposit.* Each utility shall issue a receipt of deposit to each customer from whom a deposit is received, and shall provide means whereby a depositor may establish claim if the receipt is lost.

20.4(7) *Deposit refund.* A deposit shall be refunded after 12 consecutive months of prompt payment (which may be 11 timely payments and 1 automatic forgiveness of late payment). For refund purposes the account shall be reviewed for prompt payment after 12 months of service following the making of the deposit and for each 12-month interval terminating on the anniversary of the deposit. However, deposits received from customers subject to the exemption provided by 20.4(3)"b," including surety deposits, may be retained by the utility until final billing. Upon termination of service, the deposit plus accumulated interest, less any unpaid utility bill of the customer, shall be reimbursed to the person who made the deposit.

20.4(8) *Unclaimed deposits.* The utility shall make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility shall maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4, at which time the record and deposit, together with accrued interest less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section 556.11.

20.4(9) Customer bill forms. Each customer shall be informed as promptly as possible following the reading of the customer's meter, on bill form or otherwise, of the following:

- a. The reading of the meter at the beginning and at the end of the period for which the bill is rendered.
- b. The dates on which the meter was read, at the beginning and end of the billing period.
- c. The number and kind of units metered.
- d. The applicable rate schedule, or identification of the applicable rate schedule.
- e. The account balance brought forward and amount of each net charge for rate-schedule-priced utility service, sales tax, other taxes, late payment charge, and total amount currently due. In the case of prepayment meters, the amount of money collected shall be shown.
- f. The last date for timely payment shall be clearly shown and shall be not less than 20 days after the bill is rendered.
- g. A distinct marking to identify an estimated bill.
- h. A distinct marking to identify a minimum bill.
- i. Any conversions from meter reading units to billing units, or any calculations to determine billing units from recording or other devices, or any other factors, such as sliding scale or automatic adjustment and amount of sales tax adjustments used in determining the bill.
- j. Customer billing information alternate. A utility serving less than 5000 electric customers may provide the information in 20.4(9) on bill form or otherwise. If the utility elects not to provide the information of 20.4(9), it shall advise the customer, on bill form or by bill insert, that such information can be obtained by contacting the utility's local office.

20.4(10) Rescinded, effective 7/1/81.

20.4(11) Payment agreements.

a. Availability—customer.

(1) When a residential customer cannot pay in full a delinquent bill for utility service and will be disconnected, a utility shall offer the customer an opportunity to enter into a reasonable agreement to pay that bill unless the customer is in default on a payment agreement.

(2) When a disconnected or potential customer for residential service has an outstanding debt to the utility for utility service, cannot pay the debt in full, and is not in default on a payment agreement, the utility must consider a request for a payment agreement.

b. Reasonableness. Whether a payment agreement is reasonable will be determined by considering the current household income, ability to pay, payment history including prior defaults on similar agreements, the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household. The utility may require the person to confirm financial difficulty with an acknowledgment from the department of human services or another agency.

c. Terms. The agreement may require the customer to bring the account to a current status by paying specific amounts at scheduled times. The utility shall offer customers or disconnected customers the option of spreading payments evenly over at least 12 months. Payments for potential customer agreements may be spread evenly over at least 6 months.

The agreement shall also include provision for payment of the current account. The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules.

When the customer makes the agreement in person, a signed copy of the agreement shall be provided to the customer, disconnected customer or potential customer.

The utility may offer the customer the option of making the agreement over the telephone or through electronic transmission. When the customer makes the agreement over the telephone or through electronic transmission, the utility will render to the customer a written document reflecting the terms and conditions of the agreement within three days of the date the parties entered into the oral agreement. The document will be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the document shall be considered rendered to the customer when delivered to the last-known address of the person responsible for the payment for the service. The document shall state that unless the customer notifies the utility within ten days from the date the document is rendered, it will be deemed that the customer accepts the terms as reflected in the written document. The document stating the terms and agreements shall include the address and a toll-free number where a qualified representative can be reached. By making the first payment, the customer confirms acceptance of the terms of the oral agreement.

Second agreement. If a customer has retained service from November 1 through April 1 but is in default of a payment agreement, the utility may offer the customer a second payment agreement that will divide the past-due amount into equal monthly payments with the final payment due by the fifteenth day of the next October. The utility may also require the customer to enter into a level payment plan to pay the current bill.

The customer who has been in default of a payment agreement from November 1 to April 1 may be required to pay current bills based on a budget estimate of the customer's actual usage, weather-normalized, during the prior 12-month period or based on projected usage if historical use data is not available.

d. Refusal by utility. If the utility intends to refuse a payment agreement offered by a customer, it must provide a written refusal to the customer. That refusal, with explanation, must be made within 30 days of mailing of the initial disconnection notice. A customer may protest the utility's refusal by filing a written complaint, including a copy of the utility's refusal, with the board within 10 days after receipt of the written refusal. If the utility intends to refuse a payment agreement to a disconnected or potential customer, it must provide a written refusal within 10 days of the application for payment agreement.

20.4(12) Bill payment terms. The bill shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the bill shall be considered rendered when delivered to the last-known address of the party responsible for payment. There shall not be less than 20 days between the rendering of a bill and the date by which the account becomes delinquent. Bills for customers on more frequent billing intervals under subrule 20.3(6) may not be considered delinquent less than 5 days from the date of rendering. However, a late payment charge may not be assessed if payment is received within 20 days of the date the bill is rendered.

The date of delinquency for all residential customers or other customers whose consumption is less than 3000 kWh per month, shall be changeable for cause in writing; such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment.

In any case where net and gross amounts are billed customers, the difference between net and gross is a late payment charge and is valid only when part of a delinquent bill payment. A utility's late payment charge shall not exceed 1.5 percent per month of the past due amount. No collection fee may be levied in addition to this late payment charge. This rule does not prohibit cost-justified charges for disconnection and reconnection of service.

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

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

All residential customers or other customers whose consumption is less than 3000 kWh per month may select a plan of level payments. The rules for such plan shall include at least the following:

- a. Be offered when the customer initially requests service.
- b. Have a date of delinquency changeable for cause in writing; such as, but not limited to, 15 days from approximate date each month upon which income is received by the person responsible for payment.
- c. Provide for entry into the level payment plan any time during the calendar year. The month of entry shall be that customer's anniversary month.
- d. The billing period level payment to be the sum of estimated charges divided by the number of standard billing intervals, all for the next 12 consecutive months.
- e. Except for termination of service, a customer on the level payment plan may not request termination of the plan (or withdrawal from the plan) until the first anniversary date following entry.
- f. The level payment plan account balance on the anniversary date shall be carried forward and added to the estimated charges for service during the next year. This total will be the basis for computing the next year's periodic billing interval level payment amount. For purposes of this paragraph the anniversary date account balance shall not carry forward an unpaid level payment bill. For delinquency on a level payment plan amount see 20.4(12) "i."
- g. The amount to be paid in each billing interval by a customer on a level payment plan shall be computed at the time of entry into the plan. It may be recomputed on each anniversary date, when requested by the customer, or whenever price, consumption, alone or in combination result in a new estimate differing by 10 percent or more from that in use.

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

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

i. Irrespective of the account balance, a delinquency in payment shall be subject to the same procedures as other accounts on late payment charge on the level payment amount, collection, or cutoff.

20.4(13) Customer records. The utility shall retain records as may be necessary to effectuate compliance with 20.4(14) and 20.6(6), but not less than three years. Records for customer shall show where applicable:

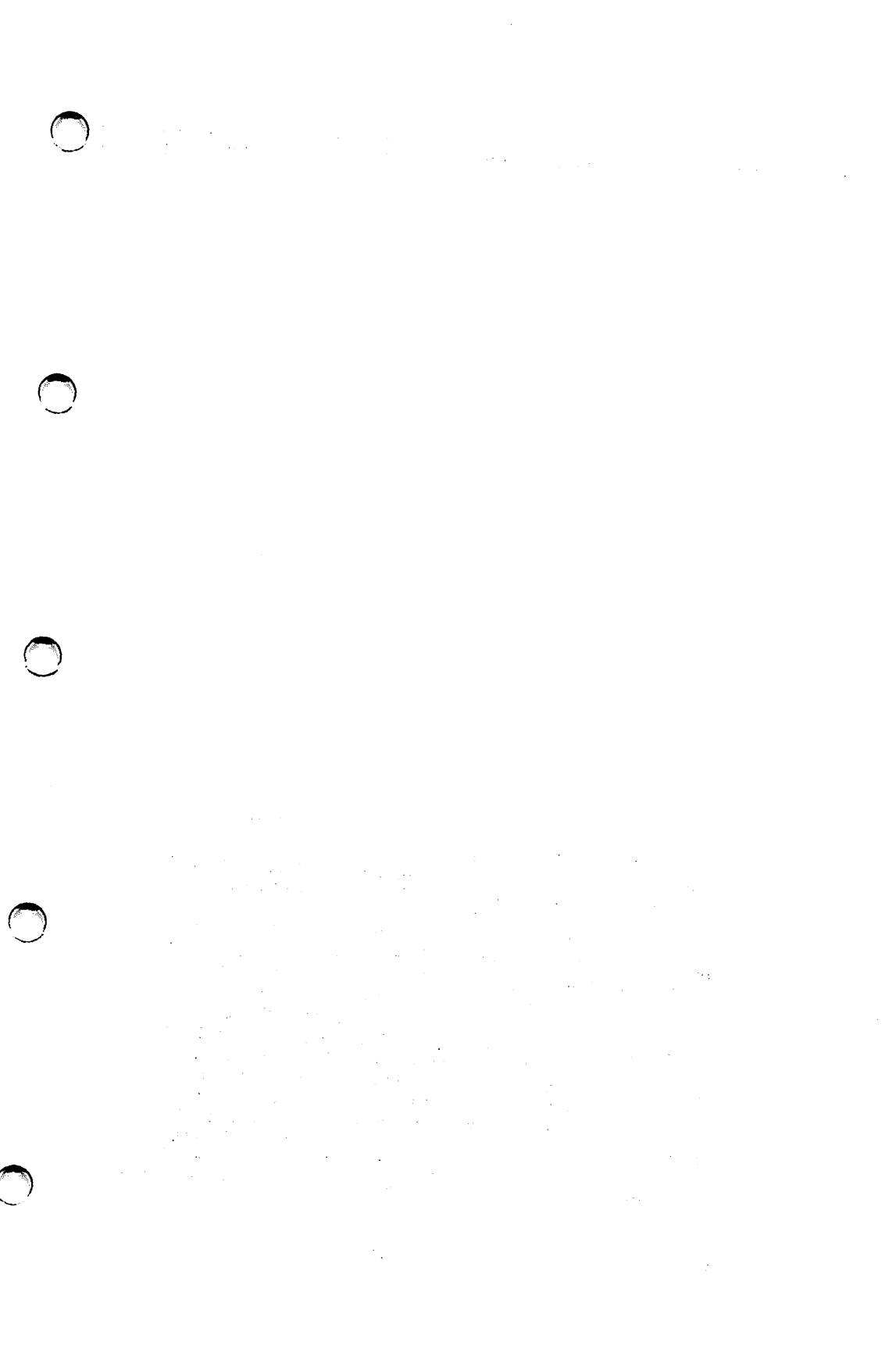
- a. kWh meter reading
- b. kWh consumption
- c. kW meter reading
- d. kW measured demand
- e. kW billing demand
- f. Total amount of bill.

20.4(14) Adjustment of bills.

a. **Meter error.** Whenever a meter creeps or whenever a metering installation is found upon any test to have an average error of more than 2.0 percent for watt-hour metering; or a demand metering error of more than 1.5 percent in addition to the errors allowed under accuracy of demand metering; an adjustment of bills for service for the period of inaccuracy shall be made in the case of overregistration and may be made in the case of underregistration. The amount of the adjustment shall be calculated on the basis that the metering equipment should be 100 percent accurate with respect to the testing equipment used to make the test. For watt-hour metering installations the average accuracy shall be the arithmetic average of the percent registration at 10 percent of rated test current and at 100 percent of rated test current giving the 100 percent of rated test current registration a weight of four and the 10 percent of rated test current registration a weight of one.

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6.14(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.14(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.14(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the legal consultant for the department of education for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

281—6.15(17A) Record.

6.15(1) Upon the request of any party, oral proceedings in whole or in part shall be either transcribed, if recorded by certified shorthand reporters, or copied if recorded by mechanical means, with the expense for the transcription of copies charged to the requesting party.

6.15(2) All recordings, stenographic notes or transcriptions of oral proceedings shall be maintained and preserved by the department for at least five years from the date of a decision.

6.15(3) The record of a hearing under these rules shall include:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of matters officially noticed.
- d. All questions and offers of proof, objections, and rulings thereon.
- e. All proposed findings of fact and conclusions of law.
- f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—6.16(17A) Recording costs. Upon request, the department of education shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

281—6.17(290,17A) Decision and review.

6.17(1) The presiding officer, after due consideration of the record and the arguments presented, and with the advice and counsel of the staff members, shall make a decision on the appeal. Unless the parties are eligible to and agree to waive their right to a written decision approved by the director or state board of education pursuant to subrule 6.17(7), the proposed decision shall be mailed to the parties or their representatives by regular mail.

6.17(2) The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.

6.17(3) The decision of the presiding officer shall be placed on the agenda of the next regular board meeting for review of the record and decision unless the decision is issued orally at hearing under sub-rule 6.17(7) or unless the decision is within the province of the director to make.

6.17(4) Any adversely affected party may appeal a proposed decision to the state board within 20 days after the date of the proposed decision.

6.17(5) An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office of the director. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The names and addresses of the parties initiating the appeal;
- b. The proposed decision to be appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision;

- d. The relief sought; and

- e. The grounds for relief.

6.17(6) Appeal procedures.

- a. Unless otherwise ordered, within 15 days of a party's filing of the notice of appeal, each appealing party may file exceptions and briefs. Within 10 days after the filing of exceptions and briefs by the appealing party, any party may file a responsive brief;

- b. Briefs shall cite any applicable legal authority and specify relevant portions of the record in the proceeding below;

- c. Briefs shall be limited to a maximum length of 25 pages; and

- d. An opportunity for oral arguments may be given with the consent of the board. Written requests to present oral arguments shall be filed with the briefs.

6.17(7) The board may affirm, modify, or vacate the decision, or may direct a rehearing before the director or the director's designee.

6.17(8) Copies of the final decision shall be sent to the parties or their representatives by regular mail within five days after state board action, if required, on the proposed decision.

6.17(9) No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case, or other pending factually related matters. Nor shall any individual who participates in the making of any proposed decision be subject to the authority, direction, or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing, or a pending related matter involving the same parties.

6.17(10) In an appeal from the denial of a parent's or guardian's request for open enrollment, where the denial was for missing the deadline for filing for open enrollment without good cause for being late, the parties to the appeal may request that the presiding officer issue an oral decision on the merits of the case at the conclusion of the hearing. An agreement by the parties to waive their right to a written decision reviewed by the director or state board in favor of an oral decision after the hearing may be rescinded by either party if a request is submitted in writing and mailed or delivered in person to the presiding officer with 30 days following the hearing. A written decision will not be expedited but will be issued at a later date in sequence with other written decisions in the order in which the case was heard.

A request to waive a written decision shall not be granted by the presiding officer if the issue in the case is an issue of first impression or is not substantially similar to the issue decided by the state board or director which serves as precedent to the presiding officer.

281—6.18(290) Finality of decision. The decision is final upon board approval of the presiding officer's decision.

These rules are intended to implement Iowa Code sections 256.7(6), 275.16, 282.18, 282.18(5), 282.32, 285.12, and Iowa Code chapter 290 and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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TITLE IV
FAMILY INVESTMENT PROGRAM

CHAPTER 40
APPLICATION FOR AID
 [Prior to 7/1/83, Social Services[770] Ch 40]
 [Prior to 2/11/87, Human Services[498]]

DIVISION I
FAMILY INVESTMENT PROGRAM—CONTROL GROUP
 [Rescinded IAB 2/12/97, effective 3/1/97]

441—40.1 to 40.20 Reserved.

DIVISION II
FAMILY INVESTMENT PROGRAM—TREATMENT GROUP
 [Prior to 10/13/93, 441—40.1(239) to 40.9(239)]

441—40.21(239B) Definitions.

“Applicant” means a person for whom assistance is being requested, parent(s) living in the home with the child(ren), and the nonparental relative as defined in 441—subrule 41.22(3) who is requesting assistance for the child(ren).

“Assistance unit” includes any person whose income is considered when determining eligibility or the amount of assistance for aid to dependent children.

“Budgeting process” means the process by which income is computed to determine eligibility under the 185 percent eligibility test described in 441—41.27(239B), Initial eligibility, the initial family investment program grant, ongoing eligibility, and the ongoing family investment program grant.

1. For retrospective budgeting, the budget month is the second month preceding the payment month.

2. For prospective budgeting, the budget month and payment month are the same calendar month.

“Budget month” means the calendar month from which the local office uses income or circumstances of the eligible group to compute eligibility and the amount of assistance.

“Central office” shall mean the state administrative office of the department of human services.

“Change in income” means a permanent change in hours worked or rate of pay, any change in the amount of unearned income, or the beginning or ending of any income.

“Department” shall mean the Iowa department of human services.

“Income in kind” is any gain or benefit which is not in the form of money payable directly to the eligible group including nonmonetary or in-kind benefits, such as meals, clothing, and vendor payments. Vendor payments are money payments which are paid to a third party and not to the eligible group.

“Initial two months” means the first two consecutive months for which assistance is paid. This may include a month for which a partial payment is made.

Whenever *“medical institution”* is used in this title, it shall mean a facility which is organized to provide medical care, including nursing and convalescent care, in accordance with accepted standards as authorized by state law and as evidenced by the facility’s license. A medical institution may be public or private. Medical institutions include the following:

1. Hospitals
2. Extended care facilities (skilled nursing)
3. Intermediate care facilities
4. Mental health institutions
5. Hospital schools

"Payment month" means the calendar month for which assistance is paid.

"Payment standard" means the total needs of a group as determined by adding need according to the schedule of basic needs, described in 441—subrule 41.28(2), to any allowable special needs, described in 441—subrule 41.28(3).

"Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) programs" means the department's training program as described in 441—Chapter 93, Division II.

"Prospective budgeting" means the determination of eligibility and the amount of assistance for a calendar month based on the best estimate of income and circumstances which will exist in that calendar month.

"Recipient" means a person for whom assistance is paid, parent(s) living in the home with the eligible child(ren) and nonparental relative as defined in 441—subrule 41.22(3) who is receiving assistance for the child(ren). Unless otherwise specified, a person is not a recipient for any month in which the assistance issued for that person is subject to recoupment because the person was ineligible.

"Report month" for retrospective budgeting means the calendar month following the budget month. *"Report month"* for prospective budgeting means the calendar month in which a change occurs.

"Retrospective budgeting" means the computation of the amount of assistance for a payment month based on actual income and circumstances which existed in the budget month.

"Standard of need" means the total needs of a group as determined by adding need according to the schedule of living costs, described in 441—subrule 41.28(2), to any allowable special needs, described in 441—subrule 41.28(3).

"Suspension" means a month in which an assistance payment is not made due to ineligibility for one month when eligibility is expected to exist the following month.

"Unborn child" shall include an unborn child during the entire term of the pregnancy.

"X-PERT" means an automated knowledge-based computer system that determines eligibility for FIP and other assistance programs.

This rule is intended to implement Iowa Code sections 239B.3, 239B.5, and 239B.6.

441—40.22(239B) Application. For cases selected for the X-PERT system, the application for the family investment program shall be initiated by submitting Form 470-3112, Application for Assistance, Part 1, or Form 470-3122 (Spanish). Applicants whose cases are selected for the X-PERT system but whose eligibility cannot be determined through the X-PERT system may be requested to complete Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish). Form 470-3112 or Form 470-3122 shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf.

For cases not selected for the X-PERT system, the application for the family investment program shall be submitted on Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish). When submitting Application for Assistance, Part 1, Form 470-3112 or Form 470-3122 (Spanish), the applicant shall also be required to complete Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish), no later than at the time of the required face-to-face interview. Form PA-2207-0 or Form PA-2230-0 (Spanish) shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf. When both parents, or a parent and a stepparent, are in the home, both shall sign the application.

(3) The assistance unit contains any member receiving nonexempt unearned income, the source or amount of which is expected to change more often than once annually, unless the income is from job insurance benefits or interest; or unless the assistance unit's adult members are 60 years old or older, or are receiving disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act; or unless all adults, who would otherwise be members of the assistance unit, are receiving Supplemental Security Income including state supplementary assistance.

(4) Rescinded IAB 10/13/93, effective 10/1/93.

(5) The assistance unit contains any member residing out of state on a temporary basis.

b. The assistance unit subject to monthly reporting shall complete a Public Assistance Eligibility Report, Form PA-2140-0, for each budget month, unless the assistance unit is required to complete Form 470-2881, Review/Recertification Eligibility Document for that month. The Public Assistance Eligibility Report shall be signed by the payee, the payee's authorized representative, or, when the payee is incompetent or incapacitated, someone acting responsibly on the payee's behalf. When both parents or a parent and a stepparent are in the home, both shall sign the form.

40.27(2) A redetermination of specific eligibility factors shall be made when:

a. The recipient reports a change in circumstances (for example, a change in income, as defined at rule 441—40.21(239B)), or

b. A change in the recipient's circumstances comes to the attention of a staff member.

40.27(3) Information for semiannual reviews shall be submitted on Form PA-2140-0, Public Assistance Eligibility Report. Information for the annual face-to-face determination interview shall be submitted on Form 470-2881, Review/Recertification Eligibility Document. When the client has completed Form PA-2207-0, Public Assistance Application, for another purpose, this form may be used as the review document for the semiannual or annual review. The review form shall be signed by the payee, the payee's authorized representative, or, when the payee is incompetent or incapacitated, someone acting responsibly on the payee's behalf. When both parents, or a parent and a stepparent, are in the home, both shall sign the Public Assistance Eligibility Report, the Review/Recertification Eligibility Document, or the Public Assistance Application.

40.27(4) Responsibilities of recipients (including individuals in suspension status). For the purposes of this subrule, recipients shall include persons who received assistance subject to recoupment because the persons were ineligible.

a. The recipient shall cooperate by giving complete and accurate information needed to establish eligibility and the amount of the family investment program grant.

b. The recipient shall complete Form PA-2140-0, Public Assistance Eligibility Report, or Form 470-2881, Review/Recertification Eligibility Document, when requested by the county office in accordance with these rules. Either form will be supplied as needed to the recipient by the department. The department shall pay the cost of postage to return the form. When the form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the fifth calendar day of the report month. When the form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the seventh day after the date it is mailed by the department. The county office shall supply the recipient with a Form PA-2140-0, Public Assistance Eligibility Report, or Form 470-2881, Review/Recertification Eligibility Document, on request. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no earlier than the last day of the budget month and accompanied by verification as required in 441—paragraph 41.27(1) "i," and 41.27(2) "q."

441—40.28(239B) Referral for investigation. The local office may refer questionable cases to the department of inspections and appeals for further investigation. Referrals shall be made using Form 427-0328, Referral For Front End Investigation.

This rule is intended to implement Iowa Code section 239B.5.

441—40.29(239B) Conversion to the X-PERT system. For conversion to the X-PERT system at a time other than review, the recipient may be required to provide additional information. To obtain this information, a recipient may be required to appear for a face-to-face interview. Failure to appear for this interview when so requested, or failure to provide requested information, shall result in cancellation.

These rules are intended to implement Iowa Code chapter 239B.

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e. Rescinded IAB 2/11/98, effective 2/1/98.

f. When the applicant or recipient sells property on contract, proceeds from the sale shall be considered exempt as income. The portion of any payment that represents principal is considered a resource upon receipt as defined in 41.26(4). The interest portion of the payment is considered a resource the month following the month of receipt.

g. Every person in the eligible group shall apply for benefits for which that person may be qualified and accept those benefits, even though the benefit may be reduced because of the laws governing a particular benefit. The needs of any individual who refuses to cooperate in applying for or accepting benefits from other sources shall be removed from the eligible group. The individual is eligible for the 50 percent work incentive deduction in paragraph 41.27(2) "c."

h. Support payments in cash shall be considered as unearned income in determining initial and continuing eligibility.

(1) Any nonexempt cash support payment for a member of the eligible group, made while the application is pending, shall be treated as unearned income and deducted from the initial assistance grant(s). Any cash support payment for a member of the eligible group, except as described at 41.27(7) "p" and "q," received by the recipient after the date of decision as defined in 441—subrule 40.24(4) shall be refunded to the child support recovery unit.

(2) Assigned support collected in a month and retained by child support recovery shall be exempt as income for determining prospective or retrospective eligibility. Participants shall have the option of withdrawing from FIP at any time and receiving their child support direct.

(3) and (4) Rescinded IAB 12/3/97, effective 2/1/98.

i. The applicant or recipient shall cooperate in supplying verification of all unearned income and of any change in income, as defined at rule 441—40.21(239B). When the information is available, the county office shall verify job insurance benefits by using information supplied to the department by the department of workforce development. When the county office uses this information as verification, job insurance benefits shall be considered received the second day after the date that the check was mailed by workforce development. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day. When the client notifies the county office that the amount of job insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. A payment adjustment shall be made when indicated. Recoupment shall be made for any overpayment. The client must report the discrepancy prior to the payment month or within ten days of the date on the Notice of Decision, Form PA-3102-0, applicable to the payment month, whichever is later, in order to receive a payment adjustment.

j. Every person in the eligible group shall apply for and accept health or medical insurance when it is available at no cost to the applicant or recipient, or when the cost is paid by a third party, including the department of human services. The needs of any individual who refuses to cooperate in applying for or accepting this insurance shall be removed from the eligible group. The individual is eligible for the 50 percent work incentive deduction in paragraph 41.27(2) "c."

41.27(2) Earned income. Earned income is defined as income in the form of a salary, wages, tips, bonuses, commissions earned as an employee, income from Job Corps, or profit from self-employment. Earned income from commissions, wages, tips, bonuses, Job Corps, or salary means the total gross amount irrespective of the expenses of employment. With respect to self-employment, earned income means the net profit from self-employment, defined as gross income less the allowable costs of producing the income. Income shall be considered earned income when it is produced as a result of the performance of services by an individual.

a. Each person in the assistance unit whose gross nonexempt earned income, earned as an employee or net profit from self-employment, is considered in determining eligibility and the amount of the assistance grant is entitled to one 20 percent earned income deduction of nonexempt monthly gross earnings. The deduction is intended to include all work-related expenses other than child care. These expenses shall include, but are not limited to, all of the following: taxes, transportation, meals, uniforms, and other work-related expenses.

b. Rescinded IAB 12/29/99, effective 3/1/00.

(5) Any other direct cost involved in the production of the income, except the purchase of capital equipment and payment on the principal of loans for capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

p. Rescinded IAB 6/30/99, effective 9/1/99.

q. The applicant or recipient shall cooperate in supplying verification of all earned income and of any change in income, as defined at rule 441—40.21(239B). A self-employed individual shall keep any records necessary to establish eligibility.

41.27(3) Shared living arrangements. When a family investment program parent shares living arrangements with another family or person, funds combined to meet mutual obligations for shelter and other basic needs are not income. Funds made available to the family investment program eligible group, exclusively for their needs, are considered income.

41.27(4) Diversion of income.

a. Nonexempt earned and unearned income of the parent shall be diverted to meet the unmet needs, including special needs, of the dependent, but ineligible child(ren) of the parent living in the family group. Income of the parent shall be diverted to meet the unmet needs of the ineligible child(ren) of the parent and a companion in the home only when the income and resources of the companion and the child(ren) are within family investment program standards. The maximum income that shall be diverted to meet the needs of the dependent, but ineligible child(ren) shall be the difference between the needs of the eligible group if the ineligible child(ren) were included and the needs of the eligible group with the child(ren) excluded, except as specified in 41.27(8) "a"(2) and 41.27(8) "b."

b. Nonexempt earned and unearned income of the parent shall be diverted to permit payment of court-ordered support to children not living with the parent when the payment is actually being made.

41.27(5) Income of unmarried specified relatives under age 19.

a. Income of an unmarried specified relative under age 19 when that specified relative lives with a parent who receives the family investment program or lives with a nonparental relative or in an independent living arrangement.

(1) The income of the unmarried, underage specified relative who is also an eligible child in the grant of the specified relative's parent shall be treated in the same manner as that of any other child. The income for the unmarried, underage specified relative who is not an eligible child in the grant of the specified relative's parent shall be treated in the same manner as though the specified relative had attained majority.

(2) The income of the unmarried, underage specified relative living with a nonparental relative or in an independent living arrangement shall be treated in the same manner as though the specified relative had attained majority.

b. Income of the unmarried specified relative under the age of 19 who lives in the same home as a self-supporting parent(s). The income of the unmarried specified relative under the age of 19 living in the same home as a self-supporting parent(s) shall be treated in accordance with subparagraphs (1), (2), and (4) below.

(1) When the unmarried specified relative is under the age of 18 and not a parent of the dependent child, the income of the specified relative shall be exempt.

(2) When the unmarried specified relative is under the age of 18 and a parent of the dependent child, the income of the specified relative shall be treated in the same manner as though the specified relative had attained majority. The income of the specified relative's self-supporting parent(s) shall be treated in accordance with 41.27(8) "c."

(3) Rescinded IAB 4/3/91, effective 3/14/91.

(4) When the unmarried specified relative is age 18, the income of the specified relative shall be treated in the same manner as though the specified relative had attained majority.

41.27(6) Exempt as income and resources. The following shall be exempt as income and resources:

- a. Food reserves from home-produced garden products, orchards, domestic animals, and the like, when utilized by the household for its own consumption.
- b. The value of the coupon allotment in the food stamp program.
- c. The value of the United States Department of Agriculture donated foods (surplus commodities).
- d. The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act.
- e. Any benefits received under Title III-C, Nutrition Program for the Elderly, of the Older Americans Act.
- f. Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981.
- g. Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Federal-Aid Highway Act of 1968.
- h. Any judgment funds that have been or will be distributed per capita or held in trust for members of any Indian tribe. When the payment, in all or part, is converted to another type of resource, that resource is also exempt.
- i. Payments to volunteers participating in the Volunteers in Service to America (VISTA) program, except that this exemption will not be applied when the director of ACTION determines that the value of all VISTA payments, adjusted to reflect the number of hours the volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the state where the volunteers are serving, whichever is greater.
- j. Payments for supporting services or reimbursement of out-of-pocket expenses received by volunteers in any of the programs established under Titles II and III of the Domestic Volunteer Services Act.
- k. Tax-exempt portions of payments made pursuant to the Alaskan Native Claims Settlement Act.
- l. Experimental housing allowance program payments made under annual contribution contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1936 as amended.
- m. The income of a supplemental security income recipient.
- n. Income of an ineligible child.
- o. Income in-kind.
- p. Family support subsidy program payments.
- q. Grants obtained and used under conditions that preclude their use for current living costs.
- r. All earned and unearned educational funds of an undergraduate or graduate student or a person in training. Any extended social security or veterans benefits received by a parent or nonparental relative as defined at subrule 41.22(3), conditional to school attendance, shall be exempt. However, any additional amount received for the person's dependents who are in the eligible group shall be counted as nonexempt income.
- s. Rescinded IAB 2/11/98, effective 2/1/98.
- t. Any income restricted by law or regulation which is paid to a representative payee, living outside the home, other than a parent who is the applicant or recipient, unless the income is actually made available to the applicant or recipient by the representative payee.
- u. The first \$50 received and retained by an applicant or recipient which represents a current monthly support obligation or a voluntary support payment, paid by a legally responsible individual, but in no case shall the total amount exempted exceed \$50 per month per eligible group.

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“*Responsible relative*” for medically needy shall mean a spouse, parent, or stepparent living in the household of the eligible recipient.

“*Retroactive certification period*” for medically needy shall mean one, two, or three calendar months prior to the date of application. The retroactive certification period begins with the first month Medicaid-covered services were received and continues to the end of the month immediately prior to the month of application.

“*Retroactive period*” shall mean the three calendar months immediately preceding the month in which an application is filed.

“*Spenddown*” shall mean the process by which a medically needy person obligates excess income for allowable medical expenses to reduce income to the appropriate MNIL.

“*SSI-related*” shall mean those persons whose eligibility is derived from regulations governing the supplemental security income (SSI) program except that income shall be considered prospectively.

“*SSI-related medically needy*” shall mean those persons whose eligibility is derived from regulations governing the supplemental security income (SSI) program except for income or resources.

“*Supply*” shall mean the requested information is received by the department by the specified due date.

“*Transfer of assets*” shall mean transfer of resources or income for less than fair market value for the purposes of rule 441—75.23(249A). For example, a transfer of resources or income could include establishing a trust, contributing to a charity, removing a name from a resource or income, or reducing ownership interest in a resource or income.

“*Unborn child*” shall include an unborn child during the entire term of pregnancy.

“*X-PERT*” means an automated knowledge-based computer system that determines eligibility for Medicaid and other assistance programs.

441—75.26(249A) References to the family investment program. Rescinded IAB 10/8/97, effective 12/1/97.

441—75.27(249A) AIDS/HIV settlement payments. The following payments are exempt as income and resources when determining eligibility for or the amount of Medicaid benefits under any coverage group if the payments are kept in a separate, identifiable account:

75.27(1) Class settlement payments. Payments made from any fund established pursuant to a class settlement in the case of *Susan Walker v. Bayer Corporation, et al.*, 96-C-5024 (N.D. Ill.) are exempt.

75.27(2) Other settlement payments. Payments made pursuant to a release of all claims in a case that is entered into in lieu of the class settlement referred to in subrule 75.27(1) and that is signed by all affected parties in the cases on or before the later of December 31, 1997, or the date that is 270 days after the date on which the release is first sent to the person (or the legal representative of the person) to whom payment is to be made are exempt.

441—75.28 to 75.49 Reserved.

These rules are intended to implement Iowa Code sections 249A.3 and 249A.4.

DIVISION II
ELIGIBILITY FACTORS SPECIFIC TO COVERAGE GROUPS RELATED TO
THE FAMILY MEDICAL ASSISTANCE PROGRAM (FMAP)

441—75.50(249A) Definitions.

"Applicant" shall mean a person who is requesting assistance on the person's own behalf or on behalf of another person, including recertification under the medically needy program. This also includes parents living in the home with the children and the nonparental relative who is requesting assistance for the children.

"Assistance unit" includes any person whose income is considered when determining eligibility.

"Bona fide offer" means an actual or genuine offer which includes a specific wage or a training opportunity at a specified place when used to determine whether the parent has refused an offer of training or employment.

"Budget month" means the calendar month from which the county office uses income or circumstances of the eligible group to calculate eligibility.

"Central office" shall mean the state administrative office of the department of human services.

"Change in income" means a permanent change in hours worked or rate of pay, any change in the amount of unearned income, or the beginning or ending of any income.

"Change in work expenses" means a permanent change in the cost of dependent care or the beginning or ending of dependent care.

"Client" shall mean an applicant or recipient of Medicaid.

"Department" shall mean the Iowa department of human services.

"Income in-kind" is any gain or benefit which is not in the form of money payable directly to the eligible group including nonmonetary benefits, such as meals, clothing, and vendor payments. Vendor payments are money payments which are paid to a third party and not to the eligible group.

"Initial two months" means the first two consecutive months for which eligibility is granted.

"Medical institution," when used in this division, shall mean a facility which is organized to provide medical care, including nursing and convalescent care, in accordance with accepted standards as authorized by state law and as evidenced by the facility's license. A medical institution may be public or private. Medical institutions include the following:

1. Hospitals.
2. Extended care facilities (skilled nursing).
3. Intermediate care facilities.
4. Mental health institutions.
5. Hospital schools.

"Nonrecurring lump sum unearned income" means a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits such as social security, job insurance or workers' compensation.

"Parent" means the natural or adoptive parent.

"Prospective budgeting" means the determination of eligibility and the amount of assistance for a calendar month based on the best estimate of income and circumstances which will exist in that calendar month.

“*Recipient*” means a person for whom Medicaid is received as well as parents living in the home with the eligible children and other specified relatives as defined in subrule 75.55(1) who are receiving Medicaid for the children. Unless otherwise specified, a person is not a recipient for any month in which the assistance issued for that person is subject to recoupment because the person was ineligible.

“*Report month*” for retrospective budgeting means the calendar month following the budget month. “*Report month*” for prospective budgeting means the calendar month in which a change occurs.

“*Retrospective budgeting*” means the calculation of eligibility for a month based on actual income and circumstances which existed in the budget month.

“*Schedule of needs*” means the total needs of a group as determined by the schedule of living costs, described at subrule 75.58(2).

“*Stepparent*” means a person who is the legal spouse of the child’s natural or adoptive parent by ceremonial or common-law marriage.

“*Suspension*” means a month in which an otherwise ineligible household continues to remain eligible for one month when eligibility is expected to exist the following month.

“*Unborn child*” shall include an unborn child during the entire term of the pregnancy.

“*Uniformed service*” means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration, or Public Health Service of the United States.

441—75.51(249A) Reinstatement of eligibility. Eligibility for the family medical assistance program (FMAP) and FMAP-related programs shall be reinstated without a new application when all necessary information is provided at least three working days before the effective date of cancellation and eligibility can be reestablished, except as provided in the transitional Medicaid program in accordance with subparagraph 75.1(31)“j”(2).

Assistance may be reinstated without a new application when all necessary information is provided after the third working day but before the effective date of cancellation and eligibility can be reestablished before the effective date of cancellation.

When all eligibility factors are met, assistance shall be reinstated when a completed Public Assistance Eligibility Report, Form PA-2140-0, or a Review/Recertification Eligibility Document, Form 470-2881, is received by the county office within ten days of the date a cancellation notice is sent to the recipient because the form was incomplete or not returned.

441—75.52(249A) Continuing eligibility.

75.52(1) Reviews. Eligibility factors shall be reviewed at least every six months for the family medical assistance program and family medical assistance-related programs. A semiannual review shall be conducted using information contained in and verification supplied with Form 470-0455, Public Assistance Eligibility Report. A face-to-face interview shall be conducted at least annually at the time of a review for adults using information contained in and verification supplied with Form 470-2881, Review/Recertification Eligibility Document.

a. Any assistance unit with one or more of the following characteristics shall report monthly:

(1) The assistance unit contains any member with earned income unless the income is either exempt or the only earned income is from annualized self-employment.

(2) The assistance unit contains any member with a recent work history. A recent work history means the person received earned income during either one of the two calendar months immediately preceding the budget month, unless the income was either exempt or the only earned income was from annualized self-employment.

(3) The assistance unit contains any member receiving nonexempt unearned income, the source or amount of which is expected to change more often than once annually, unless the income is from job insurance benefits or interest; or unless the assistance unit's adult members are 60 years old or older, or are receiving disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act; or unless all adults, who would otherwise be members of the assistance unit, are receiving Supplemental Security Income (SSI) including state supplementary assistance (SSA).

(4) The assistance unit contains any member residing out of state on a temporary basis.

b. The assistance unit subject to monthly reporting shall complete a Public Assistance Eligibility Report (PAER), Form PA-2140-0, for each budget month, unless the assistance unit is required to complete Form 470-2881, Review/Recertification Eligibility Document (RRED) for that month. The PAER shall be signed by the recipient, the recipient's authorized representative or, when the recipient is incompetent or incapacitated, someone acting responsibly on the recipient's behalf. When both parents or a parent and a stepparent are in the home, both shall sign the form.

75.52(2) Additional reviews. A redetermination of specific eligibility factors shall be made when:

a. The recipient reports a change in circumstances (for example, a change in income, as defined at rule 441—75.50(249A)), or

b. A change in the recipient's circumstances comes to the attention of a staff member.

75.52(3) Forms. Information for semiannual reviews shall be submitted on Form PA-2140-0, Public Assistance Eligibility Report (PAER). Information for the annual face-to-face determination interview shall be submitted on Form 470-2881, Review/Recertification Eligibility Document (RRED). When the client has completed Form PA-2207-0, Public Assistance Application, for another purpose, this form may be used as the review document for the semiannual or annual review.

75.52(4) Recipient responsibilities. Responsibilities of recipients (including individuals in suspension status). For the purposes of this subrule, recipients shall include persons who received assistance subject to recoupment because the persons were ineligible.

a. The recipient shall cooperate by giving complete and accurate information needed to establish eligibility.

b. The recipient shall complete Form PA-2140-0, Public Assistance Eligibility Report (PAER), or Form 470-2881, Review/Recertification Eligibility Document (RRED), when requested by the county office in accordance with these rules. Either form will be supplied as needed to the recipient by the department. The department shall pay the cost of postage to return the form. When the form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the fifth calendar day of the report month. When the form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the county office by the seventh day after the date it is mailed by the department. The county office shall supply the recipient with a PAER or a RRED upon request. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no earlier than the first day of the budget month and accompanied by verification as required in paragraphs 75.57(1)"f" and 75.57(2)"l."

f. The applicant or recipient shall cooperate in supplying verification of all unearned income and of any change in income, as defined at rule 441—75.50(249A). When the information is available, the county office shall verify job insurance benefits by using information supplied to the department by Iowa workforce development. When the county office uses this information as verification, job insurance benefits shall be considered received the second day after the date that the check was mailed by Iowa workforce development. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day. When the client notifies the county office that the amount of job insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. The client must report the discrepancy prior to the eligibility month or within ten days of the date on the Notice of Decision, Form PA-3102-0, applicable to the eligibility month, whichever is later.

75.57(2) *Earned income.* Earned income is defined as income in the form of a salary, wages, tips, bonuses, commission earned as an employee, income from Job Corps, or profit from self-employment. Earned income from commissions, wages, tips, bonuses, Job Corps, or salary means the total gross amount irrespective of the expenses of employment. With respect to self-employment, earned income means the net profit from self-employment, defined as gross income less the allowable costs of producing the income. Income shall be considered earned income when it is produced as a result of the performance of services by an individual.

a. Each person in the assistance unit whose gross nonexempt earned income, earned as an employee or net profit from self-employment, considered in determining eligibility is entitled to one 20 percent earned income deduction of nonexempt monthly gross earnings. The deduction is intended to include work-related expenses other than child care. These expenses shall include, but are not limited to, all of the following: taxes, transportation, meals, uniforms, and other work-related expenses.

b. Each person in the assistance unit is entitled to a deduction for care expenses subject to the following limitations.

Persons in the eligible group and excluded parents shall be allowed care expenses for a child or incapacitated adult in the eligible group.

Stepparents as described at paragraph 75.57(8)“b” and self-supporting parents on underage parent cases as described at paragraph 75.57(8)“c” shall be allowed child care expenses for the ineligible dependents of the stepparent or self-supporting parent.

(1) Child care or care for an incapacitated adult shall be considered a work expense in the amount paid for care of an individual, not to exceed \$175, or \$200 in the case of a child under the age of two, per month or the going rate in the community, whichever is less.

(2) Rescinded IAB 6/30/99, effective 9/1/99.

(3) The deduction is allowable only when the care covers the actual hours of the individual's employment plus a reasonable period of time for commuting; or the period of time when the individual who would normally care for the child or incapacitated adult is employed at such hours that the individual is required to sleep during the waking hours of the child or incapacitated adult, excluding any hours a child is in school.

(4) Any special needs of a physically or mentally handicapped child or adult shall be taken into consideration in determining the deduction allowed.

(5) The expense shall be verified by receipt or a statement from the provider of care and shall be allowed when paid to any person except a parent or legal guardian of the child or another member of the eligible group, or to any person whose needs are met by diversion of income from any person in the eligible group.

c. After deducting the allowable work expenses as defined at paragraphs 75.57(2) "a" and "b" and income diversions as defined at subrules 75.57(4) and 75.57(8), 50 percent of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each individual whose income must be considered is deducted in determining eligibility for the family medical assistance program (FMAP) and those FMAP-related coverage groups subject to the three-step process for determining initial eligibility as described at rule 441—75.57(249A). The 50 percent work incentive deduction is not time-limited. Initial eligibility under the first two steps of the three-step process is determined without the application of the 50 percent work incentive deduction as described at subparagraphs 75.57(9) "a"(2) and (3).

Individuals whose needs have been removed from the eligible group for refusing to cooperate in applying for or accepting benefits from other sources, in accordance with the provisions of rule 441—75.2(249A), 441—75.3(249A), or 441—75.21(249A), are eligible for the 50 percent work incentive deduction but the individual is not eligible for Medicaid.

d. Rescinded IAB 6/30/99, effective 9/1/99.

e. A person is considered self-employed when the person:

(1) Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions.

(2) Establishes the person's own working hours, territory, and methods of work.

(3) Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

f. The net profit from self-employment income in a non-home-based operation shall be determined by deducting only the following expenses that are directly related to the production of the income:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees of the self-employed.

(3) The cost of shelter in the form of rent, the interest on mortgage or contract payments; taxes; and utilities.

(4) The cost of machinery and equipment in the form of rent or the interest on mortgage or contract payments.

(5) Insurance on the real or personal property involved.

(6) The cost of any repairs needed.

(7) The cost of any travel required.

(8) Any other expense directly related to the production of income, except the purchase of capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

g. When the client is renting out apartments in the client's home, the following shall be deducted from the gross rentals received to determine the profit:

(1) Shelter expense in excess of that set forth on the chart of basic needs components at subrule 75.58(2) for the eligible group.

(2) That portion of expense for utilities furnished to tenants which exceeds the amount set forth on the chart of basic needs components at subrule 75.58(2).

(3) Ten percent of gross rentals to cover the cost of upkeep.

h. In determining profit from furnishing board, room, operating a family life home, or providing nursing care, the following amounts shall be deducted from the payments received:

(1) \$41 plus an amount equivalent to the monthly maximum food stamp allotment in the food stamp program for a one-member household for a boarder and roomer or an individual in the home to receive nursing care, or \$41 for a roomer, or an amount equivalent to the monthly maximum food stamp allotment in the food stamp program for a one-member household for a boarder.

(2) Ten percent of the total payment to cover the cost of upkeep for individuals receiving a room or nursing care.

i. Gross income from providing child care in the applicant's or recipient's own home shall include the total payments received for the service and any payment received due to the Child Nutrition Amendments of 1978 for the cost of providing meals to children. In determining profit from providing child care services in the applicant's or recipient's own home, 40 percent of the total gross income received shall be deducted to cover the costs of producing the income, unless the individual requests to have actual expenses in excess of the 40 percent considered. When the applicant or recipient requests to have expenses in excess of the 40 percent considered, profit shall be determined in the same manner as specified at paragraph 75.57(2) "j."

j. In determining profit for a self-employed enterprise in the home other than providing room and board, renting apartments or providing child care services, the following expenses shall be deducted from the income received:

- (1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.
- (2) Wages, commissions, and mandated costs relating to the wages for employees.
- (3) The cost of machinery and equipment in the form of rent; or the interest on mortgage or contract payment; and any insurance on such machinery equipment.
- (4) Ten percent of the total gross income to cover the costs of upkeep when the work is performed in the home.
- (5) Any other direct cost involved in the production of the income, except the purchase of capital equipment and payment on the principal of loans for capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

k. Rescinded IAB 6/30/99, effective 9/1/99.

l. The applicant or recipient shall cooperate in supplying verification of all earned income and of any change in income, as defined at rule 441—75.50(249A). A self-employed individual shall keep any records necessary to establish eligibility.

75.57(3) Shared living arrangements. When an applicant or recipient shares living arrangements with another family or person, funds combined to meet mutual obligations for shelter and other basic needs are not income. Funds made available to the applicant or recipient, exclusively for the applicant's or recipient's needs, are considered income.

75.57(4) Diversion of income.

a. Nonexempt earned and unearned income of the parent shall be diverted to meet the unmet needs of the dependent, but ineligible children of the parent living in the family group. Income of the parent shall be diverted to meet the unmet needs of the ineligible children of the parent and a companion in the home only when the income and resources of the companion and the children are within family medical assistance program standards. The maximum income that shall be diverted to meet the needs of the dependent but ineligible children shall be the difference between the needs of the eligible group if the ineligible children were included and the needs of the eligible group with the ineligible children excluded, except as specified at paragraph 75.57(8) "b."

b. Nonexempt earned and unearned income of the parent shall be diverted to permit payment of court-ordered support to children not living with the parent when the payment is actually being made.

75.57(5) Income of unmarried specified relatives under the age of 19.

a. Income of the unmarried specified relative under the age of 19 when that specified relative lives with a parent who receives coverage under family medical assistance-related programs or lives with a nonparental relative or in an independent living arrangement.

(1) The income of the unmarried, underage specified relative who is also an eligible child in the eligible group of the specified relative's parent shall be treated in the same manner as that of any other child. The income for the unmarried, underage specified relative who is not an eligible child in the eligible group of the specified relative's parent shall be treated in the same manner as though the specified relative had attained majority.

(2) The income of the unmarried, underage specified relative living with a nonparental relative or in an independent living arrangement shall be treated in the same manner as though the specified relative had attained majority.

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51.5(3) Use of decoys. The use of decoys on any game management area is restricted as follows:

Decoys are prohibited from one-half hour after sunset until midnight each day. Decoys shall be considered as removed from an area when they are picked up and placed in a boat, vehicle or other container at an approved access site.

571—51.6(481A) Trapping on game management areas.

51.6(1) Marking trap sites. No one shall place on any game management area any trap, stake, flag, marker, or any other item or device to be used for trapping furbearers, or to mark or otherwise claim any site for trapping furbearers, except during the open season for taking furbearers other than coyote.

51.6(2) Reserved.

571—51.7(481A) Motor vehicle restrictions. The use of motor vehicles on all game management areas is restricted.

51.7(1) Roads and parking lots. Except as otherwise provided in these rules, motor vehicles are prohibited on a game management area except on constructed and designated roads and parking lots.

51.7(2) Handicapped persons. Handicapped persons may use certain motor vehicles on game management areas, according to the restrictions set out in this rule, in order that they might enjoy such uses as are available to others.

a. Definitions. For purposes of this subrule, 51.7(2), the following definition shall apply: "Motor vehicle" means any self-propelled vehicle having at least three wheels and registered as a motor vehicle under Iowa Code chapter 321.

b. Permits. Each handicapped person must have a permit issued by the director in order to use motor vehicles on game management areas. Such permits will be issued without charge. Applicants must submit certificates from their doctors stating that the applicants meet the criteria describing handicapped persons. Nonhandicapped companions of permit holders are not covered under the conditions of the permit.

c. Approved areas. A permit holder must contact the technician or wildlife biologist of the specific area(s) that the permit holder wishes to use annually. The technician or wildlife biologist will determine which areas or portions of areas will not be open to use by permittees, in order to protect the permittee from hazards or to protect certain natural resources of the area. The technician or wildlife biologist will assist by arranging access to the area and by designating specific sites on the area where the motor vehicle may be used, and where it may not be used. The technician or wildlife biologist will provide a map of the area showing the sites where use is permitted and bearing the signature of the technician or wildlife biologist and the date.

d. Exclusive use. The issuance of a permit does not imply that the permittee has exclusive use of an area. Permittees shall take reasonable care so as not to unduly interfere with the use of the area by others.

e. Prohibited acts. Except as provided in subrule 51.7(1), the use of a motor vehicle on any game management area by a person without a valid permit, or at any site not approved on a signed map, is prohibited. Permits and maps must be carried by the permittee at any time the permittee is using a motor vehicle on a game management area, and must be exhibited to any department employee or law enforcement official upon request.

f. Shooting from motor vehicle. Except where prohibited by law, a handicapped person meeting the conditions of this rule may shoot from a stationary motor vehicle.

571—51.8(481A) Employees exempt. Restrictions in rules 51.3(481A) to 51.7(481A) shall not apply to department personnel, law enforcement officials, or other authorized persons engaged in research, management, or enforcement when in performance of their duties.

571—51.9(481A) Use of nontoxic shot on wildlife areas. It shall be unlawful to hunt any migratory game bird or resident game or furbearers, except deer and turkeys, or target shoot with a shotgun while having in one's possession any shot other than nontoxic shot approved by the U.S. Fish and Wildlife Service on the following wildlife areas:

<u>County</u>	<u>Wildlife Area</u>
Boone	Harrier Marsh
Buena Vista	All state and federal areas except Bluebird Access
Calhoun	South Twin Lake
Cerro Gordo	All state and federal areas
Clay	All state and federal areas except Burr Access, Dry Mud Lake, Little Sioux, Highbridge, Fen Valley, and the Ocheyedan wildlife area target shooting range
Dickinson	All state and federal areas except the Spring Run target shooting range
Emmet	All state and federal areas except Birge Lake, Grass Lake, Ryan Lake, and the East Des Moines River Access
Greene	All state and federal areas except Rippey Access and McMahon Access
Guthrie	McCord Pond, Lakin Slough and Bays Branch, except the target shooting range at Bays Branch
Hamilton	Little Wall Lake, Gordon Marsh and Bauer Slough
Hancock	All state and federal areas except Schuldts and Goodell
Humboldt	All state and federal areas except Bradgate Access and Willows Access
Jasper	Chichaqua
Kossuth	All state and federal areas except Seneca Access
Osceola	All state and federal areas
Palo Alto	All state and federal areas
Pocahontas	All state and federal areas except Kalsow Prairie
Polk	Paul Errington Marsh and Chichaqua
Sac	All state and federal areas except White Horse Access and Sac City Access
Winnebago	All state and federal areas
Worth	All state and federal areas except Brights Lake
Wright	All state and federal areas except White Tail Flats

These rules are intended to implement Iowa Code sections 456A.24(2)“a” and 481A.6.

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CHAPTER 99
WILD TURKEY FALL HUNTING

571—99.1(481A) General. Wild turkey may be taken only by Iowa residents during the fall season subject to the following:

99.1(1) License. When hunting wild turkey, all hunters must have in possession a valid fall wild turkey hunting license and a valid hunting license and habitat stamp if normally required to have them. While hunting wild turkey, no person shall carry or have in possession a fall wild turkey hunting license or transportation tag issued to another person. Turkey hunting licenses will be issued by zone and period and will be valid only in the designated zone and for the designated period. Except as provided in 99.4(1), no person shall apply for or obtain more than one fall wild turkey combination shotgun-or-archery hunting license and one fall wild turkey archery-only hunting license.

99.1(2) Seasons. Wild turkey of any age or sex may be taken only during specified periods as follows:

a. Combination shotgun-or-archery season. The dates for the combination shotgun-or-archery season shall be from the Monday following the second Saturday in October through November 30 of the same year.

b. Archery-only. The dates for the fall archery-only wild turkey hunting season shall be the same as the dates for the archery deer season as defined in 571—Chapter 106.

99.1(3) Daily possession and season limits. The daily, season, and possession bag limit is one wild turkey per license.

99.1(4) Shooting hours.

a. Combination shotgun-or-archery season. Shooting hours shall be from one-half hour before sunrise to sunset each day.

b. Archery-only season. Shooting hours shall be from one-half hour before sunrise to one-half hour after sunset.

571—99.2(481A) Areas open to hunting. Wild turkey, according to the type of license issued, may be taken in specific areas only.

99.2(1) Combination shotgun-or-archery season. Wild turkey may be taken only in hunting zones described as follows:

a. Zone 1. Zone 1 is that portion of Stephens State Forest west of U.S. Highway 65 in Lucas and Clarke Counties.

b. Zone 2. Zone 2 is the Shimek State Forest in Lee and Van Buren Counties.

c. Zone 3. Zone 3 is that portion of the Yellow River State Forest in Allamakee County.

d. Zone 4. Zone 4 is that portion of Iowa bounded on the north by Interstate Highway 80 and on the west by U.S. Highway 59.

e. Zone 5. Zone 5 is that portion of Iowa bounded on the east by U.S. Highway 59 and on the north by U.S. Highway 20.

f. Zone 6. Zone 6 is that portion of Iowa bounded on the south by Interstate Highway 80 and on the west by U.S. Highway 63.

g. Zone 7. Zone 7 is that portion of Iowa bounded on the north by U.S. Highway 20, on the west by U.S. Highway 59, on the south by Interstate Highway 80 and on the east by U.S. Highway 63.

h. Zone 8. Zone 8 is that portion of Iowa bounded on the south by U.S. Highway 20, on the east by U.S. Highway 63, and on the west by U.S. Highway 69.

99.2(2) Archery-only season. Wild turkey may be taken on an archery-only license statewide.

571—99.3(481A) Means and method of take.

99.3(1) Permitted weapons. In accordance with the type of license issued, wild turkey may be taken only with shotguns and muzzleloading shotguns not smaller than 20-gauge and shooting 4, 5, 6, 7½, or 8 shot only, or with recurve, compound or longbows with broadhead or blunt head arrows only (with a minimum diameter of 9/16 inch), except as otherwise provided in 571—15.5(483A). Arrows with chemical or explosive pods are not permitted.

99.3(2) Prohibited devices. The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord. "Bait" means grain, fruit, vegetables, nuts or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife.

571—99.4(481A) Application procedure. All applications for wild turkey fall hunting licenses must be made on forms provided by the department of natural resources and returned to the Department of Natural Resources, Des Moines, Iowa 50319-0035, with the proper license fee. Individual applications only will be accepted. Nonresidents may not apply for or obtain any fall wild turkey hunting license.

99.4(1) Applications for combination shotgun-or-archery licenses. Applications for paid combination shotgun-or-archery hunting licenses shall be received and accepted for 15 working days beginning the first Monday in July, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. No person shall submit more than one application. At the end of the period, if applications have been received in excess of the license quota for any hunting zone and license type, the department of natural resources shall conduct a drawing to determine which applicants shall receive licenses. Incomplete or improperly completed applications, applications not meeting the above conditions, or applications received prior to or after the application period shall not be considered valid applications for the drawing. If the quota for any hunting period, zone or license type has not been filled by applications received during the first application period, licenses shall then be issued in the order in which applications are received for 5 working days beginning the third Monday in August and shall continue to be issued until the quota has been met or until the end of the second application period, whichever occurs first. Residents who have obtained one combination shotgun-or-archery license may obtain one additional combination shotgun-or-archery license during the second application period if licenses are still available.

99.4(2) Applications for archery-only licenses. Applications for fall wild turkey archery-only hunting licenses will be received at any time beginning the first Monday in July. The number of archery-only licenses will not be restricted.

99.4(3) *Special turkey hunting licenses.* Applications for special wild turkey hunting licenses, as provided for in Iowa Code section 481A.38, subsection 3, shall be on forms furnished by the department and shall be received at the department offices from the first Monday in July to the end of the combination shotgun-or-archery second application period.

99.4(4) *Landowner-tenant licenses.* The application period for free landowner-tenant licenses shall be from the first Monday in July to the end of the combination shotgun-or-archery second application period. Free landowner-tenant shotgun-or-archery licenses are valid only for that portion of the farm unit that lies within a zone open for hunting as defined in 99.2(481A). Free landowner-tenant archery licenses are valid on farm units statewide. No landowner or tenant may obtain both a free combination shotgun-or-archery license and a paid combination shotgun-or-archery license, except that persons obtaining a free landowner or tenant license may obtain a paid license in the same manner that a nonlandowner or tenant obtains a second paid license, as provided in 99.4(1).

571—99.5(481A) License quotas. A limited number of wild turkey hunting licenses will be issued to residents in the zones as follows:

1. Zone 1. 50
2. Zone 2. 50
3. Zone 3. 50
4. Zone 4. 2,500
5. Zone 5. 300
6. Zone 6. 3,000
7. Zone 7. 200
8. Zone 8. 75

571—99.6(481A) Transportation tag. A transportation tag bearing license number of licensee, year of issuance and date of kill properly shown shall be visibly attached to the carcass of each wild turkey in such a manner that the tag cannot be removed without mutilating or destroying the tag before the carcass can be transported from the place of kill. The tag shall be proof of possession of the carcass by the licensee.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

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**CHAPTER 106
DEER HUNTING**

[Prior to 12/31/86, Conservation Commission[290] Ch 106] .

571—106.1(481A) Licenses. Every hunter must have in possession a deer license valid for the current year when hunting, possessing, or transporting deer. No person while hunting deer shall carry or have in possession any license or transportation tag issued to another person.

106.1(1) Bow season license. Paid bow deer licenses shall be valid for taking any deer statewide or antlerless deer in the special antlerless zone and shall be valid only during the bow season. Only one paid bow license may be obtained from the county recorder's office. Individuals purchasing one bow license are eligible to purchase any gun license(s) available as provided in 571—Chapter 105 and 571—Chapter 106. This includes antlerless-only bow or gun permits in any county or special hunt area where additional licenses are available.

106.1(2) Regular gun season license. Paid regular gun season licenses will be valid for antlered deer, any sex deer or antlerless deer depending on the county or zone hunted. Licenses shall be valid statewide for the season designated on the license, except that antlerless licenses shall be valid only in one county in the special antlerless zone. Antlered deer are defined as those deer having at least one 7-inch antler.

Paid regular gun season licenses will be issued by season and will be valid for the designated season only.

106.1(3) Muzzleloader season. Paid muzzleloader season licenses shall be valid during one of the muzzleloader seasons for antlered deer, any sex deer, or antlerless deer depending on the county or zone hunted. Licenses will be valid statewide for the season designated on the license, except that antlerless licenses shall be valid only in one county in the special antlerless zone. Antlered deer are defined as those deer having at least one 7-inch antler.

106.1(4) Special late season. Paid special late season deer licenses will be valid only for antlerless deer during the special late season in one of the counties in the special antlerless zone.

571—106.2(481A) Season dates. Deer may be taken only during the following seasons:

106.2(1) Bow season. Deer may be taken by bow and arrow in accordance with the type of license issued from October 1 through the Friday before the first Saturday in December and from the Monday following the third Saturday in December through January 10 of the following year, except special regulations in deer population management areas (571—Chapter 105).

106.2(2) Regular gun seasons. Deer may be taken with gun only in accordance with the type, tenure and zone from the first Saturday in December and continuing for five consecutive days or from the second Saturday in December and continuing for nine consecutive days.

106.2(3) Muzzleloader seasons. Deer may be taken by muzzleloader in accordance with the type, tenure and zone from the Saturday closest to October 14 and continuing for nine consecutive days or from the Monday following the third Saturday in December through January 10 of the following year.

106.2(4) Special late season. Antlerless deer may be taken by shotgun, muzzleloading rifle, handgun or bow as permitted in 571—106.7(481A) from January 11 through January 17. All participants must meet the hunter orange requirements in Iowa Code section 481A.122. All other regulations for taking deer with a firearm shall apply.

571—106.3(481A) Shooting hours. Legal shooting hours vary according to the type of season.

106.3(1) *Bow season.* Legal shooting hours for hunting deer with bow and arrow shall be one-half hour before sunrise to one-half hour after sunset each day.

106.3(2) *Regular gun season.* Legal shooting hours for hunting deer with a gun shall be sunrise to sunset each day.

106.3(3) *Muzzleloader seasons and special late season.* Legal shooting hours for hunting deer during the muzzleloader seasons and special late season shall be one-half hour before sunrise to one-half hour after sunset each day, regardless of weapon used.

571—106.4(481A) Limits.

106.4(1) *Bow season.* Daily bag limit one deer per license; possession limit one deer per license. A person may only shoot and tag a deer by utilizing the license and tag issued in the person's name.

106.4(2) *Muzzleloader season.* Daily bag limit one deer per license; possession limit one deer per license. A person may only shoot and tag a deer by utilizing the license and tag issued in the person's name.

106.4(3) *Regular gun seasons.* Bag limit shall be one deer for each hunter in the party who has a valid deer transportation tag. Possession limit shall be one deer per license; "possession" shall mean that the deer is in possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

106.4(4) *Special late season.* Daily bag and possession limit is one deer per license. Tagging requirements are the same as for the regular gun seasons.

106.4(5) *Maximum annual possession limit.* The maximum annual possession limit is one deer for each legal transportation tag obtained from the department of natural resources or county recorder.

571—106.5(481A) Areas open to hunting.

106.5(1) *Paid deer licenses.* Hunters shall be restricted to the type of deer they shoot based on the date and county or zone where they hunt.

a. *Bow season.* Deer of either sex may be taken in all counties.

b. *Early muzzleloader season and first regular gun season.* Any sex deer may be taken in all counties except that in the following counties licenses will be valid only for antlered deer for the first three days of the first regular gun season: Bremer, Black Hawk, Buchanan, Grundy, Osceola, Dickinson, Clay, O'Brien, Cherokee, Buena Vista, Pocahontas, Calhoun, Sac, Ida, Crawford, Carroll and Greene. Licenses will be valid in all counties for any sex deer during the last two days of the first regular gun season.

c. *Late muzzleloader season and second regular gun season.* Licenses will be valid for any sex deer in all counties.

106.5(2) *Paid antlerless deer licenses.* Paid antlerless deer licenses for the bow season, second regular gun season and late muzzleloader season shall be valid only for antlerless deer and only in the following counties (special antlerless zone): Adair, Montgomery, Page, Fremont, Adams, Taylor, Union, Ringgold, Clarke, Decatur, Lucas, Wayne, Monroe, Appanoose, Wapello, Davis, Jefferson, Van Buren, Henry, Lee and Washington. Late season licenses for antlerless deer will be available for Davis and Van Buren Counties only.

106.5(3) *Free landowner/tenant licenses.* Free landowner/tenant licenses shall be valid for deer of either sex taken on the landowner/tenant's farm unit during the season designated on the license, except free regular gun season licenses shall be valid for both of the following periods: for five consecutive days beginning the first Saturday in December, and for nine consecutive days beginning the second Saturday in December.

106.5(4) *Closed areas.* There shall be no open season for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly. There shall be no open seasons for hunting deer on all portions of rights-of-way on Interstate Highways 29, 35, 80 and 380.

571—106.6(481A) License quotas. A limited number of deer licenses or a limited number of certain types of licenses will be issued as follows:

106.6(1) Bow season. An unlimited number of bow licenses will be issued from the county recorder's office. Persons that purchase a bow license may purchase up to two gun licenses as described in 106.6(2), or may purchase one gun license and one antlerless bow license valid only for the county or counties specified.

106.6(2) Regular gun seasons. Unlimited licenses for both first and second season will be available for all counties. Persons obtaining a paid license for the second regular gun season or late muzzleloader season shall be eligible to purchase a second antlerless-only license for the second regular gun season or late muzzleloader season that is valid for one of the counties designated in 106.5(2). Persons obtaining a paid license for the first regular gun season shall be eligible to purchase, if available, a second antlerless-only license for the late muzzleloader season that is valid for one of the counties designated in 106.5(2). No person obtaining a paid first season gun license is eligible to obtain a paid gun license for the second regular gun season.

106.6(3) Muzzleloader seasons.

a. Early muzzleloader season. No more than 7,500 licenses will be sold for the regular October early muzzleloader season. Fifty additional licenses will be issued to and will be valid only for the Iowa Army Ammunition Plant. Hunters obtaining any paid early muzzleloader season license are not eligible to purchase any other gun season license.

b. Late muzzleloader season. An unlimited number of licenses will be issued for the December-January late muzzleloader season. Persons obtaining a paid late muzzleloader season license may obtain one additional second season or late muzzleloader gun license if available.

106.6(4) Landowner/tenant free license and additional paid bow or gun license(s). Anyone receiving a free landowner/tenant license may purchase any additional paid bow license and one or two gun licenses in accordance with rule 106.6(481A).

106.6(5) Special antlerless-only licenses. Antlerless-only permits will be available by county to all eligible individuals by drawing as follows:

Adams, 500; Appanoose, 600; Clarke, 300; Davis, 800; Decatur, 800; Fremont, 200; Jefferson, 400; Lucas, 200; Monroe, 500; Ringgold, 800; Taylor, 800; Union, 400; Van Buren, 800; Wapello, 400; Wayne, 300; Adair, 200; Page, 200; Montgomery, 200; Washington, 300; Henry, 300; and Lee, 300.

106.6(6) Special late season. Hunters may obtain special late season licenses subject to quotas for Davis and Van Buren Counties only, regardless of any other deer license they may have obtained.

571—106.7(481A) Method of take. Permitted weapons and devices vary according to the type of season.

106.7(1) Bow season. Except as provided in 571—15.5(481A), only recurve, compound or longbows with broadhead arrows will be permitted in taking deer during the bow season. Arrows with chemical or explosive pods are not permitted.

106.7(2) Regular gun seasons. Only 10-, 12-, 16- and 20-gauge shotguns, shooting single slugs only, flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only, and handguns as described in 106.7(3) will be permitted in taking deer during the regular gun seasons.

106.7(3) Muzzleloader seasons. Only muzzleloading rifles will be permitted in taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloader, handgun or bow. "Muzzleloading rifles" are defined as flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only. Centerfire handguns must be .357 or larger shooting straight-walled cartridges propelling an expanding-type bullet (no full-metal jacket) and complying with all other requirements provided in 1997 Iowa Acts, House File 142. Revolvers, pistols and black powder handguns must have a 4-inch minimum barrel length. There can be no shoulder stock or long-barrel modifications to handguns. Black powder handguns must be .44 caliber or larger, shooting single projectile only.

106.7(4) Prohibited weapons and devices. The use of dogs, domestic animals, bait, rifles other than muzzleloaded, handguns except as provided in 106.7(2) and 106.7(3), crossbows except as otherwise provided, automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetable, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to have on their person a rifle other than a muzzleloading rifle that meets the requirements of 106.7(3), or to have on their person a handgun during the bow and early muzzleloader seasons.

106.7(5) Discharge of firearms from roadway. No person shall discharge a shotgun shooting slugs or muzzleloader from a highway during the regular gun seasons in all counties and parts of counties north of Highway 30 and west of Highway 63. A "highway" means the way between property lines open to the public for vehicle traffic as defined in Iowa Code section 321.1(78).

571—106.8(481A) Application procedures.

106.8(1) County recorder—issuance. Free landowner/tenant deer licenses issued to qualifying landowners or tenants shall be issued by the county recorder's office in the county of residence. Regular shotgun and late muzzleloader season licenses shall be issued through the first Friday in November. Licenses for Davis and Van Buren Counties shall be issued through January 10. Additional paid deer licenses must be purchased through the department of natural resources.

106.8(2) Regular gun, late muzzleloader season and antlerless licenses. All applications for paid regular gun, late muzzleloader season, special late season and antlerless bow licenses shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. Applications for all statewide licenses and the first antlerless license must be accompanied by \$25.50 for each license. Applications for all antlerless licenses after the first antlerless license must be accompanied by \$10 for each license. Only individual applications will be accepted. Any incomplete or improperly completed application, any application not meeting the above conditions, or any application received after the application period will not be considered a valid application.

a. *Statewide licenses.* Applications will be received and accepted from the second Monday in July through the last Friday in August or if the application form bears a valid and legible U.S. Postal Service postmark prior to that date.

b. *Antlerless licenses.* Paid antlerless licenses will be issued by quota established for each county in the special antlerless zone. Applications will be received and accepted from the second Monday in July through the last Friday in August or if the application form bears a valid and legible U.S. Postal Service postmark prior to that date. Hunters may apply for one license for one of the following seasons: bow; second regular gun; or late muzzleloader. Hunters may apply for one additional license for the special late season. A drawing will be held for each county where the number of applications exceeds the quota. Applications will be accepted on a first-come, first-served basis after September 1 if any county quotas do not fill. Applications for the bow season or second regular gun season or late muzzleloader season will be accepted through the first Friday in November or until quotas fill. Applications for the special late season will be accepted through January 3, or until quotas fill. If licenses are still available after September 1, hunters may apply for one additional license for the bow season or second regular gun season or late muzzleloader season and one additional license for the special late season. The maximum number of antlerless licenses for an individual is four: two for the bow or second regular gun or late muzzleloader season and two for the special late season (if second licenses are available).

106.8(3) *Early muzzleloader season licenses.* All applications for early muzzleloader season licenses must be made on forms provided by the department of natural resources and returned to the department in Des Moines, Iowa. Applications must be accompanied by \$25 for each license. Only individual applications will be accepted. Applications will be received and accepted from the second Monday in July through the second Friday in August. If valid applications exceed the quota, a drawing will be held. Any incomplete or improperly completed application, any application not meeting the above conditions, or any application received after the application period will not be considered as a valid application. If the quota for early muzzleloader season deer licenses has not been filled, licenses shall then be issued in the order in which applications are received and shall continue to be issued until quotas have been met or until the last Friday in August whichever first occurs.

106.8(4) *Alternate application methods.* The department may develop electronic licensing procedures for obtaining a deer license. Methods and deadlines may be determined by the department as a part of the alternative methods developed.

106.8(5) *Restrictions.* No person shall apply for or purchase more than two deer bow licenses or one bow license and two firearms licenses except as provided in 571—Chapter 105 and rule 106.6(481A). No one purchasing an early muzzleloader deer license may purchase a second gun license. No one purchasing a first season gun license may purchase a second regular gun season license.

If a person provides false information in an application for any deer license, that license and transportation tag and any other deer hunting license and transportation tag applied for during the same year shall be invalid.

571—106.9(481A) *Transportation tag.* A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each deer, in such a manner that the tag cannot be removed without mutilating or destroying the tag, within 15 minutes of the time the deer is killed or before the carcass of the deer is moved in any manner, whichever first occurs. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to all deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility, or until the deer has been processed for consumption.

571—106.10(481A) Youth deer and severely disabled hunts.**106.10(1) Licenses.**

a. Youth deer hunt. A special youth deer license will be issued to any Iowa resident that is 12 to 15 years of age by September 1 who possesses a valid hunter safety certificate. All persons participating must be accompanied by an adult possessing a regular hunting license and habitat stamp. Only one adult may participate for each youth hunter. The accompanying adult must not possess a firearm or bow and must be in direct company of the youth at all times. Persons may obtain only one youth deer license, but may also obtain one bow or firearm license for any other season. If the youth obtains a free landowner/tenant license, it will count as the one free license for which the youth's family is eligible.

b. Severely disabled hunt. Any Iowa resident meeting the requirements of Iowa Code section 321L.1(8) will be issued a severely disabled license. Persons applying for a severely disabled license must either possess a disabilities parking permit or provide a completed form from the department of natural resources and signed by a physician verifying their disability as defined in Iowa Code section 321L.1(8) along with a completed application. Those individuals between 16 and 65 years of age must also possess a regular hunting license and habitat stamp. Persons obtaining a license for the severely disabled hunt may obtain one additional bow license.

106.10(2) Season dates. Any sex deer may be taken statewide from the third Saturday in September through the first Sunday of October.

106.10(3) Shooting hours. Legal shooting hours for hunting deer will be one-half hour before sunrise to one-half hour after sunset each day regardless of weapon used.

106.10(4) Limits and license quotas. Daily bag and possession limit is one deer per licensed person. The licensee can shoot only one deer during this season. An unlimited number of licenses will be issued.

106.10(5) Method of take and other regulations. Deer may be taken with shotgun, bow or muzzleloaded rifles as permitted in 571—106.7(481A). All participants must meet the hunter orange requirement in Iowa Code section 481A.122. All other regulations for taking deer with a gun shall apply.

106.10(6) Application procedures. All applications for youth gun and severely disabled deer hunting licenses for the current season shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. No one shall submit more than one application. Applications for youth gun and severely disabled deer hunting licenses must be accompanied by \$25.50 for each license. Applications will be received and accepted only from the third Monday in June through the third Friday in July.

571—106.11(481A) Deer depredation management. Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

106.11(1) Method of take and other regulations. Legal weapons and restrictions will be governed by 571—106.7(481A).

For deer shooting permits only, there are no shooting hour restrictions. The producer or designee must meet the deer hunters' orange apparel requirements in Iowa Code section 481A.122.

106.11(5) *Disposal.* It shall be the producer's responsibility to see that all deer are field dressed, tagged with a DNR salvage tag, and removed immediately from the field. Dead deer must be handled for consumption, and the producer must coordinate disposal of deer offered to the public through the local conservation officer. Charitable organizations will have the first opportunity to take deer offered to the public. No producer can keep more than two deer taken under special depredation permits. By express permission from a DNR enforcement officer, the landowner may dispose of deer carcasses through a livestock sanitation facility.

571—106.12(481A) Eligibility for free landowner/tenant deer licenses.

106.12(1) *Who qualifies for free deer hunting license.* Owners or tenants of a farm unit, or a member of an owner's or tenant's family that resides with the owner or tenant, are eligible for free deer licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

106.12(2) *Who qualifies as a tenant.* A "tenant" is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner's family, including the landowner's spouse or child in some circumstances, or a third party not a family member. The tenant does not have to reside on the farm unit.

106.12(3) *What "actively engaged in farming" means.* Landowners and tenants are "actively engaged in farming" if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or kind. A farm manager or other third party that operates a farm for a fee or a laborer that works on the farm for a wage and is not a family member does not qualify as a tenant.

106.12(4) *Landowners who qualify as active farmers.* These landowners:

- a. Are the sole operator of a farm unit (along with immediate family members), or
- b. Make all farm operations decisions, but contract for custom farming or hire labor to do some or all of the work, or
- c. Participate annually in farm operations decisions such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or
- d. Raise specialty crops such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or
- e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or
- f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

106.12(5) *Landowners who do not qualify.* These landowners:

- a. Use a farm manager or other third party to operate the farm, or
- b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

106.12(6) *Where free licenses are valid.* Free licenses are valid only on that portion of the farm unit that is in a zone open to deer hunting. A "farm unit" is all parcels of land that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. "Agricultural purposes" includes but is not limited to field crops, livestock, horticultural crops (e.g., nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

106.12(7) *How many free licenses may be obtained.* The maximum number of free licenses per farm unit is two, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner's family may obtain only one license. A tenant or the tenant's family is entitled to only one free license even if the tenant farms land for more than one landowner.

571—106.13(481A) Special late season deer hunt. Rescinded IAB 6/17/98, effective 7/22/98.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.24.

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(7) The owner/operator certifies the upgraded tanks and replacement tanks will not be used until the owner/operator demonstrates proof of financial responsibility for the tanks using a method provided for under 567—Chapter 136; and

(8) The owner/operator meets all other applicable requirements pertaining to remedial benefits.

An owner/operator receiving remedial account benefits pursuant to this paragraph "o" will be subject to cost recovery pursuant to Iowa Code section 455G.13 in the event the owner/operator does not comply with all of the conditions of this paragraph "o," the provisions of the certifications required by this paragraph "o," and applicable statutes and rules of the environmental protection commission and the board.

p. The board may reimburse expenses associated with tank systems identified in 11.1(3)"a"(1) to (3) when all of the following conditions have been documented:

(1) The release for which benefits are being requested is from tanks operated on a site which is otherwise eligible for benefits under Iowa Code section 455G.9(1);

(2) The release for which benefits are being requested is commingled with an on-site release which is eligible for benefits under Iowa Code chapter 455G;

(3) The site has had active underground storage tanks continuously from the date of the release for which benefits are being requested until the date at which a release for which the site is currently eligible for benefits was reported to the department;

(4) The claimant certifies that the tanks for which benefits are being requested will be permanently closed within 90 days of notification of the eligibility and does permanently close the tanks in compliance with rule 567—135.9(455B) within the 90 days;

(5) All other eligibility requirements have been met.

q. An owner/operator of a site which is eligible for benefits under section 455G.9 who discovered a tank on the site after October 26, 1990, shall maintain eligibility for benefits even if that tank does not meet the financial responsibility requirements continuous since October 26, 1990, if all of the following conditions have been met:

(1) The tank was discovered after October 26, 1990;

(2) The tank has not been operated since the discovery and has never been operated by the claimant;

(3) The tank has been empty of all product since it was discovered;

(4) The tank was properly registered with the department when discovered;

(5) The tank is a regulated tank which previously contained only petroleum products as defined in this chapter;

(6) The tank is permanently closed within 90 days of discovery, or by July 1, 1995, whichever date is later.

r. Compliance with report submittal deadlines. To be eligible for remedial benefits, claimants must comply with all department deadlines for submittal of Tier 1, Tier 2 and corrective action design report (CADR) requirements, as published in 567—Chapter 135, and must, by June 30, 2000, or 180 days after confirmation of a release from the site, whichever is later, provide a copy of an executed contract with a certified groundwater professional which contract must include a timetable that meets department deadlines for completion of a Tier 1 and Tier 2 if required.

11.1(4) *Payments of financial responsibility claims.* Rescinded IAB 2/9/00, effective 3/15/00.

11.1(5) *Payment of benefits under Iowa Code section 455G.21(2) "a."* Consistent with Iowa Code chapter 455G, the board may reimburse an owner of petroleum-contaminated property who is not otherwise eligible to receive benefits under Iowa Code section 455G.9 for eligible expenses not to exceed the benefits they would otherwise receive based upon the date the release was reported if they were eligible under Iowa Code section 455G.9(1) "a" (1) to (3), subject to the copayment requirements of Iowa Code section 455G.9(4), the requirement of 11.1(3), and subject to the available funding and limitations of the innocent landowner fund created by Iowa Code section 455G.21(2) "a," for corrective action subject to the following priority:

a. Late-filed retroactive claims. For releases reported to the department on or after January 1, 1984, but prior to May 5, 1989:

(1) Claims must be filed with the board by February 26, 1994.

(2) All costs incurred on or after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

b. Preregulation claims. For releases from petroleum USTs which are not eligible for remedial account benefits under 455G.9(1) "a" (1) to (3) only because the USTs were taken out of use prior to January 1, 1974, or permanently closed or removed before July 1, 1985.

(1) Claims must be filed with the board by December 1, 1997.

(2) USTs have not been operated on the site since the time the tanks were taken out of use or permanently closed.

(3) All costs incurred after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

(4) The owner cannot have claimed bankruptcy on or after the date of the reported release.

c. Innocent landowner claims. For releases reported by owners of petroleum-contaminated property as defined under 455G.9(9) who did not comply with the reporting or filing deadlines identified in this chapter with priority to those owners who did not have knowledge of the USTs or did not have control over the property.

(1) Claims must be filed with the board by December 1, 1997.

(2) The owner or operator must have reported a known release to the department consistent with the department requirements.

(3) The owner did not have knowledge of the UST or of a release impacting the property prior to acquisition of the property if the property was acquired on or after October 26, 1990, or if the owner did have such knowledge, the acquisition was necessary to protect a security interest.

(4) All costs incurred on or after July 10, 1996, must be approved by the board to be eligible for reimbursement.

(5) The owner cannot have claimed bankruptcy on or after the date of the reported release.

d. Acquired properties. For releases reported by owners of petroleum-contaminated property as defined under 455G.9(9) who acquired the petroleum-contaminated property after October 26, 1990, and who did not comply with the reporting or filing deadlines identified in this chapter.

(1) Claims must be filed with the board by December 1, 1997.

(2) The owner or operator must have reported a known release to the department consistent with the department requirements.

(3) The owner could not have been the owner or operator of the UST system which caused the release prior to acquiring the property after October 26, 1990.

(4) All costs incurred on or after December 1, 1996, must be preapproved by the board to be eligible for reimbursement.

(5) For claims submitted under this paragraph, the precorrective action value shall be the purchase price paid by the owner after October 26, 1990.

(6) For claims submitted under this paragraph, the purchase must have been an arm's-length transaction.

(7) The owner cannot have claimed bankruptcy on or after the date of the reported release.

e. Other innocent landowner claims. Claims for releases submitted to the board after December 1, 1997, which would have been eligible for benefits pursuant to paragraphs "a" through "d" of this subrule if filed by December 1, 1997, will be eligible for reimbursement subject to a first-in, first-out priority and the funding limitations of the innocent landowner fund. The owner must demonstrate that the owner has met all other requirements of this subrule in order to receive benefits.

f. Compliance with report submittal deadlines. To be eligible for remedial benefits, claimants must comply with all department deadlines for submittal of Tier 1, Tier 2 and corrective action design report (CADR) requirements, as published in 567—Chapter 135, and must, by June 30, 2000, or 180 days after confirmation of a release from the site, whichever is later, provide a copy of an executed contract with a certified groundwater professional which contract must include a timetable that meets department deadlines for completion of a Tier 1 and Tier 2 if required.

g. Costs incurred by a governmental subdivision for treating, handling or disposing of, as required by DNR, petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance or repair of a public improvement.

591—11.2(455G) Investigation of claims—remedial and retroactive.

11.2(1) All remedial and retroactive claims shall be investigated and overall fund liability estimated.

11.2(2) Costs which are not reasonable, necessary or eligible shall not be paid. The budget for the work shall be submitted prior to the initiation of the work for approval by the board or its designee. Failure to obtain prior approval shall invalidate the board's and the owner's or operator's obligations as provided for under Iowa Code section 455G.12A.

11.2(3) Owner or operator compliance with regulatory and program requirements shall be evaluated as part of the investigation. The failure to meet regulatory and program standards shall not bar recovery hereunder. However, failure to meet regulatory and program requirements which exist at the time of payment may result in cost recovery claims as provided under Iowa Code section 455G.13.

11.2(4) Cause of loss and determination of responsible parties shall be ascertained as a part of the investigation process. Independent environmental consultants may be retained to assist in the determination of the cause of the release and for the application of coverage.

11.2(5) Subrogation and cost recovery opportunities shall be pursued against any responsible party, as deemed appropriate by the board to do so.

591—11.3(455G) Other terms and conditions. Rescinded IAB 2/9/00, effective 3/15/00.

591—11.4(455B,455G) Tank and piping upgrades and replacements.**11.4(1) Definitions.**

“Administrator” means the Iowa comprehensive petroleum underground storage tank fund board administrator as provided in Iowa Code section 455G.5.

“Automatic in-tank gauging” means a device used for leak detection and inventory control in tanks that meet the department’s standards as set out in 567—paragraph 135.5(4)“d.”

“Board or UST board” means the Iowa comprehensive petroleum underground storage tank fund board as provided for in Iowa Code section 455G.4.

“Department” means the Iowa department of natural resources.

“Environmentally sensitive site” means, as classified under the Unified Soil Classification System as published by the American Geologic Institute or ASTM designation: D 2487-85, any site where the native soils outside or under the tank zone are materials where more than half of the material is larger than no. 200 sieve size. As used herein, tank zone means the native soils immediately outside the excavation area or nearest native soil under the tank.

The following classifications of soil descriptions are considered environmentally sensitive:

1. Well-graded gravels, gravel-sand mixtures, little or no fines, classified using the group symbol of “GW”;
2. Poorly graded gravels, gravel-sand mixtures, little or no fines, classified using the symbol of “GP”;
3. Silty gravels, gravel-sand-clay mixtures, classified using the symbol of “GM”;
4. Clayey gravels, gravel-sand-clay mixtures, classified using the symbol of “GC”;
5. Well-graded sands, gravelly sands, little or no fines, classified using the symbol “SW”;
6. Poorly graded sands, gravelly sands, little or no fines, classified using the symbol “SP”;
7. Silty sands, sand-silt mixtures, classified using the symbol “SM”;

In addition, environmentally sensitive sites include any site which is within 100 feet of a public or private well, other than a monitoring well on a site, and any site where the tank is installed in fractured bedrock or “Karst” formations. Any one of the above-specified conditions shall constitute an environmentally sensitive site under this rule.

A site shall be classified as environmentally sensitive when:

- Fifty percent or more of the soils from a boring or a monitoring well are logged and classified as one or more of the areas noted in paragraphs “1” through “7” and 50 percent of the total wells located on or immediately next to the property show the same or similar conditions. If no testing of the site has occurred and the soil condition as classified under the unified soil classification system in or under the tank zone is one of the conditions as classified, the site shall be considered to be environmentally sensitive. Reports previously prepared on the site and available from DNR may be used to make the soil classification. At least three borings/wells must have been completed. If fewer than three have been completed, an additional well which triangulates the tank zone shall be completed to determine the types of soils present.

b. On sites where monitoring-in-place has not been approved by the department, overexcavation may be approved to a maximum of the actual tank zone, plus six lineal feet out from the tank zone, and two feet below the tank itself, unless normal groundwater heights are above that level, and may be approved to a maximum of two feet deep below the line and three feet total width along the tank line.

11.6(4) If overexcavation occurs prior to completion of the site cleanup report (SCR), the SCR shall no longer be eligible for 100 percent reimbursement up to \$20,000 if approval of costs associated with the overexcavation and the scope of the work is not first approved by the board or the administrator. In such situations, the cost of the SCR will be paid as a remediation expense and subject to deductibles and copayments should approval not be obtained prior to proceeding.

11.6(5) Preapproval is required for overexcavation of any site, whether as a part of a remediation project or a tank upgrade or replacement, if the distances exceed board-authorized ranges set forth in subrule 11.6(3).

11.6(6) Rescinded IAB 3/26/97, effective 4/30/97.

591—11.7(455G) Prioritization of remedial account benefits and expenses. Rescinded IAB 1/17/96, effective 12/29/95.

591—11.8(455G) Payments for conducting RBCA analysis on “monitor only” sites.

11.8(1) When reviewing applications for benefits for the cost of completing an RBCA analysis on a site which has an approved SCR requiring “monitoring only,” or on a site with an SCR submitted between August 15, 1996, and January 31, 1997, the criteria in this rule shall apply when determining payment eligibility.

11.8(2) Tier 1, Tier 2, and Tier 3 risk-based corrective action analysis must have budgets preapproved by the board or its administrator prior to any costs being incurred.

11.8(3) Benefits shall be limited to those costs associated with activities which are required to be completed in order for a Tier 1, Tier 2, or Tier 3 to be accepted by the department and which will determine the risk associated with the site.

11.8(4) Only sites which are currently eligible for benefits under this chapter are eligible for reimbursement of costs associated with activities under this rule.

11.8(5) One hundred percent of the costs may be preapproved not to exceed \$10,000 for all activities associated with the completion of the Tier 1, Tier 2, or Tier 3 analysis. Costs which exceed \$10,000 will be subject to the limitations of Iowa Code section 455G.9(1)“f.”

These rules are intended to implement Iowa Code section 455B.474 and chapter 455G.

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◇Two or more ARCs

*Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held October 11, 1994.

CHAPTER 130
EMERGENCY MEDICAL SERVICES TRAINING GRANTS

641—130.1(135) Definitions. For the purpose of these rules, the following definitions shall apply:

“Ambulance service” means any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation and medical care.

“Applicant” means an Iowa county which has submitted an application for county EMS training funds.

“Area” means the number of square miles in a county listed in the most current edition of “Census of Population and Housing,” published by the United States Bureau of the Census.

“CEH” means continuing education hour which is based upon a minimum of 50 minutes of training per hour.

“Conferences” means continuing education courses which provide at least 7 CEHs.

“Continuing education” means training approved by the department which is obtained by a certified emergency medical care provider to maintain, improve, or expand relevant skills and knowledge and to satisfy renewal of certification requirements.

“County EMS association” means a countywide group of EMS providers and various agency and organization representatives and consumers who advise the county board of supervisors or their designee on EMS needs and objectives. The county EMS association should also include representatives of services located in a neighboring county if service is provided on a regular basis to residents of the funding county.

“Department” means the Iowa department of public health.

“Designee” means a county government agency or a board, commission or committee which has entered into an agreement with the county board of supervisors pursuant to Iowa Code chapter 28E.

“Director” means the director of the Iowa department of public health.

“Emergency medical care personnel” or *“provider”* means an individual who has been trained to provide emergency and non-emergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic level or other certification levels adopted by rule by the department, and who has been issued a certificate by the department.

“EMS” means emergency medical services.

“EMS course” means a course for emergency medical care personnel pursuant to Iowa Code section 147A.4, subsection 2.

“Nontransport service” means any privately or publicly owned EMS service program that does not provide patient transportation (except when no ambulance is available or in a disaster situation).

“Regional EMS council” means a multicounty nonprofit corporation whose purpose is to facilitate EMS development on a regional basis.

“Rural population” means the number of rural residents listed in the most current edition of “Census of Population and Housing,” published by the United States Bureau of the Census.

“Service program” or *“service”* means any emergency medical care ambulance or nontransport service that has received authorization by the department.

“Total population” means the number of residents listed in the most current edition of “Census of Population and Housing,” published by the United States Bureau of the Census.

“Training” means EMS related courses designed and intended for EMS providers.

“Training aid” means an item used in EMS training and includes, but is not limited to: slides, films, mannequins, emergency care devices, books and other items pertinent and necessary for training purposes.

641—130.2(135) Purpose.

130.2(1) The county EMS training fund is intended to supplement EMS funds at the county or local level.

130.2(2) Rescinded IAB 8/2/95, effective 7/14/95.

641—130.3(135) County EMS associations. Each county shall have a county EMS association, council or board to provide the county board of supervisors or their designee with advice on EMS funding needs and objectives.

641—130.4(135) County EMS training grants. Grants for training-related purposes at the county and local level are available from the department according to the following allocation formula:

1. Fifty percent of the funds will be allocated according to each county's rural population, and
2. Fifty percent of the funds will be allocated according to each county's area.

County EMS training grants may be used to train members of an ambulance or nontransport service located in a neighboring county if service is provided on a regular basis to residents of the funding county.

130.4(1) Application process. An application for EMS training grants is required. The application process is as follows:

a. Each county EMS association shall propose a plan for spending the county's allocation and submit the plan to the department. The plan shall establish spending priorities pursuant to 1995 Iowa Acts, Senate File 178.

b. The department shall review the plan and shall approve, request clarification or request a new proposal.

c. Upon approval by the department, the county's allocation shall be released except as provided in subrule 130.6(5).

130.4(2) Eligible costs. Costs which are eligible for EMS training fund expenditures include:

a. Reimbursement of tuition, fees and materials following successful completion of an EMS course. Practical and written examination fees may also be included.

b. Payment of continuing education tuition, fees and materials. Emergency medical training for the general public is an allowable expense.

c. Payment for EMS training aids. The title to any training aid purchased with these funds shall not lie with the department, but shall be determined by the county board of supervisors or their designee.

130.4(3) Ineligible costs. Costs which are not eligible for funding include, but are not limited to, the following:

a. Building and construction costs;

b. Rescinded IAB 5/31/00, effective 7/5/00.

c. Debt amortization;

d. Land;

e. Lodging;

f. Meals (except when included in tuition for a continuing education course);

g. Non-training-related equipment;

h. Operating expenses;

i. Personnel costs;

j. Rent;

k. Travel;

l. Utilities;

m. Vehicles;

n. Rescinded IAB 5/31/00, effective 7/5/00.

641—130.5(135) **County EMS equipment grants.** Rescinded IAB 8/2/95, effective 7/14/95.

641—130.6(135) **Disbursement of county funds.**

130.6(1) The training funds shall be disbursed separately to each county. The county board of supervisors or their designee shall be responsible for the administration of these funds. The county shall be responsible for repayment of any funds which are not spent in compliance with these rules.

130.6(2) Each county shall submit to the department a quarterly report of training fund expenditures pursuant to these rules.

130.6(3) All funds must be obligated for expenditure by May 31 and must actually be expended prior to June 30. Funds not obligated by May 31 shall be submitted to the department by June 1. Counties may apply to the department for unobligated funds. No carryover of funds is permitted between fiscal years.

130.6(4) A final expenditure report and any unspent funds shall be submitted to the department prior to July 31.

130.6(5) No funds shall be disbursed to a county until the county has submitted a final expenditure report for the previous fiscal year's funds and the report has been approved by the department.

641—130.7(135) **Special EMS training grants.** Rescinded IAB 8/2/95, effective 7/14/95.

641—130.8(135) **Application denial or partial denial—appeal.**

130.8(1) Denial or partial denial of an application shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the applicant of denial or partial denial shall be served by restricted certified mail, return receipt requested, or by personal service.

130.8(2) Any request for appeal concerning denial or partial denial shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 30 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. Prior to or at the hearing, the department may rescind the denial or partial denial. If no request for appeal is received within the 30-day time period, the department's notice of denial or partial denial shall become the department's final agency action.

130.8(3) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

130.8(4) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

130.8(5) When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 130.6(6).

130.8(6) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

130.8(7) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings on them.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

130.8(8) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

130.8(9) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

130.8(10) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

130.8(11) The party who appeals a final agency action to the district court shall pay the costs of the preparation of a transcript of the contested case hearing for the district court.

These rules are intended to implement 1999 Iowa Acts, chapter 201, and Iowa Code chapter 135.

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NURSING HOME ADMINISTRATORS

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OPTOMETRY EXAMINERS
CHAPTER 180
BOARD OF OPTOMETRY EXAMINERS
[Prior to 5/18/88, see 470—Chapters 143 and 144]

645—180.1(154) General definitions.

“Active licensee” means any person licensed to practice optometry in Iowa who has met all conditions of license renewal and maintains a current license to practice in this state.

“Board” means the board of optometry examiners.

“Department” means the department of public health.

“Diagnostically certified optometrist” means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry examiners to use cycloplegics, mydriatics and topical anesthetics as diagnostic agents typically applied to determine the condition of the human eye for proper optometric practice or referral for treatment to a person licensed under Iowa Code chapter 148 or 150A.

“Inactive licensee” means any person licensed to practice optometry in Iowa who has met all conditions of officially placing their license on inactive status and may not practice optometry until the reinstatement requirements as defined in these rules are met.

“Licensee” means any person licensed to practice as an optometrist in the state of Iowa.

“License renewal biennium” means July 1 of even-numbered years to June 30 of even-numbered years.

“Study compliance biennium” means May 1 of even-numbered years to April 30 of even-numbered years.

“Therapeutically certified optometrist” means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry examiners to use eye-related topical pharmaceutical agents, oral antimicrobial agents, oral antihistamines, oral antiglaucoma agents, oral analgesic agents, and may remove superficial foreign bodies from the human eye and adnexa.

645—180.2(154) Availability of information.

180.2(1) All information regarding rules, forms, time and place of meetings, minutes of meetings, record of hearings, and examination results are available to the public between the hours of 8 a.m. and 4:30 p.m., Monday to Friday, except holidays.

180.2(2) Information may be obtained by writing to the Board of Optometry Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All official correspondence shall be in writing and directed to the board at this address.

645—180.3(154) Organization of the board and procedures.

180.3(1) A chair, vice chair, and secretary shall be elected at the first meeting after April 30 of each year.

180.3(2) Four board members present shall constitute a quorum.

180.3(3) The board shall hold an annual meeting and may hold additional meetings called by the chair or by a majority of the members of the board.

This rule is intended to implement Iowa Code section 147.22.

645—180.4(154) Conduct for licensure examination. Rescinded IAB 2/10/99, effective 3/17/99.

645—180.5(154) Requirements for licensure.

180.5(1) All applicants shall apply to the Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

180.5(2) The forms properly completed shall be filed with the department, together with satisfactory evidence of compliance with Iowa Code sections 154.3(1) and 154.3(2).

180.5(3) An applicant for admission to practice optometry in Iowa shall successfully pass the examinations specified in paragraphs "a" through "c." Examination results from the examination of the National Board of Examiners in Optometry and the examination of the International Board of Examiners in Optometry on "The Treatment and Management of Ocular Disease" (incorporated into the N.B.E.O. examination effective April 1993) shall be valid for ten years prior to date of application. An applicant shall present a diploma from an accredited school or college of optometry and, if the applicant graduated from optometry school prior to January 2, 1988, shall submit proof of satisfactory completion of all educational requirements contained in Iowa Code chapter 154.

a. All parts of the examination of the National Board of Examiners in Optometry in effect at the time of application;

b. The examination of the National Board of Examiners in Optometry (formerly given by the International Board of Examiners in Optometry) on "Treatment and Management of Ocular Disease." This paragraph does not apply to those applicants taking the examination of the National Board of Examiners in Optometry after January 1, 1993; and

c. The Iowa jurisprudence examination. Successful completion of the jurisprudence examination requires a minimum score of 75 percent.

d. An applicant must provide an official verification from each state board of examiners in which applicant is currently or formerly licensed, regarding the status of the applicant's license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action.

e. Incomplete applications will be held in office files for three years. Applicants will be required to reapply after that time span.

180.5(4) Diagnostic certification. Those persons licensed to practice optometry in Iowa before January 2, 1980, who apply to be a diagnostically certified licensed optometrist shall earn a grade of not less than 70 percent on the examination prescribed by the Iowa state board of optometry examiners. The examination shall be in the subjects of physiology and pathology appropriate to the use of diagnostic pharmaceutical agents and diagnosis of conditions of the human eye, and pharmacology including systemic effects of ophthalmic diagnostic pharmaceutical agents authorized for use by optometrists by Iowa Code section 154.1.

180.5(5) Therapeutic certification.

a. This paragraph applies to all optometrists graduating after January 2, 1986, and prior to January 2, 1988. As a prerequisite to taking the examination described in subrule 180.5(3) "c," an applicant for admission to practice optometry in Iowa may only apply to be a therapeutically certified optometrist and, if requested by the board, shall supply certification that the applicant's optometric education and training meet or exceed the requirements of the state of Iowa as outlined in Iowa Code section 154.3(5).

b. A person licensed to practice optometry in any state prior to January 1, 1986, who applies to be a therapeutically certified optometrist shall first satisfactorily complete a course provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States Department of Education, and approved by the Iowa state board of optometry examiners, which has particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa. The course shall include a minimum of 40 hours of didactic education and 60 hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa.

c. The board also requires that all therapeutically certified optometrists, prior to the utilization of pharmaceutical agents authorized by Iowa Code chapter 154, shall complete an additional 44 hours of education with emphasis on treatment and management of glaucoma and use of oral pharmaceutical agents for treatment and management of ocular diseases, provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States Department of Education, and approved by the board of optometry examiners. Upon completion of the additional 44 hours of education, a therapeutically certified optometrist shall also pass an oral or written examination which emphasizes the diagnosis, treatment, and management of glaucoma, ocular disease, and systemic disease which affect the eye. The board shall suspend the optometrist's therapeutic certificate according to the procedures outlined in subrule 180.5(6) in the event the optometrist fails to comply with this paragraph by July 1, 1988. Beginning July 1, 1988, additional continuing education is required as study compliance for license renewal as specified in subrule 180.12(2).

180.5(6) The board shall suspend an optometrist's therapeutic certificate for failure to comply with subrule 180.5(5) "c" by July 1, 1988.

a. When it comes to the board's attention that an optometrist therapeutically certified by July 1, 1988, has failed to comply with subrule 180.5(5) "c" by July 1, 1988, the board shall take the following steps.

(1) The board shall notify the licensee of being placed on suspension due to the licensee's failure to be in compliance with subrule 180.5(5) "c." Notice shall be served by restricted certified mail, return receipt requested, or by personal service.

(2) Any requests for appeal concerning the suspension shall be submitted by the aggrieved party, in writing, to the Iowa board of optometry examiners by certified mail, return receipt requested, within 20 days of the receipt of the board's notice. The address is: Iowa Board of Optometry Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. If a request is made within the 20-day time period, the notice shall be deemed suspended. If no request for appeal is received within the 20-day time period, the board's notice of suspension shall become the board's final agency action.

(3) Upon the board's receipt of a request for a hearing, the board shall prepare a notice of hearing and transmit the notice to the licensee by certified mail, return receipt requested, at least 10 days before the date of the hearing.

(4) The board shall conduct the hearing in accordance with rule 180.108(272C) and may authorize an administrative hearing officer to assist it with conducting the hearing.

(5) After the hearing, the board shall affirm, modify, or set aside the suspension.

(6) Prior to or at the hearing, the board may rescind the notice of suspension upon satisfaction that the reason for the suspension has been resolved.

b. Unless otherwise specified, the suspension, originally noticed, shall exist until the therapeutically certified licensee has completed the requirements of subrule 180.5(5) "c" and proven completion to the board.

This rule is intended to implement Iowa Code sections 147.34, 147.36 and 154.3.

645—180.6(147,154) Licensure by endorsement. An applicant who has been a licensed optometrist under laws of another jurisdiction for one year or more shall file an application for licensure by endorsement with the board office. The following requirements must be satisfied prior to licensure to practice optometry in Iowa through the procedure of licensure by endorsement.

180.6(1) Application for licensure by endorsement to practice optometry in this state shall be made to the board of optometry examiners on a form provided by the board which must be complete.

180.6(2) Applications must be filed with the board along with the following:

a. Proof of graduation with a doctor of optometry degree from an accredited school and, in the case of foreign graduates, adherence to the current requirements of the National Board of Examiners in Optometry to sit for the examination.

b. Evidence of successful completion of the examination of the National Board of Examiners in Optometry that was current at the time of initial licensure, or the examination that is currently offered by the National Board of Examiners in Optometry.

c. An applicant licensed to practice optometry in any state prior to January 1, 1986, shall supply evidence of completion of a course provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States Department of Education, which has particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa. The course shall include a minimum of 40 hours of didactic education and 60 hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa. An applicant shall have completed an additional 44 hours of education with emphasis on treatment and management of glaucoma and use of oral pharmaceutical agents for treatment and management of ocular diseases.

d. Proof of licensure and evidence of one year of active practice in another state, territory or district of the United States immediately preceding the date of application that has a similar scope of practice as determined by the board. When the scope of practice is different, the applicant shall make available to the board evidence of completion of additional hours of training related to the area of the deficiency as prescribed by the board. The board may waive the requirement of one year of active practice if, during the above-mentioned one-year period, the applicant was:

- (1) Teaching optometry;
- (2) A military optometrist;
- (3) A supervisory or administrative optometrist; or
- (4) A researcher in optometry.

e. Verification by an official statement from each state board of examiners regarding the status of the applicant's license, including date of licensure, expiration date and available information regarding any pending or prior investigation that has resulted in disciplinary action. The applicant shall request such statements from all states in which the applicant is currently or was formerly licensed.

f. Statement as to any claims, complaints, judgments or settlements, pending or final, made with respect to the applicant arising out of the alleged negligence or malpractice in rendering professional services as an optometrist.

This rule is intended to implement Iowa Code sections 147.29, 147.54, 147.80 and 154.3.

645—180.7(154) Diagnostic pharmaceutical agents.

180.7(1) Those persons licensed to practice optometry before January 2, 1980, who apply to be a certified licensed optometrist shall receive a grade of not less than 70 percent on the examination prescribed by the board of optometry examiners to pass the test.

180.7(2) The examination shall be in the subjects of physiology and pathology appropriate to the use of diagnostic pharmaceutical agents and diagnosis of conditions of the human eye, and pharmacology including systemic effects of ophthalmic diagnostic pharmaceutical agents and the possible adverse reactions thereto, authorized for use by optometrists by Iowa Code section 154.1.

This rule is intended to implement Iowa Code section 154.3(4).

645—180.8(154) Notice of address.

180.8(1) Before engaging in the practice of optometry, each optometrist shall notify the board in writing by United States mail of the address where the optometrist is to engage, or intends to engage, in the practice of optometry. If the optometrist intends to practice in more than one office, the notification shall include the address of each office.

180.8(2) Each optometrist shall as a part of the renewal application notify the board in writing of the address where the licensee is engaged in the practice of optometry. In the event that the licensee is not engaged in the practice of optometry this shall be noted and the home address provided by the licensee. If the optometrist practices in more than one office, the notification shall include the address of each office.

180.8(3) Each optometrist shall notify the board in writing by United States mail of a change of address of the licensee's residence and where the licensee is engaged in the practice of optometry within 30 days after the change of address.

180.8(4) Each optometrist shall keep the optometry license publicly displayed in the primary place of practice. For purposes of this rule, primary place of practice is that office in which the optometrist practices the greatest number of hours.

This rule is intended to implement Iowa Code section 272C.3.

645—180.9(154) Furnishing prescriptions. Each contact lens or ophthalmic spectacle lens/eyeglass prescription by a licensed optometrist must meet requirements as listed.

180.9(1) A contact lens prescription shall contain the following information.

- a. Date of issuance.
- b. Name and address of patient for whom the contact lens is prescribed.
- c. Name, address, and signature of the practitioner.
- d. All parameters required to duplicate properly the original contact lens.
- e. A specific date of expiration, not to exceed 18 months; the quantity of lenses allowed and the number of refills allowed.
- f. At the option of the prescribing practitioner, the prescription may contain fitting and material guidelines and specific instructions for use by the patient.

180.9(2) Release of contact lens prescription.

a. After the contact lenses have been adequately adapted and the patient released from initial follow-up care by the prescribing doctor, the patient may request a copy of the contact lens prescription, at no cost, for the duplication of the original contact lens.

b. A practitioner choosing to issue an oral prescription shall furnish the same information required for the written prescription except the written signature and address of the practitioner. An oral prescription may be released by an O.D. to any dispensing person who is a licensed professional with the O.D., M.D., D.O., R.Ph. degree or a person under direct supervision of those licensed under Iowa Code chapters 148, 150, 150A, 154 and 155A.

c. The issuing of an oral prescription must be followed by a written copy to be kept by the dispenser of the contact lenses until the date of expiration.

180.9(3) An ophthalmic spectacle lens prescription shall contain the following information.

- a. Date of issuance.
- b. Name and address of the patient for whom the ophthalmic lens or lenses are prescribed.
- c. Name, address, and signature of the practitioner issuing the prescription.
- d. All parameters necessary to duplicate properly the ophthalmic lens prescription.
- e. A specific date of expiration not to exceed two years.
- f. A dispenser of ophthalmic materials, in spectacle or eyeglass form, must keep a valid copy of the prescription on file for two years.

180.9(4) Release of ophthalmic lens prescription.

- a. The ophthalmic lens prescription shall be furnished upon request at no additional charge to the patient.
- b. The prescription, at the option of the prescriber, may contain adapting and material guidelines and may also contain specific instructions for use by the patient.
- c. Spectacle lens prescriptions must be in written format, according to Iowa Code section 147.109(1).

645—180.10(147) Board of optometry examiners. All fees are nonrefundable.

180.10(1) Application for license to practice optometry is \$250.

180.10(2) Renewal of license to practice optometry or reinstatement of inactive license for a biennial period is \$120.

180.10(3) Fee for a certified statement that a licensee is licensed in this state is \$10.

180.10(4) Fee for a duplicate license is \$10.

180.10(5) Late fee for renewal or reinstatement of a license to practice optometry is:

- a. If applying up to 60 days after expiration date: \$100 late renewal fee, plus the renewal fee.
- b. If applying 60 days or more after expiration date: \$200 lapsed or revoked license reinstatement fee, plus the renewal fee.

180.10(6) Penalty fee, in addition to the renewal fee, for failure to complete the continuing education by the end of the continuing education period is \$200.

180.10(7) Fee for application for licensure by endorsement is \$275.

This rule is intended to implement Iowa Code section 147.80.

645—180.11(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in the rules, including civil penalties in an amount not to exceed \$1,000 or maximum allowed, when the board determines that the licensee is guilty of any of the following acts or offenses:

180.11(1) 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 optometry in this state, and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the Iowa department of public health any false or forged diploma, or certificate or affidavit or identification or qualification in making an application for a license in this state.

180.11(2) Professional incompetency. Professional incompetency includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the optometrist's practice;
- b. A substantial deviation by the optometrist from the standards of learning or skill ordinarily possessed and applied by other optometrists in the state of Iowa acting in the same or similar circumstances;
- c. Failure by an optometrist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average optometrist in the state of Iowa acting in the same or similar circumstances;
- d. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of optometry in the state of Iowa.

180.11(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Practice harmful or detrimental to the public includes, but is not limited to, the failure of an optometrist to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent optometrist acting in the same or similar circumstances in this state.

b. Practice harmful or detrimental to the public includes, but is not limited to, the use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a physical handicap, to make a written signature or mark, however, may substitute, in lieu of a signature, a rubber stamp which is adopted by the handicapped person for all purposes requiring a signature and which is affixed by the handicapped person or affixed by another person upon the request of the handicapped person and in that person's presence.

c. Practice harmful or detrimental to the public includes, but is not limited to, the practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

180.11(4) Habitual intoxication or addiction to the use of drugs. The inability of an optometrist to practice optometry with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other type of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other type of material which may impair an optometrist's ability to practice the profession with reasonable skill and safety.

180.11(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession includes, but is not limited to, the conviction of an optometrist who has committed a public offense in the practice of the profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of optometry, or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon an optometrist in this state.

180.11(6) Use of untruthful or improbable statements in advertisements. This includes, but is not limited to, an action by an optometrist, or on behalf of an optometrist, in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

a. Inflated or unjustified expectations of favorable results.

b. Self-laudatory claims that imply that the optometrist is a skilled optometrist engaged in a field or specialty of practice for which the optometrist is not qualified.

c. Extravagant claims or proclaiming extraordinary skills not recognized by the optometric profession.

180.11(7) Willful or repeated violations of the provisions of these rules and Iowa Code chapter 147.

180.11(8) Violating a regulation or law of this state, or the United States, which relates to the practice of optometry.

180.11(9) Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, district, territory or country within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

180.11(10) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements to restrict the practice of optometry entered into in another state, district, territory or country.

180.11(11) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice optometry.

180.11(12) Failure to identify oneself as an optometrist to the public.

180.11(13) Violating a lawful order of the board, previously entered by the board in a disciplinary hearing or pursuant to informal settlement.

180.11(14) Being adjudged mentally incompetent by a court of competent jurisdiction.

180.11(15) Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

180.11(16) Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose. Indiscriminately or promiscuously prescribing, administering or dispensing includes, but is not limited to, the prescribing, administering or dispensing any drug for purposes which are not eye or vision related.

180.11(17) Knowingly submitting a false report of continuing education or failure to submit the biennial report of continuing education.

180.11(18) Failure to comply with a subpoena issued by the board.

180.11(19) Failure to file the reports required by rule 645—9.3(272C) concerning acts or omissions committed by another licensee.

180.11(20) Obtaining any fee by fraud or misrepresentation.

180.11(21) Failing to exercise due care in the delegation of optometric services to or supervision of assistants, employees or other individuals, whether or not injury results.

This rule is intended to implement Iowa Code chapter 272C.

STUDY COMPLIANCE FOR LICENSE RENEWAL
AND REINSTATEMENT AND DISCIPLINARY PROCEDURES
[Prior to 5/18/88, see 470—Chapter 144]

645—180.12(154) General. Rescinded IAB 5/31/00, effective 7/5/00.

645—180.13(154) Local study groups. Rescinded IAB 5/31/00, effective 7/5/00.

645—180.14 Reserved.

645—180.15(154,272C) Continuing education exemptions for inactive practitioners. Rescinded IAB 5/31/00, effective 7/5/00.

645—180.16(154,272C) Continuing education exemption for physical disability or illness. Rescinded IAB 5/31/00, effective 7/5/00.

645—180.17(154,272C) Reinstatement of inactive practitioners. Rescinded IAB 5/31/00, effective 7/5/00.

645—180.18(154,272C) Continuing education exemption for active practitioners. Rescinded IAB 5/31/00, effective 7/5/00.

645—180.19 to 180.114 Reserved.

645—180.115(272C) Grounds for discipline. Renumbered as 645—180.11(272C), IAB 5/31/00.

645—180.116 to 180.199 Reserved.

645—180.200(155A) Prescription drug orders. Each prescription drug order furnished in this state by a therapeutically certified optometrist shall meet the following requirements:

180.200(1) Written prescription drug orders shall contain:

- a. The date of issuance;
- b. The name and address of the patient for whom the drug is dispensed;
- c. The name, strength, and quantity of the drug, medicine, or device prescribed;
- d. The directions for use of the drug, medicine, or device prescribed;
- e. The name, address, and written signature of the practitioner issuing the prescription;
- f. The federal drug enforcement administration number, if required under Iowa Code chapter 204; and
- g. The title, "Therapeutically Certified Optometrist" by the name of the practitioner issuing the prescription.

180.200(2) The practitioner issuing oral prescription drug orders shall furnish the same information required for a written prescription, except for the written signature and address of the practitioner. This rule is intended to implement Iowa Code section 155A.27.

645—180.201 to 180.299 Reserved.

PROCEDURES FOR USE OF CAMERAS
AND RECORDING DEVICES
AT OPEN MEETINGS

645—180.300(21) Conduct of persons attending meetings. Rescinded IAB 6/16/99, effective 7/21/99.

These rules are intended to implement Iowa Code sections 147.2, 147.3, 147.10, 147.11, 147.29, 147.49, 147.54, 147.80, 154.3, 154.6, 155A.27, 272C.2, and 272C.3.

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◇Two separate ARCs

CHAPTER 181
CONTINUING EDUCATION FOR OPTOMETRISTS

645—181.1(154) Definitions. For the purpose of these rules, the following definitions shall apply:

“Active license” means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

“Administrator” means the administrator of the board of optometry examiners.

“Approved program/activity” means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

“Approved sponsor” means a person or an organization sponsoring continuing education activities that has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such organization, educational institution, or person may be deemed automatically approved.

“Audit” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing provider requirements during a specified time period.

“Board” means the board of optometry examiners.

“Continuing education” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“Hour of continuing education” means a clock hour spent by a licensee in actual attendance at and completion of approved continuing education activity.

“Inactive license” means the license of a person who is not engaged in practice in the state of Iowa.

“Lapsed license” means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within a stated time.

“License” means license to practice.

“Licensee” means any person licensed to practice as an optometrist in the state of Iowa.

645—181.2(154) Continuing education requirements.

181.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 and ending on June 30 of each even-numbered year.

a. Requirements for nontherapeutic licensees. Each biennium, each person who is licensed to practice as an optometrist in this state and who is not therapeutically certified shall be required to complete a minimum of 30 hours of continuing education approved by the board. Nontherapeutic licensees must comply with Iowa continuing education rules for license renewal and reinstatement by meeting the continuing education requirements in the state of practice.

b. Requirements for therapeutic licensees. Each biennium, each person who is licensed to practice as a therapeutic licensee in this state shall be required to complete a minimum of 50 hours of continuing education approved by the board. A minimum of 20 hours of continuing education per biennium shall be in the treatment and management of ocular disease. Therapeutic licensees must comply with Iowa continuing education rules for license renewal and reinstatement regardless of the licensee’s place of residence or place of practice.

181.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 50 hours of continuing education per biennium for each subsequent license renewal.

181.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein and be approved by the board pursuant to statutory provisions and the rules that implement them.

181.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for second renewal.

181.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—181.3(154) Standards for approval.

181.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

- a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertains to common subject matters which integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The board may request the qualifications of presenters;
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides proof of attendance to licensees in attendance including:
 - (1) Date, location, course title, presenter(s);
 - (2) Numbers of program contact hours (One contact hour usually equals one hour of continuing education credit.); and
 - (3) Official signature or verification by program sponsor.

181.3(2) Specific criteria.

- a. Continuing education hours of credit may be obtained by attending:
 - (1) The continuing education programs of the Iowa Optometric Association, the American Optometric Association, the American Academy of Optometry, and national regional optometric congresses, schools of optometry and all state optometric associations. The department of ophthalmology of the school of medicine of the University of Iowa shall be one of the approved providers of continuing education for Iowa optometrists;
 - (2) Postgraduate study through an accredited school or college of optometry;
 - (3) Meetings or seminars that are approved and certified for optometric continuing education by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education Committee (COPE); or
 - (4) Continuing education activities of an approved sponsor.
- b. The maximum number of hours in each category in each biennium is as follows:
 - (1) Twelve hours of credit for local study group programs that have prior approval or an approved sponsorship.
 - (2) Ten hours of credit for correspondence courses, which include written and electronically transmitted material and have a postcourse test. Certification of the continuing education requirements and of passing the test must be given by the institution providing the continuing education, and that institution must be accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education.
 - (3) Six hours of credit for practice management courses.

- (4) Two hours of credit for dependent adult abuse and child abuse identification.
- (5) Four hours of credit for current certification in CPR, by the American Heart Association, the American Red Cross or an equivalent organization.
- (6) Twenty hours of credit for postgraduate study courses.
- (7) Twenty hours of credit in the treatment and management of ocular disease from the University of Iowa.

645—181.4(154) Approval of sponsors, programs, and activities for continuing education.

181.4(1) Approval of sponsors. An applicant who desires approval as a sponsor of courses, programs, or other continuing education activities shall, unless exempted elsewhere in these rules, apply for approval to the board on the form designated by the board stating the applicant's educational history for the preceding two years or proposed plan for the next two years.

a. The form shall include the following:

- (1) Date, place, course title(s) offered and outline of content;
- (2) Total hours of instruction presented;
- (3) Names and qualifications of instructors including résumé or vitae; and
- (4) Evaluation form(s).

b. Records shall be retained by the sponsor for four years.

c. Attendance record report. The person or organization sponsoring an approved continuing education activity shall provide a certificate of attendance or verification to the licensee providing the following information:

- (1) Program date(s);
- (2) Course title and presenter;
- (3) Location;
- (4) Number of clock hours attended and continuing education hours earned;
- (5) Name of sponsor and sponsor number;
- (6) Licensee's name; and
- (7) Method of presentation.

d. All approved sponsors shall maintain a copy of the following:

- (1) The continuing education activity;
- (2) List of enrolled licensees' names and license numbers; and
- (3) Number of continuing education clock hours awarded for a minimum of four years from the date of the continuing education activity.

The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall also include a summary of the evaluations completed by the licensees.

181.4(2) Prior approval of programs/activities. An organization or person other than an approved sponsor that desires prior approval of a course, program or other educational activity or that desires to establish approval of such activity prior to attendance shall apply for approval to the board on a form provided by the board at least 60 days in advance of the commencement of the activity. The board shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state:

- a. The date(s);
- b. Course(s) offered;
- c. Course outline;
- d. Total hours of instruction; and
- e. Names and qualifications of speakers and other pertinent information.

The organization or person shall be notified of approval or denial by ordinary mail.

181.4(3) Review of programs. Continuing education programs/activities shall be reported every year at the designated time as assigned by the board. The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice of the revocation to that sponsor by certified mail. The sponsor shall have the right to hearing regarding the revocation. The request for hearing must be sent within 20 days after the receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The board shall conduct the hearing in compliance with rule 645—11.9(17A).

181.4(4) Postapproval of activities. A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 60 days after completion of such activity, the following:

- a. The date(s);
- b. Course(s) offered;
- c. Course outline;
- d. Total hours of instruction and credit hours requested;
- e. Names and qualifications of speakers and other pertinent information;
- f. Request for credit which includes a brief summary of the activity; and
- g. Certificate of attendance or verification.

Within 90 days after receipt of such application, the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

181.4(5) Voluntary relinquishment. The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

645—181.5(154) Reporting continuing education by licensee. At the time of license renewal, each licensee shall be required to submit a report on continuing education to the board on a board-approved form.

181.5(1) The information on the form shall include:

- a. Title of continuing education activity;
- b. Date(s);
- c. Sponsor of the activity;
- d. Board-approved sponsor number;
- e. Number of continuing education hours earned; and
- f. Teaching method used.

181.5(2) Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

- a. The board will select licensees to be audited.
- b. The licensee shall make available to the board for auditing purposes a copy of the certificate of attendance or verification for all reported activities that includes the following information:
 - (1) Date(s), location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation;
 - (2) Number of contact hours for program attended; and
 - (3) Certificate of attendance or verification indicating successful completion of course.
- c. For auditing purposes, the licensee must retain the above information for two years after the biennium has ended.

- d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.
- e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of continuing education report.
- f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—181.6(154) Reinstatement of lapsed license. Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows a license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse may apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;
2. Pays all of the renewal fees then due;
3. Pays all penalty fees which have been assessed by the board for failure to renew;
4. Pays reinstatement fee; and
5. Provides evidence of satisfactory completion of Iowa continuing education requirements during the period since the license lapsed.

The total number of continuing education hours required for license reinstatement is computed by multiplying 50 for the therapeutic licensees (with a maximum of 100) and 30 for nontherapeutic licensees (with a maximum of 60) by the number of bienniums since the license lapsed. If the license has lapsed for more than five years, the applicant shall successfully pass the Iowa state optometry jurisprudence examination with a minimum grade of 75 percent.

645—181.7(154,272C) Continuing education waiver for active practitioners. An optometrist licensed to practice optometry shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing optometrist.

645—181.8(154,272C) Continuing education waiver for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa and who is residing within or without the state of Iowa may be granted a waiver of continuing education compliance and obtain a certificate of waiver upon written application to the board. The application shall contain a statement that the applicant will not engage in practice in Iowa without first complying with all regulations governing reinstatement after waiver. The application for a certificate of waiver shall be submitted upon forms provided by the board.

645—181.9(154,272C) Continuing education waiver for physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—181.10(154,272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of exemption shall, prior to engaging in the practice of optometry in the state of Iowa, satisfy the following requirements for reinstatement.

181.10(1) Submit written application for reinstatement to the board upon forms provided by the board with appropriate reinstatement fee; and

181.10(2) Furnish in the application evidence of one of the following:

a. Full-time practice in another state of the United States or the District of Columbia and completion of continuing education for each biennium of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of hours of approved continuing education computed by multiplying 50 for therapeutic licensees or 30 for nontherapeutic licensees by the number of bienniums a certificate of exemption shall be in effect for such applicant; or

c. Successful completion of any or all parts of the national license examination as deemed necessary by the board, within one year immediately prior to the submission of such application for reinstatement.

645—181.11(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, licensee or program provider shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 154.

[Filed 5/12/00, Notice 4/5/00—published 5/31/00, effective 7/5/00]

CHAPTER 182 to 185

Reserved

CHAPTER 186

AGENCY PROCEDURE FOR RULE MAKING

Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 187

DECLARATORY RULINGS

[Prior to 10/16/91, see 645—180.11(17A)]

Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 188

PETITIONS FOR RULE MAKING

[Prior to 10/16/91, see 645—180.4(154)]

Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 189

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 190

CHILD SUPPORT NONCOMPLIANCE

Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 191

IMPAIRED PRACTITIONER REVIEW COMMITTEE

Rescinded IAB 6/16/99, effective 7/21/99

CHAPTERS 192 to 199

Reserved

400.50(321,326)	Refund of registration fees	401.18	Reserved
400.51(321)	Assigned identification numbers	401.19(321)	Legion of Merit plates
400.52(321)	Odometer statement	401.20(321)	Persons with disabilities plates
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400.56(321)	Hearings	401.24(321)	Purple Heart, Silver Star and Bronze Star plates
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400.62(321)	Storage of registration plates, certificate of title forms and registration forms	401.30(321)	Motorcycle rider education plates
400.63(321)	Issuance and disposal of registration plates	401.31(321)	Veteran plates
400.64(321)	County treasurer's report of motor vehicle collections and funds	401.32 to 401.34	Reserved
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401.2(321)	Application, issuance and renewal	405.2(321)	Definitions
401.3 and 401.4	Reserved	405.3(321)	Salvage title
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401.7(321)	Collegiate plates	405.7(321)	Converting salvage title to regular title
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401.17(321)	State agency-sponsored processed emblem plates	410.2(321E)	Special mobile equipment transported on a registered vehicle
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		411.1(321L)	Administration
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DRIVER'S PRIVACY PROTECTION—
CERTIFICATES OF TITLE AND
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MOBILE HOME DEALERS,
MANUFACTURERS AND DISTRIBUTORS

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- 421.3(322B) Supplemental statements
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CHAPTER 424
TRANSPORTER PLATES

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DEALERS, MANUFACTURERS,
DISTRIBUTORS AND WHOLESALERS

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- 425.12(322) Motor vehicle dealer's place of business
- 425.13 Reserved
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- 425.19 Reserved
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- 425.21 to 425.23 Reserved
- 425.24(322) Miscellaneous requirements
- 425.25 Reserved
- 425.26(322) Fairs, shows and exhibitions
- 425.27 and 425.28 Reserved
- 425.29(322) Classic car permit
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- 425.32 to 425.39 Reserved
- 425.40(322) Salespersons of dealers and used vehicle wholesalers
- 425.41 to 425.49 Reserved
- 425.50(322) Manufacturers, distributors, and wholesalers
- 425.51 Reserved
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- 425.53(322) Wholesaler's financial liability coverage
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- 425.62(322) Denial, suspension or revocation
- 425.63 to 425.69 Reserved
- 425.70(321) Dealer plates
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- 425.72(321) Demonstration permits

CHAPTERS 426 to 429
Reserved

CHAPTER 430
MOTOR VEHICLE LEASING LICENSES

- 430.1(321F) Definitions
- 430.2(321F) Criteria for obtaining a motor vehicle leasing license

400.19(2) Temporary use of vehicle without registration card. A person who acquires a vehicle which is currently registered or in a dealer's inventory at the time of sale and who has possession of plates which may be attached to the vehicle acquired may operate or permit the operation of the vehicle not to exceed 30 days from the date of purchase or transfer without a registration card, if ownership evidence is carried in the vehicle.

400.19(3) Ownership evidence. Ownership evidence under this rule shall consist of the certificate of title or registration receipt, or a photocopy thereof, properly assigned to the person who has acquired the vehicle, or a bill of sale conveying ownership of the vehicle to the person who has acquired the vehicle. The ownership evidence shall be shown to any peace officer upon request.

This rule is intended to implement Iowa Code sections 321.33 and 321.46.

761—400.20(321) Registration of motor vehicle weighing 55,000 pounds or more. When applying for registration or renewal of registration for a motor vehicle weighing 55,000 pounds or more, the owner shall present to the department or to the county treasurer proof of compliance with the federal heavy vehicle use tax required by the Surface Transportation Assistance Act of 1982 and 26 CFR Part 41 as amended in the Federal Register on May 23, 1985.

400.20(1) If the motor vehicle is used exclusively in the transportation of harvested forest products, the owner may present a written statement certifying that usage and the usage will be recorded.

400.20(2) If the motor vehicle is used primarily for farming purposes, the owner may present a written statement certifying that usage and the usage will be recorded.

This rule is intended to implement Iowa Code sections 307.30 and 321.20.

761—400.21(321) Registration of vehicles on a restricted basis. The department may register a vehicle which does not meet the equipment requirements of Iowa Code chapter 321, due to the particular use for which it is designed or intended. Registration may be accomplished upon payment of the appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition.

400.21(1) Operation of the vehicle may be restricted to a roadway to which a specific lawful speed limit applies, as specified in Iowa Code section 321.285, if the maximum speed of the vehicle is such that the operation of the vehicle would impede or block the normal and reasonable movement of traffic.

400.21(2) The department may also restrict the operation of the vehicle to daylight hours if operation of the vehicle during hours other than daylight would create a hazard.

400.21(3) A certificate of restriction shall be issued in conjunction with registration of the vehicle, listing the restrictions that apply to the operation of the vehicle.

a. Registration laws applicable to motor vehicles in general shall also apply to vehicles registered under a restricted registration.

b. The department may waive those equipment requirements of Iowa Code chapter 321 which cannot be met due to the particular use for which the vehicle is designed or intended.

400.21(4) The department shall not register an all-terrain vehicle. The department shall not register a vehicle manufactured only for off-road use except a vehicle operated exclusively by a person with a disability, which may be registered if the department, in its discretion, determines that the vehicle is not in an unsafe condition.

This rule is intended to implement Iowa Code sections 321.1 and 321.234A and subsections 321.23(4), 321.30(2), and 321.101(2).

761—400.22(321) Transfers of ownership by operation of law. When ownership of a vehicle is transferred by operation of law under Iowa Code section 321.47, the following, in addition to rule 400.4(321), shall apply:

400.22(1) The new certificate of title and registration shall be issued, upon receipt of the proper documentation, by the county treasurer of the county where the transferee resides.

400.22(2) If the vehicle is not currently registered in this state, the registration fee and penalties due shall be computed in accordance with the following:

a. If the vehicle is ordered confiscated or forfeited by a court under a judgment or forfeiture, the fee shall be computed on the remaining unexpired months in the registration year from the date of the court order.

b. If the vehicle is sold on a peace officer's bill of sale as an unclaimed, stolen, embezzled or abandoned vehicle, or as a vehicle seized under Iowa Code section 321.84, the fee shall be computed on the remaining unexpired months in the registration year from the date of the sale.

c. If the vehicle is sold or transferred under a judgment or order entered by a court in a civil action or proceeding, or is transferred under any provision of Iowa Code section 321.47 which is not covered in this subrule, the fee shall include any delinquent fees which have accrued during previous registration periods and accrued penalties. Penalties shall continue to accrue until paid.

d. If the vehicle was last titled or registered in a foreign state, the fee shall be based on the month the vehicle becomes subject to registration in this state, except as provided in paragraphs 400.22(2) "a" and "b" above.

This rule is intended to implement Iowa Code sections 321.47, 321.105, 321.106, 321.134, and 321.135.

761—400.23(321) Junked vehicle.

400.23(1) *Junking certificate.* The owner of a vehicle that is to be junked or dismantled shall obtain a junking certificate in accordance with Iowa Code subsection 321.52(3).

400.23(2) *Retitling a junked vehicle.* The department may authorize issuance of a new certificate of title to the vehicle owner named on the junking certificate only if the department determines that the junking certificate was issued in error.

a. The reasons a junking certificate was issued in error include but are not limited to the following:

(1) The owner inadvertently surrendered the wrong certificate of title. The owner shall submit to the department a photocopy of the ownership document for each vehicle and a signed statement explaining the circumstances that resulted in the error.

(2) A junking certificate was obtained in error and the vehicle continues to be registered. The owner shall submit to the department a photocopy of the current registration and a signed statement explaining the circumstances that resulted in the error.

(3) The owner intended to apply for a salvage title under Iowa Code subsection 321.52(4) but inadvertently submitted an application for a junking certificate. The owner shall submit to the department a bill of sale or other documentation from the previous owner stating that the vehicle was rebuildable when purchased and a signed statement explaining the owner's original intention to obtain a salvage title. The department shall inspect the vehicle to verify the rebuildable condition.

b. If the department determines that the junking certificate was issued in error, the department shall authorize the proper county treasurer to issue a certificate of title for the vehicle after payment by the owner of appropriate fees and taxes, including the return of any credit or refund for registration fees paid to the owner because of the error.

c. If the department determines that the junking certificate was not issued in error and denies the application for reinstatement of the certificate of title for the vehicle, the owner may apply for a certificate of title under the bonding procedure in rule 400.13(321) if the vehicle qualifies as an antique vehicle under Iowa Code subsection 321.115(1).

This rule is intended to implement Iowa Code subsection 321.52(3).

b. A written statement from the peace officer listing the plate number of the registration plate removed from the vehicle and the vehicle owner's name. The statement must either reference Iowa Code subparagraph 321.20B(4) "a"(3) or 321.20B(4) "a"(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded. The statement must be signed by the peace officer or an employee of the law enforcement agency.

400.70(2) The peace officer may either destroy removed plates or deliver the removed plates to the county treasurer for destruction.

This rule is intended to implement Iowa Code section 321.20B and 1998 Iowa Acts, chapter 1121, section 2.

[761—Chapter 400 appeared as Ch 11, Department of Public Safety, 1973 IDR]

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CHAPTER 410
SPECIAL MOBILE EQUIPMENT

761—410.1(321) General.

410.1(1) Special mobile equipment is defined in Iowa Code section 321.1.

410.1(2) Special mobile equipment is exempt from the titling and registration provisions of Iowa Code sections 321.18 and 321.20. However, a certificate of title and registration may be obtained in accordance with Iowa Code chapter 321 for a motor truck, trailer or semitrailer with special mobile equipment permanently attached.

410.1(3) Questions regarding special mobile equipment may be directed by mail to the Office of Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at its location in Park Fair Mall, 100 Euclid Avenue, Des Moines; or by telephone at (515)237-3264.

This rule is intended to implement Iowa Code sections 321.1, 321.18 and 321.20.

761—410.2(321E) Special mobile equipment transported on a registered vehicle. The movement of special mobile equipment or component parts of special mobile equipment transported on a vehicle registered for the gross weight of the vehicle without load, as provided in Iowa Code Supplement section 321E.12, is subject to the following:

410.2(1) A vehicle registered for its gross weight without load shall not be used to transport special mobile equipment in a for-hire operation.

410.2(2) If the special mobile equipment is leased, the lease agreement or a certified copy of the lease agreement shall be carried in the cab of the transporting vehicle.

410.2(3) All movements of special mobile equipment shall comply with the size and weight limits in Iowa Code chapter 321 unless a permit to exceed these limits is obtained in accordance with Iowa Code chapter 321E.

This rule is intended to implement Iowa Code Supplement section 321E.12.

761—410.3(321E) Special mobile equipment transported on a registered vehicle. Rescinded IAB 5/31/00, effective 7/5/00.

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*Effective date of 410.3(2), June 2, 1993, delayed 70 days by the Administrative Rules Review Committee at its meeting held May 12, 1993; delay lifted by this Committee June 8, 1993, effective June 9, 1993.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions.

2. It is essential to ensure that all data is entered correctly and consistently across all systems.

3. Regular audits should be conducted to verify the integrity and accuracy of the information stored.

4. Proper backup procedures must be followed to prevent data loss in the event of a system failure.

5. Access to sensitive information should be restricted to authorized personnel only.

6. The document also outlines the necessary steps for handling any discrepancies or errors that may arise.

7. It is recommended that all staff receive training on the correct use of the system.

8. The final section provides a summary of the key points and a list of action items.

9. The document is intended to serve as a guide for all users of the system.

10. Any questions or concerns should be directed to the IT support team.

11. The document is subject to periodic updates as the system evolves.

12. The following table provides a detailed overview of the system's capabilities.

13. The system is designed to be user-friendly and efficient.

14. It offers a range of features to meet the needs of different users.

15. The system is secure and reliable, ensuring that your data is always safe.

16. We hope this document has been helpful and that you will find the system easy to use.

17. Thank you for your attention and cooperation.

18. If you have any feedback, please contact us at [email address].

CHAPTER 529
FOR-HIRE INTERSTATE MOTOR CARRIER AUTHORITY

[Prior to 6/3/87, Transportation Department[820]—(07,F)Ch 5]

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-379, dated October 1, 1999, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library.

761—529.2(327B) Registering interstate authority in Iowa. Registration for interstate exempt and nonexempt authority shall be submitted to the Office of Motor Carrier Services, Department of Transportation, Park Fair Mall, 100 Euclid Avenue, P.O. Box 10382, Des Moines, Iowa 50306-0382.

761—529.3(327B) Waiver of rules. The director of the motor vehicle division may waive provisions of this chapter after determining that special or emergency circumstances exist or the waiver is in the best interest of the public for interstate travel through Iowa.

529.3(1) “Special or emergency circumstances” means one or more of the following:

- a. Circumstances where the movement is necessary to cooperate with cities, counties, other state agencies or other states in response to a national or other disaster.
- b. Circumstances where the movement is necessary to cooperate with national defense officials.
- c. Circumstances where the movement is necessary to cooperate with public or private utilities in order to maintain their public services.
- d. Circumstances where the movement is essential to ensure safety and protection of any person or property due to events such as, but not limited to, pollution of natural resources, a potential fire or explosion.
- e. Circumstances where weather or transportation problems create an undue hardship for citizens of the state of Iowa.
- f. Circumstances where movement involves emergency-type vehicles.
- g. Uncommon and extraordinary circumstances where the movement is essential to the existence of an Iowa business and the move may be accomplished without causing undue hazard to the safety of the traveling public or undue damage to private or public property.

529.3(2) A request for a waiver must be submitted in writing to the Director of the Motor Vehicle Division, Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204.

529.3(3) The request should include the following information where applicable and known to the requester:

- a. The name, address and motor carrier permit or certificate number.
- b. The specific waiver requested.
- c. The reasons for the request.
- d. The relevant facts supporting the request.

529.3(4) The request shall be acknowledged immediately and shall be responded to in writing within 60 days of receipt.

529.3(5) The decision on the waiver is the final decision of the department.

These rules are intended to implement Iowa Code chapter 327B.

[Filed 7/15/75]

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[Filed 5/10/00, Notice 4/5/00—published 5/31/00, effective 7/5/00]

CHAPTERS 530 to 599

Reserved

604.12(2) License.

a. The department shall affix a sticker to the applicant's license stating: "Renewal or license issuance denied due to vision."

b. If the applicant's license is valid for less than 30 days, the department may issue a temporary driving permit with restrictions appropriate to the applicant's visual acuity level and field of vision. The temporary driving permit is valid for not more than 30 days from the end of the current license validity.

604.12(3) Report. If the vision report recommends a restriction, the department shall issue a restricted license even though it would not be required by departmental standards.

604.12(4) Applicant refusal. If an applicant refuses to consult a licensed vision specialist, the department shall issue or deny the license based on the results achieved on the vision screening.

This rule is intended to implement Iowa Code sections 321.181, 321.186, 321.186A, 321.193 and 321.196.

761—604.13(321) Vision screening results.

604.13(1) Two-year license. An applicant who cannot attain a visual acuity of 20/40 with both eyes or with the better eye shall be issued a two-year license. This restriction may be waived by the department when a vision report pursuant to subrule 604.10(3) certifies that the vision has stabilized and is not expected to deteriorate.

604.13(2) License denied.

a. An applicant who cannot attain a visual acuity of 20/70 with both eyes or with the better eye shall not be licensed, subject to discretionary issuance under subrule 604.13(4).

b. If the applicant's binocular field of vision (sum of temporal measurements) is less than 115 degrees, or if neither eye has a monocular field of vision of at least 70 degrees temporal and 45 degrees nasal, the applicant shall not be licensed, subject to discretionary issuance under subrule 604.13(4).

604.13(3) Reapplication. An applicant who cannot meet the vision standards in subrule 604.13(2) may reapply when the vision improves and meets the vision standards. If a suspension or denial notice was served, reapplication must be made to the office of driver services at the address in 761—600.2(17A), and not at a driver's license examination station.

604.13(4) Discretionary issuance.

a. An applicant whose license is restricted under rule 761—604.11(321) or who cannot meet the vision standards in subrule 604.13(2) may submit a written request for review by an informal settlement officer.

b. Based upon consideration of the applicant's vision screening results or vision report, driving test and driving record, the written recommendation of the applicant's licensed vision specialist, and traffic conditions in the vicinity of the applicant's residence, the officer may recommend issuing a license with restrictions suitable to the applicant's capabilities. However:

(1) An applicant who cannot attain a visual acuity of 20/100 with both eyes or with the better eye may be considered for licensing only after recommendation by the medical advisory board.

(2) An applicant who cannot attain a visual acuity of 20/200 with both eyes or with the better eye shall not be licensed.

(3) If an applicant's binocular field of vision (sum of temporal measurements) is less than 95 degrees, or if neither eye has a monocular field of vision of at least 60 degrees temporal and 35 degrees nasal, the applicant may be considered for licensing only after recommendation by the medical advisory board.

c. The officer's recommendation denying discretionary issuance or regarding the extent and nature of restrictions is subject to reversal or modification upon review or appeal only if it is clearly characterized by an abuse of discretion.

This rule is intended to implement Iowa Code sections 321.186, 321.186A, 321.193 and 321.196.

761—604.14 to 604.19 Reserved.

761—604.20(321) Knowledge test.

604.20(1) *Written test.* A knowledge test is a written test to determine an applicant's ability to read and understand Iowa traffic laws and the highway signs that regulate, warn, and direct traffic. A test may be revised at any time but each test states the minimum passing score.

604.20(2) *Three types of tests.* There are three types of knowledge tests: an operator's test, a chauffeur's test, and a motorcycle test. The requirement for a license depends upon the class of license desired, applicable endorsements, and the qualifications of the applicant.

604.20(3) *Oral test.* An applicant who is unable to read or understand a written test may request an oral test. The oral test may be administered by an examiner or by an automated testing device.

604.20(4) *Waiver.* Rescinded IAB 1/8/92, effective 2/12/92.
This rule is intended to implement Iowa Code section 321.186.

761—604.21(321) Knowledge test requirements and waivers.

604.21(1) *Knowledge test requirements.* The knowledge test requirements are as follows:

a. Operator's test. An operator's knowledge test is required for all classes of licenses and all types of special licenses and permits.

b. Motorcycle test. A motorcycle knowledge test is required for:

- (1) Motorcycle instruction permits.
- (2) All Class M licenses.

c. Chauffeur's test. A chauffeur's knowledge test is required for:

- (1) Chauffeur's instruction permits.
- (2) Class D licenses except those with an endorsement for "passenger vehicle less than 16-passenger design."

604.21(2) *Knowledge test waivers.* The department may waive a knowledge test listed in subrule 604.21(1) if the applicant meets one of the following qualifications:

a. The applicant has passed the same type of test for another Iowa license or an equivalent out-of-state license that is still valid.

b. The applicant has a valid, equivalent license issued by a foreign jurisdiction with which Iowa has a nonbinding reciprocity agreement.

c. The applicant has a military extension and is renewing a noncommercial Class C or Class M Iowa license or the equivalent within six months following separation from active duty.

This rule is intended to implement Iowa Code sections 321.180, 321.180A, 321.186, 321.189, 321.196 and 321.198.

761—604.22(321) Knowledge test results.

604.22(1) *Proof of Passing score.* When necessary, the department shall give the applicant a form, valid for 90 days, which certifies that the applicant has passed the knowledge test.

604.22(2) *Retesting.* An applicant who fails a knowledge test may repeat the test at the discretion of the examiner, but at least two hours shall elapse between tests.

This rule is intended to implement Iowa Code section 321.186.

761—604.23 to 604.29 Reserved.

761—604.30(321) Driving test. A driving test is a demonstration of an applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle under actual traffic conditions. The test is also called a road test, field test, or driving demonstration. A motorcycle skill test is an off-street demonstration of an applicant's ability to control the motorcycle in a set of standard maneuvers, and a motorcycle driving test is an on-street demonstration.

604.30(1) Vehicle type and safety.

a. For the driving test, the applicant shall provide a representative vehicle as defined in 761—604.2(321).

b. The examiner or other authorized personnel shall visually inspect the vehicle. If a vehicle is illegal or unsafe, or is not a representative vehicle, the examiner shall refuse to administer the test until corrections are made or an acceptable vehicle is provided.

604.30(2) Criteria and route. Form 430024, "Your Driving Test," explains the criteria for passing the test and shall be given to the applicant before any required test, except a motorcycle skill test. The applicant shall be directed over one of the routes which have been preselected by the examiner to test driving skills and maneuvers.

604.30(3) Test score. The examiner shall use the standard departmental score sheet and shall enter the test score and the licensing decision in the spaces provided. At the end of the test, the examiner shall explain the test score and give the applicant the original score sheet which is valid for 90 days.

604.30(4) Retesting. If an applicant fails a driving test, the test may be rescheduled at the discretion of the examiner.

This rule is intended to implement Iowa Code sections 321.174 and 321.186.

761—604.31(321) Driving test requirements and waivers for noncommercial licenses.

604.31(1) Driving test requirements. The driving test requirements for noncommercial licenses are as follows:

a. *Instruction permits.* A driving test is not required to obtain an instruction permit.

b. *Class C licenses.* For a Class C license other than an instruction permit or a motorized bicycle license, an operator's driving test in a representative vehicle is required.

c. *Class D licenses.* For a Class D license, a driving test in a representative vehicle for the endorsement requested is required.

d. *Class M licenses.* The driving test for a Class M license consists of two parts: an off-street motorcycle skill test and an on-street driving test.

(1) The off-street motorcycle skill test is required. The on-street motorcycle driving test is also required if the applicant does not have another class of license that permits unaccompanied driving.

(2) A motorcycle shall be used for these tests. If a three-wheeled motorcycle is used, the license shall be restricted: "Not valid for 2-wheel vehicle."

e. *Motorized bicycle licenses.* For a motorized bicycle license, an off-street or on-street driving test may be required. A motorized bicycle shall be used for the test.

604.31(2) Driving test waivers. The department may waive a required driving test listed in sub-rule 604.31(1) if the applicant meets one of the following qualifications:

a. The applicant is applying for the applicant's first Iowa license that permits unaccompanied driving following successful completion of the appropriate Iowa-approved course or courses. The appropriate Iowa-approved courses are the following: driver education for a Class C license other than motorized bicycle, driver education and motorcycle rider education for a Class M license, and motorized bicycle education for a motorized bicycle license. However:

(1) The department may select dates and require a driving test of applicants whose birth dates fall on the selected dates. The department shall notify the Iowa department of education quarterly of the dates selected.

(2) If an applicant is under the age of 21, a driving test is required if so requested by the applicant's parent, guardian, or instructor.

b. The applicant is renewing a Class C, Class D or Class M Iowa license within 14 months after the expiration date.

c. The applicant has passed the same type of driving test for another Iowa license that is still valid or has expired within the past 14 months.

d. The applicant has a military extension and is renewing a Class C or Class M Iowa license or the equivalent within six months following separation from active duty.

e. The applicant is applying for a Class C or Class M Iowa license that permits unaccompanied driving and has an equivalent out-of-state license that is valid or has expired within the past six months.

f. The applicant is applying for a Class D Iowa license and has an equivalent out-of-state license that is valid or has expired within the past six months.

g. The applicant has a valid, equivalent license issued by a foreign jurisdiction with which Iowa has a nonbinding reciprocity agreement.

This rule is intended to implement Iowa Code sections 321.174, 321.178, 321.180, 321.180A, 321.186, 321.189, 321.193, 321.196 and 321.198.

761—604.32(321) Driving tests requirements. Rescinded IAB 1/8/92, effective 2/12/92.

761—604.33 to 604.34 Reserved.

761—604.35(321) Determination of gross vehicle weight rating. For a vehicle that has no legible manufacturer's certification label, the applicant may provide documentation of the gross vehicle weight rating, such as a manufacturer's certificate of origin, a title, a vehicle registration document, or the vehicle identification number information for the vehicle. In the absence of the above documentation, the registered weight of the vehicle shall be presumed to be the gross vehicle weight rating.

This rule is intended to implement Iowa Code section 321.1.

761—604.36 to 604.39 Reserved.

761—604.40(321) Failure to pass examination.

604.40(1) An applicant who fails to pass a required examination or reexamination shall not be licensed.

a. If the applicant does not have a valid Iowa license, the department shall deny the applicant a license.

b. If the applicant has a valid Iowa license, the department shall suspend the license for incapability. However, if the applicant's license is valid for less than 30 days, the department shall deny further licensing. The department shall serve a notice of suspension or denial.

c. See 761—615.4(321) for further information on denials and 761—615.14(321) for further information on suspensions for incapability.

d. An applicant may contest a denial or suspension in accordance with 761—615.38(321).

604.40(2) Limitations on the hearing and appeal process.

a. After a suspension or denial for failure to pass a required knowledge or driving test, a person who contests the suspension or denial shall be deemed to have exhausted the person's administrative remedies after three unsuccessful attempts to pass the required test.

b. After the three unsuccessful attempts, no further testing shall be allowed until six months have elapsed from the date of the last test failure, and then only if the applicant demonstrates a significant change or improvement in those physical or mental factors that resulted in the original decision. A request for further testing must be submitted in writing to the office of driver services at the address in rule 761—600.2(17A).

c. Notwithstanding paragraphs “*a*” and “*b*” of this subrule, no testing shall occur if the director determines that it is unsafe to allow testing.

This rule is intended to implement Iowa Code chapter 17A and sections 321.177, 321.180A and 321.210.

761—604.41 to 604.44 Reserved.

761—604.45(321) Reinstatement. A person whose license has been suspended or denied for failure to pass a required examination or reexamination shall meet the vision standards for licensing, pass the required knowledge examination(s), and pass the required driving test(s) before an Iowa license will be issued.

This rule is intended to implement Iowa Code sections 321.177 and 321.186.

761—604.46 to 604.49 Reserved.

761—604.50(321) Special reexaminations. The department may require a special reexamination consisting of a vision screening, knowledge test and driving test of any licensee.

604.50(1) The department may require a special reexamination when a licensee has been involved in a fatal motor vehicle accident and the investigating officer’s report of the accident indicates the licensee contributed to the accident.

604.50(2) The department may require a special reexamination when a licensee has been involved in two accidents within a three-year period and the investigating officer’s report of each accident lists one of the following “Driver/Vehicle Related Contributing Circumstances” for the licensee:

- a.* Ran traffic signal.
- b.* Ran stop sign.
- c.* Passing, interfered with other vehicle.
- d.* Left of center, not passing.
- e.* Failure to yield right-of-way at uncontrolled intersection.
- f.* Failure to yield right-of-way from stop sign.
- g.* Failure to yield right-of-way from yield sign.
- h.* Failure to yield right-of-way making left turn.
- i.* Failure to yield right-of-way to pedestrian.
- j.* Failure to have control.

604.50(3) The department may require a special reexamination when a licensee has been involved in two accidents within a three-year period and the investigating officers’ reports for both accidents list a driver condition for the licensee of “apparently asleep.”

604.50(4) The department may require a special reexamination when a licensee who is 65 years of age or older has been involved in an accident and information in the investigating officer’s or the person’s own report of the accident indicates the need for reexamination. A circumstance that may indicate a need for reexamination includes, but is not limited to, any one of the following:

- a.* The licensee made a left turn that resulted in the accident.
- b.* The licensee failed to yield the right-of-way at a stop sign.

- c. The licensee failed to yield the right-of-way at a yield sign.
- d. The licensee failed to yield the right-of-way at an uncontrolled intersection.
- e. The licensee failed to yield the right-of-way at a traffic control signal.
- f. The licensee's vision may be a contributing factor to a nighttime accident.
- g. The licensee has a physical disability-related license restriction other than "corrective lenses" and the accident involved one of the circumstances listed in paragraphs "a" to "f" above.

604.50(5) The department may require a special reexamination when recommended by a peace officer, a court, or a properly documented citizen's request. A factor that may indicate a need for reexamination includes, but is not limited to, any one of the following:

- a. Loss of consciousness.
- b. Confusion, disorientation or dementia.
- c. Inability to maintain a vehicle in the proper lane.
- d. Repeatedly ignoring traffic control devices in a nonchase setting.
- e. Inability to interact safely with other vehicles.
- f. Inability to maintain consistent speed when no reaction to other vehicles or pedestrians is required.

This rule is intended to implement Iowa Code sections 321.177, 321.186 and 321.210.

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*Effective date of 604.11(2) and 604.13(2)"b" delayed until adjournment of the 1988 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its June 1987 meeting.

WORKERS' COMPENSATION DIVISION[876]

[Prior to 9/24/86, see Industrial Commissioner[500]. Renamed Division of Industrial Services under the "umbrella" of Employment Services Department by 1986 Iowa Acts, Senate File 2175]
 [Prior to 1/29/97 see Industrial Services Division[343]. Reorganized under "umbrella" of the Department of Workforce Development[871] by 1996 Iowa Acts, chapter 1186]
 [Prior to 7/29/98 see Industrial Services Division[873]]

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**CHAPTER 1
PURPOSE AND FUNCTION**

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 1]

876—1.1(86,17A) Purpose and function. The function of the division of workers' compensation of the department of workforce development is to adjudicate the rights and duties of persons provided for in Iowa Code chapters 85, 85A, 85B, 86, and 87 and these rules, and to administer and enforce the provisions of chapters 85, 85A, 85B, 86, and 87 and these rules. The indicated chapters provide for the rights and duties of persons injured in employment and the responsible employers and insurance carriers. The chapters are commonly referred to as the workers' compensation chapters of the Iowa Code. The Iowa workers' compensation commissioner is the executive head of the division of workers' compensation who serves a six-year term, appointed by the governor and confirmed by the senate. Two major sections within the division, compliance and adjudication, carry out the purpose of the division as set out by the laws of this state.

The compliance section prepares and distributes literature concerning the workers' compensation law, rates, judicial decisions, and statistics; responds to written and oral inquiries regarding the law; conducts conferences and training sessions; provides appropriate forms for use in matters under the jurisdiction of the division; establishes and monitors files arising from claims of work-related injuries and illness; and informs parties to a claim of their rights and responsibilities.

The adjudication section determines, by adjudicative means, the rights and liabilities of parties in a disputed claim by conducting hearings and rendering decisions; approving settlements in accordance with the statutes; and conducting appeals within the division.

876—1.2(86,17A) Location. Interested persons may contact the Iowa Workers' Compensation Commissioner, 1000 East Grand Avenue, Des Moines, Iowa 50319; telephone (515)281-5387 or 1-800-Job-Iowa (1-800-562-4692). The fax number is (515)281-6501.

These rules are intended to implement Iowa Code sections 17A.3(1) "a" and "b" and 84A.5.

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*See IAB Industrial Services, Division of [343]

The following information was obtained from the records of the Department of Health, Education and Welfare, Office of the Assistant Secretary for Health, Washington, D. C., on the subject of the above-named individual.

The individual was born on [redacted] at [redacted] and is currently residing at [redacted]. The individual is a [redacted] and is currently employed as a [redacted] at [redacted].

The individual has a history of [redacted] and has been treated for [redacted] at [redacted]. The individual is currently receiving treatment for [redacted] at [redacted].

The individual is currently receiving treatment for [redacted] at [redacted]. The individual is currently receiving treatment for [redacted] at [redacted].

It is noted that the individual has a history of [redacted] and has been treated for [redacted] at [redacted]. The individual is currently receiving treatment for [redacted] at [redacted].

The individual is currently receiving treatment for [redacted] at [redacted]. The individual is currently receiving treatment for [redacted] at [redacted].

The individual is currently receiving treatment for [redacted] at [redacted]. The individual is currently receiving treatment for [redacted] at [redacted].

The individual is currently receiving treatment for [redacted] at [redacted]. The individual is currently receiving treatment for [redacted] at [redacted].

The individual is currently receiving treatment for [redacted] at [redacted]. The individual is currently receiving treatment for [redacted] at [redacted].

Very truly yours,
[redacted]
[redacted]

CHAPTER 2
GENERAL PROVISIONS

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 2]

876—2.1(86) Extending time and continuances. For good cause the workers' compensation commissioner or the commissioner's designee may modify the time to comply with any rule.

876—2.2(85A,85B,86,87) Applicability. When appropriate, all rules shall apply to Iowa Code chapters 85A, 85B, 86 and 87 as well as chapter 85.

876—2.3(86,87) Representative within the state. All licensed insurers, foreign and domestic, insuring workers' compensation and all employers relieved from insurance pursuant to Iowa Code section 87.11 shall designate one or more persons geographically located within the borders of this state, which person or persons shall be knowledgeable of the Iowa Workers' Compensation Law and Rules and shall be given the authority and have the responsibility to expedite the handling of all matters within the scope of Iowa Code chapters 85, 85A, 85B, 86, and 87.

The Iowa workers' compensation commissioner shall be advised by letter of the name, address, and telephone number of each of the persons so designated. Any change in the identity, address or telephone number of the persons so designated shall be reported to the Iowa workers' compensation commissioner within ten days after such change occurs.

876—2.4(85) Guides to evaluation of permanent impairment. The Guides to the Evaluation of Permanent Impairment published by the American Medical Association are adopted as a guide for determining permanent partial disabilities under Iowa Code section 85.34(2) "a" to "s." The extent of loss or percentage of permanent impairment may be determined by use of this guide and payment of weekly compensation for permanent partial scheduled injuries made accordingly. Payment so made shall be recognized by the workers' compensation commissioner as a prima facie showing of compliance by the employer or insurance carrier with the foregoing sections of the Iowa workers' compensation Act. Nothing in this rule shall be construed to prevent the presentations of other medical opinions or guides or other material evidence for the purpose of establishing that the degree of permanent disability to which the claimant would be entitled would be more or less than the entitlement indicated in the AMA guide.

This rule is intended to implement Iowa Code section 85.34(2).

876—2.5(85,85A,85B,86,87) Electronic filing. Rescinded IAB 9/23/98, effective 10/28/98.

876—2.6(85,85A,85B,86) Reports to employees. An employer or its insurance carrier filing a final claim activity report with the workers' compensation commissioner (see 876—subrules 3.1(2) and 3.1(3)) shall also mail a copy to the employee at the employee's last-known address.

This rule is intended to implement Iowa Code sections 85.26, 86.8, 86.11 and 86.13.

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**CHAPTER 4
CONTESTED CASES**

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 4]

876—4.1(85,85A,85B,86,87,17A) Contested cases. Contested case proceedings before the workers' compensation commissioner are:

- 4.1(1) Arbitration (Iowa Code section 86.14).
- 4.1(2) Review of award or settlement (review-reopening, section 86.14).
- 4.1(3) Benefits under section 85.27.
- 4.1(4) Death and burial benefits (sections 85.28, 85.29, 85.31).
- 4.1(5) Determination of dependency (sections 85.42, 85.43, 85.44).
- 4.1(6) Equitable apportionment (section 85.43).
- 4.1(7) Second injury fund (section 85.63 et seq.).
- 4.1(8) Vocational rehabilitation benefits (section 85.70).
- 4.1(9) Approval of fees under section 86.39.
- 4.1(10) Commutation (section 85.45 et seq.).
- 4.1(11) Employee's examination (section 85.39).
- 4.1(12) Employer's examination or sanctions (section 85.39).
- 4.1(13) Determination of compliance with chapters 85, 85A, 85B, 86, and 87.
- 4.1(14) Applications for alternate medical care (section 85.27).
- 4.1(15) Determination of liability, reimbursement for benefits paid and recovery of interest (section 85.21).
- 4.1(16) Matters that would be a contested case if there were a dispute over the existence of material facts.
- 4.1(17) Any other issue determinable upon evidential hearing which is under the jurisdiction of the workers' compensation commissioner.

This rule is intended to implement the provisions of Iowa Code sections 17A.2(2) and 86.8 and the statutory sections noted in each category of the rule.

876—4.2(86) Separate evidentiary hearing or consolidation of proceedings. In addition to applying the provision of Iowa rule of civil procedure 116, a person presiding over a contested case proceeding in a workers' compensation matter may conduct a separate evidentiary hearing for determination of any issue in the contested case proceeding which goes to the whole or any material part of the case. An order determining the issue presented shall be issued before a hearing is held on the remaining issues. The issue determined in the separate evidentiary hearing shall be precluded at the hearing of the remaining issues. If the order on the separate issue does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal.

When any contested case proceeding shall be filed prior to or subsequent to the filing of an arbitration or review-reopening proceeding and is of such a nature that it is an integral part of the arbitration or review-reopening proceeding, it shall be deemed merged with the arbitration or review-reopening proceeding. No appeal to the commissioner of a deputy commissioner's order in such a merged proceeding shall be had separately from the decision in arbitration or review-reopening unless appeal to the commissioner from the arbitration or review-reopening decision would not provide an adequate remedy.

Entitlement to denial or delay benefits provided in Iowa Code section 86.13 shall be pled, and if pled, discovery shall be limited to matters discoverable in the absence of such pleading unless it is bifurcated. The claimant may bifurcate the denial or delay issue by filing and serving a notice of bifurcation at any time before a case is assigned for hearing, in which case discovery on that issue may proceed only after the final decision of the agency on all other issues.

This rule is intended to implement Iowa Code sections 86.13, 86.18 and 86.24.

876—4.3(85,85A,86,87) Compliance proceedings. If the workers' compensation commissioner shall have reason to believe that there has not been compliance with the workers' compensation law by any person or entity, the commissioner may on the commissioner's own motion give notice to the person or entity and schedule a hearing for the purpose of determining whether or not there has been compliance by the person or entity. The notice shall state the time and place of the hearing and a brief statement of the matters to be considered. Following the hearing the commissioner may issue a finding regarding compliance. In the event a failure to comply is found, the commissioner may order compliance within a specified time and under specified circumstances. The workers' compensation commissioner may file a certified copy of the order in an appropriate district court and may file a certified copy of the order with the Iowa insurance division [commerce department] with a request for action by the insurance division upon failure to comply with the order.

Nothing in this rule shall prevent the workers' compensation commissioner from conducting an informal conference with any person or entity concerning problems of compliance prior to the initiation of a compliance proceeding.

876—4.4(86) Request for hearing. Unless otherwise ordered a hearing shall not be held in proceedings under 4.1(8) to 4.1(12), unless requested in writing by the petitioner in the original notice or petition or by the respondent within ten days following the time allowed by these rules for appearance.

876—4.5(86) Commencement by commissioner. In addition to an aggrieved party, the commissioner may initiate proceedings under 4.1(9). The proceeding may be held before a deputy commissioner or the commissioner. The workers' compensation commissioner shall be the only person to commence a proceeding under 4.1(13), unless such authority is specifically delegated by the workers' compensation commissioner to a deputy commissioner concerning a specific matter.

876—4.6(85,86,17A) Original notice and petition. A petition or application must be delivered or filed with the original notice unless original notice Form 100, Form 100A or Form 100B of the division of workers' compensation is used.

The original notice Form 100, Form 100A, Form 100B, Form 100C, or a determination of liability reimbursement for benefits paid and recovery of interest form shall provide for the data required in Iowa Code section 17A.12(2) and shall contain factors relevant to the contested case proceedings listed in 4.1(85,85A,85B,86,87,17A). The Form 100 is to be used for all contested case proceedings except as indicated in this rule. The Form 100A is to be used for the contested case proceedings provided for in subrules 4.1(11) and 4.1(12). The Form 100B is to be used for the contested case proceeding provided for in subrule 4.1(8). The Form 100C is to be used for the contested case proceeding provided for in subrule 4.1(14) and rule 4.48(17A,85,86). The application and consent order for payment of benefits under Iowa Code section 85.21 is to be used for contested case proceedings brought under Iowa Code section 85.21. When a commutation is sought, the Form No. 9 or Form No. 9A must be filed in addition to any other document. The petition for declaratory order, approval of attorney fees, determination of compliance and other proceedings not covered in the original notice forms must accompany the original notice.

At the same time and in the same manner as service of the original notice and petition, the claimant shall serve a patient's waiver using Form 14-0043 (authorization for release of information regarding claimants seeking workers' compensation benefits) which shall not be revoked until conclusion of the contested case.

876—4.16(86) Request for copy. No person requesting a mailed file-stamped copy of a filing made in a contested case shall receive such a copy unless the request shall be accompanied by a self-addressed envelope with sufficient postage. In addition, no party requesting a file-stamped copy of a filing made by the party in a contested case shall receive such a copy unless the request shall be accompanied by sufficient copies to allow the requesting party to receive a copy.

876—4.17(85,86,17A) Service of records and reports. Each party to a contested case shall serve all records received pursuant to a patient's waiver (Form 14-0043—authorization for release of information regarding claimants seeking workers' compensation benefits) and medical records and reports concerning the injured worker in the possession of the party upon each opposing party not later than 20 days following filing of an answer or, if not then in possession of a party, within 10 days of receipt. Medical records and reports are records of medical practitioners and institutions concerning the injured worker. Medical practitioners and institutions are medical doctors, osteopaths, chiropractors, dentists, nurses, podiatrists, psychiatrists, psychologists, counselors, hospitals, clinics, persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation, all other practitioners of the healing arts or sciences, and all other institutions in which the healing arts or sciences are practiced. Each party shall serve a notice accompanying the records and reports identifying the records and reports served by the name of the practitioner or institution or other source and date of the records and reports and, if served later than 20 days following filing of the answer, stating the date when the records and reports were received by the party serving them. Pursuant to 4.14(86), the notice and records and reports shall not be filed with the workers' compensation commissioner. A party failing to comply with the provisions of this rule shall, if the failure is prejudicial to an opposing party, be subject to the provisions of 4.36(86). This rule does not require a party to serve any record or report that was previously served by another party in a contested case proceeding.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

876—4.18(85,86,17A) Medical evidence and discovery. Any relevant medical record or report served upon a party in compliance with these rules prior to any deadline established by order for service of the records and reports shall be admissible as evidence at hearing of the contested case unless otherwise provided by rule. Any party against which a medical record or report may be used shall have the right, at the party's own initial expense, to cross-examine by deposition the medical practitioner producing the record or report and the deposition shall be admissible as evidence in the contested case.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

876—4.19(86) Prehearing calendar. The workers' compensation commissioner may provide for a calendar for prehearing procedures which may extend to all contested cases or be limited to any type or class of such cases as may be prescribed.

876—4.20(86) Prehearing procedure. A deputy commissioner or the workers' compensation commissioner may order parties in the case to either appear before the commissioner or a deputy commissioner for a conference, or communicate with the commissioner or the commissioner's designee and with each other in any manner as may be prescribed to consider, so far as applicable to the particular case:

4.20(1) The necessity or desirability of amending pleadings by formal amendment or prehearing order;

4.20(2) Agreeing to admissions of facts, documents or records not really controverted, to avoid unnecessary proof;

4.20(3) Limiting the number of witnesses;

4.20(4) Settling any facts of which the commissioner or deputy commissioner is to be asked to take official notice;

4.20(5) Stating and simplifying the factual and legal issues to be determined;

4.20(6) Specifying the items and amounts of compensation claimed;

4.20(7) Specifying all proposed exhibits and proof thereof;

- 4.20(8) Consolidation, separation for hearing, and determination of points of law;
 - 4.20(9) Specifying all witnesses expected to testify;
 - 4.20(10) Possibility of settlement;
 - 4.20(11) Filing of advance briefs, if any;
 - 4.20(12) Setting or altering dates for completion of discovery or completion of medical evidence by each party;
 - 4.20(13) Any other matter which may facilitate, expedite, or simplify any contested case.
- This rule is intended to implement Iowa Code sections 86.17 and 86.18.

876—4.21(86) Prehearing conference record. At the request of any attorney in the case, or at the discretion of a deputy commissioner or the workers' compensation commissioner, the entire prehearing conference or any designated part thereof shall be recorded and the cost of the reporter shall be assessed to the requesting party, or if directed by the commissioner or deputy commissioner, assessed as costs.

876—4.22(86) Orders. The deputy commissioner or workers' compensation commissioner may enter an order reciting any action taken at the conference or pursuant to any other procedures prescribed which will control the subsequent course of action relative to matters which it includes, unless modified to prevent manifest injustice.

876—4.23(86) Assignment for hearing. Contested cases shall be set for hearing within the discretion of the workers' compensation commissioner as soon as practicable after the parties have had adequate opportunity to prepare for hearing. A party may request in writing that no hearing in a contested case be held until such time as specified matters have been accomplished or specified events have occurred. Continuances of hearings in contested cases shall be granted only by the workers' compensation commissioner or the commissioner's designee. Requests for continuance shall state in detail the reasons for the request and whether the opposing party accedes to the request. The workers' compensation commissioner or the commissioner's designee shall enter an order granting or denying the request.

Defendants shall promptly notify the workers' compensation commissioner of settlements.

This rule is intended to implement Iowa Code sections 17A.3(1) "b," 86.8 and 86.18.

876—4.24(17A,86) Rehearing. Any party may file an application for rehearing of a proposed decision in any contested case by a deputy commissioner or a decision in any contested case by the workers' compensation commissioner within 20 days after the issuance of the decision. A copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. An application for rehearing shall be deemed denied unless the deputy commissioner or workers' compensation commissioner rendering the decision grants the application within 20 days after its filing. For purposes of this rule, motions or requests for reconsideration or new trial or retrial or any reexamination of any decision, ruling, or order shall be treated the same as an application for rehearing.

876—4.25(17A,86) Appeal when rehearing requested. An appeal to or review on motion of the workers' compensation commissioner must be filed within 20 days after the application for rehearing of a proposed decision by a deputy workers' compensation commissioner under 4.24(17A,86) has been denied or deemed denied. If the application for rehearing is granted, the appeal shall be filed within 20 days of the decision on rehearing. If no application for rehearing under 4.24(17A,86) is filed, appeal shall be as provided in 4.27(17A,86).

This rule is intended to implement Iowa Code sections 17A.15 and 86.24.

876—4.26 Rescinded, effective July 1, 1977.

876—4.33(86) Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery.

This rule is intended to implement Iowa Code section 86.40.

876—4.34(86) Dismissal for lack of prosecution. It is the declared policy that in the exercise of reasonable diligence, all contested cases before the workers' compensation commissioner, except under unusual circumstances, shall be brought to issue and heard at the earliest possible time. To accomplish such purpose the workers' compensation commissioner may take the following action:

4.34(1) Any contested case, where the original notice and petition is on file in excess of two years, may be subject to dismissal after the notice in 4.34(2) is sent to all parties and after the time as provided for in the notice.

4.34(2) After the circumstances provided in 4.34(1) occur, all parties to the action, or their attorneys, shall be sent notice from the division of workers' compensation by certified mail containing the following:

- a. The names of the parties;
- b. The date or dates of injury involved in the contested case or appeal proceeding;
- c. Counsel appearing;
- d. Date of filing of the petition or appeal;
- e. That the contested case proceeding will be dismissed without prejudice on the thirtieth day following the date of the notice unless good cause is shown why the contested case proceeding should not be dismissed.

4.34(3) The action or actions dismissed may at the discretion of the workers' compensation commissioner and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, be reinstated. Applications for such reinstatement, setting forth the grounds, shall be filed within three months from the date of dismissal.

This rule is intended to implement Iowa Code sections 86.8, 17A.3(1) "b" and 86.18 and 1986 Iowa Acts, Senate File 2175.

876—4.35(86) Rules of civil procedure. The rules of civil procedure shall govern the contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A, or obviously inapplicable to the workers' compensation commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner."

This rule is intended to implement Iowa Code sections 17A.1, 17A.12, 17A.13, 17A.14, and 86.8.

876—4.36(86) Compliance with order or rules. If any party to a contested case or an attorney representing such party shall fail to comply with these rules or any order of a deputy commissioner or the workers' compensation commissioner, the deputy commissioner or workers' compensation commissioner may dismiss the action. Such dismissal shall be without prejudice. The deputy commissioner or workers' compensation commissioner may enter an order closing the record to further activity or evidence by any party for failure to comply with these rules or an order of a deputy commissioner or the workers' compensation commissioner.

This rule is intended to implement the provisions of Iowa Code section 86.8.

876—4.37(86,17A) Waiver of contested case provisions. The parties who wish to waive the contested case provisions of chapter 17A shall file a written stipulation of such waiver with the workers' compensation commissioner before such waiver shall be recognized. The waiver shall specify the provisions waived such as a consent to delivery, waiver of original notice, or waiver of hearing.

876—4.38(17A) Recusal.

4.38(1) The workers' compensation commissioner, a chief deputy workers' compensation commissioner or a deputy workers' compensation commissioner shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case;
- g. Has even the appearance of impropriety; or
- h. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.38(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and rule 4.38(17A).

4.38(3) In a situation where the workers' compensation commissioner, chief deputy workers' compensation commissioner or deputy workers' compensation commissioner knows of information which might reasonably be deemed to be a basis for recusal and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.38(4) If a party asserts disqualification on any appropriate ground, including those listed in sub-rule 4.38(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for recusal but must establish the grounds by the introduction of evidence into the record.

If the workers' compensation commissioner, chief deputy workers' compensation commissioner or deputy workers' compensation commissioner determines that recusal is appropriate, that person shall withdraw. If that person determines that withdrawal is not required, that person shall enter an order to that effect.

This rule is intended to implement Iowa Code section 17A.17.

876—4.39(17A,86) Filing by facsimile transmission (fax). All documents filed with the agency pursuant to this chapter and Iowa Code section 86.24 except an original notice and petition requesting a contested case proceeding (see Iowa Code section 17A.12(9)) may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax is the date the document is received by the agency. The agency will not provide a mailed file-stamped copy of documents filed by fax. The agency fax number is (515)281-6501.

876—4.40(73GA,ch1261) Dispute resolution. The workers' compensation commissioner or the workers' compensation commissioner's designee (hereinafter collectively referred to as the workers' compensation commissioner) shall have all power reasonable and necessary to resolve contested cases filed under Chapter 4 of these rules. This power includes, but is not limited to, the following: the power to resolve matters pursuant to initiation of mandatory dispute resolution proceedings by the workers' compensation commissioner; the power to resolve matters pursuant to a request by the parties; the power to impose sanctions; and the power to require conduct by the parties. However, no issue in a contested case may be finally resolved under this rule without consent of the parties.

An employee of the division of workers' compensation who has been involved in dispute resolution shall not be a witness in any contested case proceeding under this chapter.

4.40(1) Mandatory proceedings. The workers' compensation commissioner may require that the parties participate in dispute resolution in the following situation:

- a. The oldest one-fourth of contested cases which are not scheduled for hearing.
- b. All cases where discovery deadlines have been set pursuant to a prehearing order and the deadlines have passed.
- c. All cases where the principal dispute is medical benefits.

4.48(7) Employer liability. Application cannot be filed under this rule if the liability of the employer is an issue. If an application is filed where the liability of the employer is an issue, the application will be dismissed without prejudice. (Petitions for alternate care where liability of the employer is an issue should be filed pursuant to rule 4.1(85,85A,85B,86,87,17A).)

4.48(8) Notice of hearing. The workers' compensation commissioner will notify the parties by ordinary mail or by facsimile transmission (fax) of the time, place and nature of hearing. No notice will be made until a proper application is received by the workers' compensation commissioner. The notice will specify whether the hearing will be by telephone or in person.

4.48(9) Discovery and evidence. All discovery must be completed prior to the contested case hearing. See subrule 4.48(10) on motions on discovery matters. Any written evidence to be used by the employer or the employee must be exchanged prior to the hearing. All written evidence must be filed with the agency before the date of the hearing. Written evidence shall be limited to ten pages per party.

4.48(10) Motions. All motions except as provided in this subrule will be considered at the hearing. A timely motion to change the type of hearing (telephone or in-person) may be considered prior to the hearing. The workers' compensation commissioner will make no rulings on discovery matters or motions.

4.48(11) Briefs. Hearing briefs, if any, must be filed with the agency before the date of the hearing and shall be limited to three pages.

4.48(12) Hearing. The hearing will be held either by telephone or in person in Des Moines, Iowa. The employer shall have the right to request an in-person hearing if the employee has requested a telephone hearing in the application. The employer shall on the record respond to the allegations contained in the application. The hearing will be electronically recorded. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing.

If the hearing was electronically recorded, copies of the tape will be provided to the parties. A transcript shall be provided by the appealing party pursuant to Iowa Code subsection 86.24(4) and a copy thereof shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner unless the parties submit an agreed transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid pursuant to Iowa Code subsection 86.19(1) by the party who disputes the accuracy of the transcript prepared by the appellant.

4.48(13) Represented party. A party may be represented as provided in Iowa Code section 631.14. The presiding deputy may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and its insurance carrier shall be treated as one party unless their interests appear to be in conflict and a representative of either the employer or its insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

4.48(14) Decision. A decision will be issued within 10 working days of receipt of a proper application when a telephone hearing is held or within 14 working days of receipt of a proper application when an in-person hearing is held.

This rule is intended to implement Iowa Code sections 17A.12, 85.27, 86.8 and 86.17.

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876—5.6(17A) Service and filing of petitions and other papers.

5.6(1) Service. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

5.6(2) Filing. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209.

5.6(3) Method of service, time of filing, and proof of service. Method of service and proof of service shall be as provided by rules 876—4.13(86) and 4.15(86). All documents are considered filed when received by the agency.

876—5.7(17A) Consideration. Upon request by petitioner, the workers' compensation commissioner must schedule a brief and informal meeting between the original petitioner, all intervenors, and the workers' compensation commissioner or a member of the staff of the workers' compensation commissioner to discuss the questions raised. The workers' compensation commissioner may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the workers' compensation commissioner by any person.

876—5.8(17A) Action on petition.

5.8(1) Time frames for action. Within 30 days after receipt of a petition for a declaratory order, the workers' compensation commissioner or the commissioner's designee shall take action on the petition as required by Iowa Code section 17A.9(5).

5.8(2) Date of issuance of order. The date of issuance of an order or of a refusal to issue an order is the date the order or refusal is filed unless another date is specified in the order.

876—5.9(17A) Refusal to issue order.

5.9(1) The workers' compensation commissioner shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the workers' compensation commissioner to issue an order.
3. The workers' compensation commissioner does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the workers' compensation commissioner to determine whether a statute is unconstitutional on its face.

5.9(2) Action on refusal. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

5.9(3) Filing of new petition. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the workers' compensation commissioner's refusal to issue an order.

876—5.10(17A) Contents of order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

876—5.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

876—5.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the workers' compensation commissioner, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the workers' compensation commissioner. The issuance of a declaratory order constitutes final agency action on the petition.

876—5.13(17A) Filing fee. No filing fee is due for filing a petition for declaratory order or a petition for intervention. See 876—paragraph 4.8(2)“a.”

These rules are intended to implement Iowa Code section 17A.9.

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CHAPTER 8
SUBSTANTIVE AND INTERPRETIVE RULES

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 8]

876—8.1(85) Transportation expense. Transportation expense as provided in Iowa Code sections 85.27 and 85.39 shall include but not be limited to the following:

1. The cost of public transportation if tendered by the employer or insurance carrier.
2. All mileage incident to the use of a private auto. The per mile rate for use of a private auto shall be 24 cents per mile.
3. Meals and lodging if reasonably incident to the examination.
4. Taxi fares or other forms of local transportation if incident to the use of public transportation.
5. Ambulance service or other special means of transportation if deemed necessary by competent medical evidence or by agreement of the parties.

Transportation expense in the form of reimbursement for mileage which is incurred in the course of treatment or an examination, except under Iowa Code section 85.39, shall be payable at such time as 50 miles or more have accumulated or upon completion of medical care, whichever occurs first. Reimbursement for mileage incurred under Iowa Code section 85.39 shall be paid within a reasonable time after the examination.

The workers' compensation commissioner or a deputy commissioner may order transportation expense to be paid in advance of an examination or treatment. The parties may agree to the advance payment of transportation expense.

This rule is intended to implement Iowa Code sections 85.27 and 85.39.

876—8.2(85) Overtime. The word "overtime" as used in Iowa Code section 85.61 means amounts due in excess of the straight time rate for overtime hours worked. Such excess amounts shall not be considered in determining gross weekly wages within Iowa Code section 85.36. Overtime hours at the straight time rate are included in determining gross weekly earnings.

This rule is intended to implement Iowa Code sections 85.36 and 85.61.

876—8.3 Rescinded, effective July 1, 1982.

876—8.4(85) Salary in lieu of compensation. The excess payment made by an employer in lieu of compensation which exceeds the applicable weekly compensation rate shall not be construed as advance payment with respect to either future temporary disability, healing period, permanent partial disability, permanent total disability or death.

This rule is intended to implement Iowa Code sections 85.31, 85.34, 85.36, 85.37 and 85.61.

876—8.5(85) Appliances. Appliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.

Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

876—8.6(85,85A) Calendar days—decimal equivalent. Weekly compensation benefits payable under Iowa Code chapters 85 and 85A are based upon a seven-day calendar week. Each day of weekly compensation benefits due may be paid by multiplying the employee's weekly compensation benefit rate by the decimal equivalents of the number of days as follows:

- 1 day = .143 × weekly rate
- 2 days = .286 × weekly rate
- 3 days = .429 × weekly rate
- 4 days = .571 × weekly rate
- 5 days = .714 × weekly rate
- 6 days = .857 × weekly rate

This rule is intended to implement Iowa Code sections 85.31, 85.33 and 85.34.

876—8.7(86) Short paper. All filings before the workers' compensation commissioner shall be on white paper measuring 8½ inches by 11 inches.

This rule is intended to implement Iowa Code section 86.18.

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 1999, through June 30, 2000, are the tables in effect on July 1, 1999, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [Rev. January 1999].)

2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue and Finance Iowa Withholding Tax Guide, Publication 44-001 [Rev. January 1998], for all wages paid on or after January 1, 1998.)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [Rev. January 1999].)

This rule is intended to implement Iowa Code section 85.61(6).

876—8.9(85,86) Exchange of records. Whether or not a contested case has been commenced, upon the written request of an employee or the representative of an employee who has alleged an injury arising out of and in the course of employment, an employer or insurance carrier shall provide the claimant a copy of all records and reports in its possession generated by a medical provider.

Whether or not a contested case has been commenced, upon the written request of the employer or insurance carrier against which an employee has alleged an injury arising out of and in the course of employment, the employee shall provide the employer or insurance carrier with a patient's waiver. See rules 876—3.1(17A) and 876—4.6(85,86,17A) for the waiver form used in contested cases. Claimant shall cooperate with the employer and insurance carrier to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.

A medical provider or its agent shall furnish an employer or insurance carrier copies of the initial as well as final clinical assessment without cost when the assessments are requested as supporting documentation to determine liability or for payment of a medical provider's bill for medical services. When requested, a medical provider or its agent shall furnish a legible duplicate of additional records or reports. Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be the actual expense to prepare duplicates not to exceed: \$20 for 1 to 20 pages; \$20 plus \$1 per page for 21 to 30 pages; \$30 plus \$.50 per page for 31 to 100 pages; \$65 plus \$.25 per page for 101 to 200 pages; \$90 plus \$.10 per page for more than 200 pages, and the actual expense of postage. No other clinical expenses shall be allowed.

8.10(4) Apportionment. The apportionment of age-related hearing loss shall be made by reducing the total binaural percentage hearing loss as calculated pursuant to Iowa Code section 85B.9(3) by the same percentage as the decibels of age-related change in hearing level occurring during the period of employment bears to the total decibel hearing level in each ear.

Age-related hearing loss is apportioned using the results of the audiogram determined to be the proper audiogram for measurement of the employee's hearing loss on the date of injury by using the following steps:

1. Separately for each ear, compute the average of the employee's decibel hearing levels at 500, 1000, 2000, and 3000 hertz for that ear.
2. Separately for each ear, compute the percentage loss for each ear.
3. Compute the employee's age-related change in hearing level in decibels during the period of employment using the table in subrule 8.10(3).
4. Separately for each ear, divide the result of step 3 by the result of step 1 to compute the age-correction factor for that ear.
5. Separately for each ear, multiply the total percentage hearing loss in that ear calculated pursuant to Iowa Code section 85B.9 by the age-correction factor for that ear.
6. Separately for each ear, subtract the result obtained in step 5 from the total percentage hearing loss in that ear to obtain the age-corrected hearing loss for that ear.
7. Multiply the age-corrected hearing loss in the better ear as calculated in step 6 by 5 and add the percentage hearing loss in the worse ear.
8. Divide the result obtained in step 7 by 6 to obtain the age-corrected binaural percentage hearing loss.

8.10(5) Worksheet. The following worksheet is used to calculate the percentage of age-corrected binaural hearing loss.

APPORTIONMENT OF PERCENT HEARING LOSS FOR AGE

<u>Left Ear</u> <u>Hearing Level</u>	<u>Frequency</u> <u>in Hertz</u>	<u>Right Ear</u> <u>Hearing Level</u>
1. _____	500	_____
2. _____	1000	_____
3. _____	2000	_____
4. _____	3000	_____
5. _____	total of lines 1 through 4	_____
	divide by 4 (divide the "total" by 4)	divide by 4
6. _____	equals average	_____
	minus 25 subtract "low fence"	minus 25
7. _____	equals "Excess"	_____
	multiply by 1.5 multiply % factor	multiply by 1.5
8. _____	equals % loss each ear	_____
	(% loss left ear)	(% loss right ear)
9. Age on date of injury		_____
10. Age at beginning of employment		_____

11. _____ correction for age on date of
injury in dB from table
minus
12. _____ correction for age at beginning of
employment in dB from table
equals
13. _____ age-related change in hearing
level during employment in dB

LEFT EARRIGHT EAR

Divide age-related change in hearing level from line 13
by average hearing level from line 6

To obtain

14. _____ age correction factor _____
multiply % loss from line 8 by
age-correction factor from line 14

To obtain

15. _____ deduction for
age-correction _____
subtract line 15 from line 8

To obtain

16. _____ age-corrected percent
hearing loss _____

BINAURAL PERCENTAGE LOSS

17. _____ % loss better ear (smaller amount)
from line 16, multiplied by 5

plus

18. _____ % loss worse ear (larger amount)
from line 16

19. _____ equals
divided
by 6
equals

20. _____ % age-corrected binaural hearing loss

This rule is intended to implement Iowa Code sections 85B.9A and 86.8.

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CHAPTER 9
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 9]

The workers' compensation division of the workforce development department hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

876—9.1(17A,22,85-87) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "the division of workers' compensation of the department of workforce development".

"Open record" means a record other than a confidential record, including but not limited to the record of declaratory rulings, declaratory orders, contested case proceedings, decisions, orders, rulings, settlements, and opinions of the agency.

"Person" means an individual, corporation, government or governmental subdivision or agency, business, trust, estate, partnership or association, or any other legal entity.

"Personally identifiable information." In lieu of the word "individual", insert the word "person".

"Record system" means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of a person, number, symbol, or other unique retriever assigned to a person and all records that are not retrievable by a personal identifier.

"Subject" means that person identified in a record.

876—9.3(17A,22,85-87) Requests for access to records.

9.3(1) Location of record. In lieu of the words "(insert agency head)", insert "commissioner". Also, in lieu of the words "(insert agency name and address)", insert "Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319".

9.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

9.3(7) Fees.

c. Search and supervisory fee. An hourly fee may be charged for actual agency expenses in searching for and supervising the examination and copying of the requested records if the time required for each of these services exceeds one-quarter hour. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. The custodian shall prominently post in the agency offices the hourly fees to be charged.

876—9.6(17A,22,85-87) Procedure by which additions, dissents, or objections may be entered into certain records. Insert immediately following "... official record of any agency proceeding." the following sentence: "Any additions, dissents, or objections entered into the record shall not be considered evidence in a contested case proceeding." In lieu of the words "(designate office)", insert "the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319".

876—9.8(17A,22,85–87) Notice to suppliers of information.

Insert a new paragraph as follows:

“Information provided under this rule may constitute an open record. The information supplied will be used to administer Iowa Code chapters 85 to 87 and this agency’s rules. The information may be provided to parties to contested case proceedings and their representatives, employers, employees, insurance carriers, federal, state, and local agencies, and other persons having a legitimate interest in the information. All of the information requested is required to be supplied unless the request specifies otherwise. Failure to provide the information requested may result in the sanctions provided in Iowa Code chapters 85 to 87 and this agency’s rules. See 876—Chapter 3 for forms used by this agency.”

876—9.9(17A,22,85–87) Disclosure without the consent of the subject.

9.9(1) Open records are routinely disclosed without the consent of the subject.

9.9(2) If the agency is prohibited from disclosing part of a document from inspection, that part will not be disclosed and the remainder will be made available for inspection.

9.9(3) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 9.10(17A,22,85-87) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To a person pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

876—9.10(17A,22,85–87) Routine use.

9.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

9.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to the officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

- c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.
- d. Transfers of information within the agency, to other state agencies, or to local and federal units of government as appropriate to administer the program for which the information is collected.
- e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.
- f. Disclosure to the public upon request. The custodian of the record may upon request, or on the custodian's own initiative, determine what constitutes legitimate need to use a record.
- g. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

876—9.11(17A,22,85-87) Release to subject.

9.11(1) The subject of a confidential record may file a written request to review confidential records about that subject as provided in rule 9.6(17A,22,85-87). However, the agency need not release the following records to the subject:

- a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.
- b. Records need not be disclosed to the subject when they are the work product of the workers' compensation commissioner, deputy commissioner, an agency attorney, or employee of the agency, or what would otherwise be privileged.
- c. Peace officers' investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).
- d. As otherwise authorized by law.

9.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

876—9.12(17A,22,85-87) Availability of records.

9.12(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

9.12(2) The record of declaratory rulings, declaratory orders, contested case proceedings, decisions, orders, rulings, settlements, and opinions are open for public inspection and copying.

9.12(3) Records obtained from the division of vocational rehabilitation are open records.

9.12(4) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.
- b. Tax records made available to the agency pursuant to Iowa Code sections 422.20, 422.72.
- c. Records which are exempt from disclosure under Iowa Code section 22.7.
- d. Minutes and tape recordings of closed meetings of a government body pursuant to Iowa Code section 21.5(4).
- e. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

f. Records which constitute the work product of the workers' compensation commissioner, deputy commissioner, an agency attorney, or employee of the agency, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R. Civ. P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Personnel records maintained by the agency of past and present employees which may contain confidential information under Iowa Code section 22.7(11).

h. Any other records made confidential by law.

9.12(5) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 9.4(17A,22,85-87). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 9.4(3).

876—9.13(17A,22,85-87) Personally identifiable information.

9.13(1) This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 9.1(17A,22,85-87). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapters 17A, 22, and 85 to 87. The record systems maintained by the agency are:

a. Records submitted to and gathered by the division of workers' compensation pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules regarding claims for workers' compensation benefits. These records are stored in an automated data processing system, hard copy, microfilm, or microfiche. These records may contain medical records, briefs, depositions, transcripts of evidence, pictures, diagrams, exhibits, charts, employer records, insurance carrier records, vocational rehabilitation records, attorney records, court records, correspondence, claim form data, wage records, docket sheets, memoranda, attorney or staff notes, research material, witness information, documents, case management records, investigation materials, and any other records obtained pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system, hard copy, microfilm, or microfiche. These records may contain, in whole or in part, records determined to be confidential as defined in subrule 9.12(4).

b. Records which constitute the work product of an employee of the agency pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system, hard copy, microfilm, or microfiche. Some of these records may contain, in whole or in part, records determined to be confidential as defined in subrule 9.12(4).

c. Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. These files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

d. Other groups of records. This subrule describes groups of records maintained by the agency other than record systems as defined in rule 9.1(17A,22,85-87). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 9.12(17A,22,85-87). The records listed may contain information about persons.

(1) Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. This information is collected pursuant to Iowa Code section 17A.4. This information may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(2) Agency records. Agendas, minutes, and materials presented to the division of workers' compensation are available from the custodian, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Agency records may contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code sections 21.3 and 85A.2(4). These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available at the administrative office of the agency. Brochures describing various agency programs are available at the administrative office of the agency. Agency news releases, project reports, and newsletters may contain information about persons, including agency staff or members of agency committees. Most publications of general interest are available in the state law library. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(4) Statistical reports. Reports of agency data are available from the agency. Statistical reports may contain personally identifiable information. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(5) Decisions and opinions. All records of contested case proceedings, decisions, orders, rulings, settlements, and opinions are open to the public. These records contain information about a person collected under the authority of Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(6) Declaratory rulings and declaratory orders. Records may contain information about persons making requests for declaratory rulings, declaratory orders or comments from other persons concerning the rulings or orders. This information is collected pursuant to Iowa Code section 17A.9. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(7) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

(8) Policy manuals. The agency employees' manuals are available in the administrative office of the agency. Subscriptions to all or part of the employees' manuals are available at the cost of production and handling. Requests for subscription information should be addressed to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319. Policy manuals may contain confidential information under Iowa Code section 17A.2(7) "f" or other applicable provision of law.

(9) All other records that are not exempted from disclosure by law.

e. Other records used by the agency which may not otherwise be accounted for by these rules include correspondence files, surveys, information and data files, requests for review of open records, budget documents, agency property, yearly reports, office policy for employees, time sheets, and records used for processing purposes internally (such as data processing and word processing requests, supply shipments, vouchers, requisitions, charge accounts, order, etc.). Some of these records may contain information about persons.

9.13(2) Data processing systems used by the agency may permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

876—9.14(17A,22,85-87) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about persons by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject, person or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code chapters 17A, 22, 85, 85A, 85B, 86, and 87.

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CHAPTER 12
FORMAL REVIEW AND WAIVER OF RULES

876—12.1(17A) Requests to review. Any interested person, association, agency, or political subdivision may submit a written request to the workers' compensation commissioner requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the workers' compensation commissioner, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

876—12.2(17A) Review of rules. In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the agency's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

876—12.3(17A) Form of criticism. The Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209, is designated as the office where interested persons may submit written criticism regarding an administrative rule of the Workers' Compensation Division[876]. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, be signed by the complainant, not be part of any other filing with the workers' compensation commissioner or department of workforce development, and have a valid legal basis for support. All criticisms received on any rule will be kept in a separate record for a period of five years by the workers' compensation commissioner and be a public record open for public inspection. All criticisms must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER

CRITICISM BY (NAME OF PERSON
SUBMITTING CRITICISM).



CRITICISM OF (SPECIFY
RULE THAT IS CRITICIZED).

Reasons for criticism:

Name, address, telephone number and signature of person submitting criticism.

876—12.4(17A) Requests for waiver of rules. Requests for waiver of a rule in the Workers' Compensation Division[876] of the Iowa Administrative Code shall be made to the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209. All requests for waiver of a rule must be in writing and are a public record open for inspection. The person requesting the waiver must submit all facts relied upon in requesting the waiver. The person requesting waiver of the rule must provide clear and convincing evidence that compliance with the rule will create an undue hardship on the person requesting the waiver. A concise memorandum brief and argument, if any is filed, shall be attached to the request for waiver at the time the request is filed. The workers' compensation commissioner shall grant or deny the waiver within 60 days of the date the request is filed with the agency. The workers' compensation commissioner shall deny the request if the request is for waiver of a statute. If the request for waiver relates to a time requirement of a rule, the request must be received before the time specified in the rule has expired. The workers' compensation commissioner may deny the request if the request does not comply with the provisions of this rule. All requests for waiver must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER

(NAME OF PERSON REQUESTING WAIVER).	}	REQUEST FOR WAIVER OF (SPECIFY RULE FOR WHICH WAIVER IS REQUESTED).
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Reasons for requesting waiver:

Name, address, telephone number and signature of person submitting waiver request.

These rules are intended to implement Iowa Code sections 17A.4(1)"b" and 17A.7.

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