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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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INTRODUCTION

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

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

Inquiries may be directed to:

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"Herd" means any group of swine maintained for 60 days or more on common ground for any purpose, or two or more groups of swine that have been intermingled without regard to pseudorabies status and are under common ownership or possession and that have been geographically separated within the state of Iowa. Two or more groups of swine are assumed to be one herd, unless an investigation by the epidemiologist has determined that intermingling and contact between groups has not occurred.

"Low incidence state/area" means a state or subdivision of a state with little or no incidence of pseudorabies and which qualifies for Stage III, or higher, and has been designated Stage III, or higher, by the National Pseudorabies Control Board as defined in the State/Federal Industry Program Standards for pseudorabies eradication; or an area outside the United States with a low incidence of pseudorabies determined by at least an equivalent testing protocol as is used to establish Stage III status.

"Native Iowa feeder pig" means a feeder pig farrowed in Iowa, and always located in Iowa.

"Premises" means a parcel of land together with buildings, enclosures and facilities sufficient for swine production.

"Restricted movement" means movement of swine in accordance with 2000 Iowa Acts, Senate File 2312, section 17.

"Vicinity" means a distance less than one-half mile.

21—64.148(163,166C) Pseudorabies tests and reports. Rescinded IAB 9/6/89, effective 10/11/89.

21—64.149(163,166C) Approval of qualified pseudorabies negative herd. Rescinded IAB 9/6/89, effective 10/11/89.

21—64.150(163,166C) Shipment of breeding swine and feeder pigs. Rescinded IAB 9/6/89, effective 10/11/89.

21—64.151(163,166D) Quarantines.

64.151(1) Except for sales to slaughter or to pseudorabies-approved premises, owners of animals tested for pseudorabies shall hold the entire herd on the premises until results are determined.

64.151(2) Infected herds not on an approved cleanup plan. All known pseudorabies infected herds, not on an approved herd cleanup plan, are subject to restricted movement to slaughter according to 64.154(2) "c" and 64.155(8).

64.151(3) Quarantine releasing procedures.

a. A herd of swine shall no longer be classified as a known infected herd after removal of all positive swine and at least one of the following three conditions have been met:

(1) All swine have been removed and the premises have been cleaned and disinfected and maintained free of swine for 30 days or a period of time determined adequate by an official pseudorabies epidemiologist.

(2) All swine seropositive to an official test have been removed and all remaining swine, except suckling pigs, are tested and found negative 30 days or more after removal of the seropositive animals.

(3) All swine seropositive to an official test have been removed, and all breeding swine that remain in the herd and an official random sample consisting of at least 30 animals from each segregated group of grower-finisher swine over two months of age are tested and found negative 30 days or more after removal of the seropositive animals. A second test of grower-finisher swine at least 30 days after the first test is required.

b. In nurseries and finishing herds without any breeding swine and where no pigs are received from quarantined premises, quarantines may be released as follows:

(1) A negative official random-sample test consisting of at least 30 animals from each segregated group, conducted at least 30 days following depopulation with cleaning and disinfection of the premises and 7 days' downtime, or

(2) A negative official random-sample test consisting of at least 30 animals from each segregated group, conducted at least 30 days following a similar negative official random-sample test.

A similar official random-sample test must then be conducted between 60 and 90 days following quarantine release.

Any quarantine releasing procedure deviating from the above procedures or Iowa Code section 166D.9 must be approved by the official pseudorabies epidemiologist and the state veterinarian.

21—64.152(163,166D) Nondifferentiable pseudorabies vaccine disapproved. The only pseudorabies vaccine or pseudorabies vaccine combination used in this state shall be a differentiable vaccine.

After July 1, 1993, this vaccine must be differentiable by a licensed and approved differentiable pseudorabies test capable of determining gp1 negative swine vaccinated with a gp1 gene deleted vaccine.

21—64.153(166D) Pseudorabies disease program areas.

64.153(1) Pseudorabies disease program areas as declared by the Iowa department of agriculture and land stewardship: all counties in the state of Iowa.

64.153(2) All producers will permit sufficient swine in their herds to be tested at program expense to determine the health status of the herd at intervals during the course of the program as deemed necessary by the department.

The owner shall confine the swine to be tested in a suitable place and restrain them in a suitable manner so that the proper tests can be applied. If the owner refuses to confine and restrain the swine, after reasonable time the department may employ sufficient help to properly confine and restrain them and the expense of such help shall be paid by the owner.

The swine tested shall be sufficient in number, and by method of selection, to quality for the surveillance program required to attain and maintain the program stages according to the most recent "State-Federal-Industry Program Standards" for pseudorabies eradication.

64.153(3) No indemnities will be paid for condemned animals.

64.153(4) Any person possessing swine is required to provide the name and address of the owner or the owner's agent to a representative of the department.

64.153(5) Beginning on October 1, 1999, all swine located within three miles of a pseudorabies-infected herd are required to be vaccinated with an approved pseudorabies vaccine within seven days of notification by a regulatory official. One dose of vaccine shall be administered to growing swine prior to 14 weeks of age or 100 pounds. Swine over six months of age or greater than 200 pounds, used or intended to be used for breeding, shall receive vaccine on a schedule designed to administer at least four doses throughout a 12-month period. The department may require a herd test to monitor both the pseudorabies status and the pseudorabies vaccine status of the herd.

A waiver for this vaccination requirement may be issued by the state veterinarian, based on epidemiological investigation and risk determination. Herd testing, at a level determined by the pseudorabies epidemiologist, will be required as a condition for issuance of a vaccination waiver.

In addition, beginning April 19, 2000, all swine located in a county designated as in Stage II of the national pseudorabies eradication program are required to be vaccinated with a modified-live differentiable vaccine. Breeding swine shall at a minimum receive quarterly vaccinations. Feeder swine shall at a minimum receive one vaccination administered when the swine reach 8 to 12 weeks of age or 100 pounds. These vaccination requirements shall be waived if:

a. The swine are part of a herd's being continuously maintained as a qualified negative herd; or
b. The swine are part of a herd located within a county where both of the following conditions apply:

(1) The department has determined that the county has a six-month history of 0 percent prevalence of pseudorabies infection among all herds in the county, and

(2) All contiguous counties have a 0 percent prevalence of pseudorabies infection among herds in that county.

64.153(6) All premises containing swine which are located in the Stage II area of Iowa must have a monitoring test for the premises conducted between January 1, 2000, and August 31, 2000.

21—64.154(163,166D) Identification.

64.154(1) All breeding and feeder swine being exhibited or having a change of ownership must be identified by a method approved by the Iowa department of agriculture and land stewardship. The identification shall be applied by the owner, the pig dealer, or the livestock dealer at the farm of origin or by the pig dealer or the livestock dealer at the first concentration point.

64.154(2) Approved identification.

a. Breeding swine.

(1) Ear tags or tattoos with an alphabetic or numeric system to provide unique identification for each animal.

(2) Ear notches or ear tattoos, if applied according to the standard breed registry system.

(3) Electronic devices, other devices, or marks which, when applied, will permanently and uniquely identify each animal.

(4) Breeding swine qualified to move intrastate without individual tests may move without unique identification of each animal, if they are all identified as a group to the herd of origin by an official premises tattoo.

b. Feeder swine.

(1) Ear tags or tattoos with an alphabetic or numeric system to provide unique identification with each herd, each lot, or each individual swine.

(2) Electronic devices, other devices, or marks which, when applied, will provide permanent identification with each herd, each lot, or each individual swine.

c. Restricted movement swine.

(1) All infected herds not on an approved herd cleanup plan shall only move swine directly to slaughter by restricted movement. All animals from infected herds must move by restricted movement to slaughter (slaughtering plant or fixed concentration point) or to an approved premises detailed in the herd cleanup plan. The department may, until a herd plan is approved and showing progress, require the movement of all slaughter swine by "direct movement," to slaughter only, by a Permit for Restricted Movement to Slaughter which provides a description of the animals, the owner, the consignee, the date of movement, the destination, and the identification or vehicle seal number if applicable. These "restricted movement to slaughter only swine" shall be individually identified by approved metal ear tags applied at the farm of origin, if required. The transportation vehicle must be sealed at the farm of origin. This seal shall be applied by an accredited veterinarian. This seal shall be removed by an accredited veterinarian, USDA official, department official, or the person purchasing the swine upon arrival of the consignment at the destination indicated on the Permit for Restricted Movement to Slaughter.

The ear tags shall have an alphabetic or numeric numbering system to provide unique identification with each herd, each lot, or each individual swine. They shall be applied prior to movement and listed on the Permit for Restricted Movement to Slaughter, if required. This Permit for Restricted Movement to Slaughter shall be issued and distributed by an accredited veterinarian as follows:

1. Original to accompany shipment.
2. Mail a copy to the department.
3. Veterinarian issuing permit will retain a copy.

(2) The vehicle sealing requirement may be waived by the department. Written application for waiver must be directed to the state veterinarian's office, and written waivers may be granted for herds in compliance with an approved herd cleanup plan. The minimal requirements for granting a waiver shall be:

1. No clinical disease in the herd for the past 30 days.
2. Complete herd vaccination documentation.
3. Compliance with herd plan testing requirements.
4. Concurrence of herd veterinarian and regulatory district veterinarian.

No waiver shall be granted, and waivers already granted shall be voided, for herds still classified as infected four months from the initial infection date. The department may impose additional requirements on a case-by-case basis.

The department may grant an extension to this waiver for a period of up to four additional months on a case-by-case basis. Written application for waiver extension must be directed to the state veterinarian's office, and written waivers may be granted for herds in compliance with an approved herd cleanup plan.

64.154(3) Approved ear tags available from the Iowa department of agriculture and land stewardship:

- a. Pink tags to identify pseudorabies vaccinated swine.
- b. Silver tags to identify feeder pigs from pseudorabies noninfected herds.
- c. Blue tags to identify other swine.

64.154(4) Farm-to-farm movement of native Iowa feeder pigs.

a. Native Iowa feeder pigs sold and moved farm-to-farm within the state are exempt from identification requirements if the owner transferring possession and the person taking possession agree in writing that the feeder pigs will not be commingled with other swine for a period of 30 days. The owner transferring possession shall provide a copy of the agreement to the person taking possession of the feeder pigs.

b. "Moved farm-to-farm" as used in this rule means feeder pigs farrowed and raised in Iowa by a farm owner or operator and sold to another farm owner or operator who agree, in writing, not to commingle these pigs for at least 30 days.

Feeder pigs purchased for resale by a pig dealer cannot be moved farm-to-farm, as described in the above paragraph. They must be accompanied by a Certificate of Veterinary Inspection and be identified.

c. Identification-exempt feeder pigs must originate from a "monitored," or other "noninfected," herd. The "monitored herd" number, or other qualifying number, and the date of expiration must also be shown on the Certificate of Inspection.

All identification-exempt feeder pigs aboard the transport vehicle must be from the same farm of origin and be the only pigs aboard. They must be kept in "isolation" and transported by "direct movement" to the farm of destination.

d. The veterinarian will certify, by signature on the Certificate of Inspection, that the above conditions have been met and that the pigs are exempt from the identification requirements and will qualify for movement according to 64.155(4).

64.154(5) Swine being relocated intrastate without a change of ownership are exempt from health certification, identification requirements, and transportation certification except as required by Iowa Code chapter 172B provided relocation records sufficient to determine the origin, the current pseudorabies status of the herd of origin, the number relocated, the date relocated, and destination of the relocated swine are available for inspection.

Swine relocated within a herd held on multiple premises are exempted from this health certification, identification requirement, and transportation certification, except as required by Iowa Code chapter 172B and the above record-keeping requirements.

Relocation records, if required, shall be maintained and available for inspection for a minimum of two years.

64.154(6) This rule should not be construed to implement or affect the identification requirements set down in Iowa Code sections 163.34, 163.35, 163.36, and 163.37. Records of identification applied to slaughter swine at concentration points shall be reported weekly to the department on forms provided by the department.

21—64.155(163,166D,172B) Certificates of inspection. The following certificates shall be used as outlined. All are provided by the department. All require inspection by a licensed accredited veterinarian.

64.155(1) Iowa origin Interstate Certificates of Veterinary Inspection shall be used for exporting breeding swine or feeder swine out of the state.

64.155(2) Intrastate Certificates of Veterinary Inspection shall be used for the following movements:

a. The intrastate movement of feeder swine, with a change of ownership, originating from noninfected herds requires approved identification and noninfected herd identification number, showing the date of last test on a Certificate of Veterinary Inspection. The feeder swine shall be quarantined for 30 days.

b. The intrastate movement, with a change of ownership, of breeding swine from nonquarantined herds requires approved identification and noninfected herd number, or individual test results and dates tested included on a Certificate of Veterinary Inspection only. The breeding swine shall be quarantined for 30 days.

c. The concentration points to farm movement of feeder swine originating from noninfected herds requires approved identification and herd identification number and date tested included on a Certificate of Veterinary Inspection. The feeder swine shall be quarantined for 30 days.

d. The concentration point to farm intrastate movement of noninfected breeding swine from nonquarantined herds requires approved identification and noninfected herd number or individual test results and dates tested included on a Certificate of Veterinary Inspection. The breeding swine shall be quarantined for 30 days.

e. The farm to an approved premises or from a concentration point to an approved premises movement of feeder swine requires approved identification and approved premises number to be included on a Certificate of Veterinary Inspection. A statement, "Quarantined until slaughter," shall be included on a Certificate of Veterinary Inspection.

f. Movement of exhibition swine to an exhibition when a certificate is required must be with a Certificate of Veterinary Inspection.

64.155(3) QLSM certificate. A QLSM certificate shall be used when moving swine under restricted movement and quarantined until moved to slaughter. The certificate shall be used for the following movements:

a. Movement of feeder swine from quarantined herds to approved premises. Approved identification and approved premises number shall be included on the certificate. The swine are quarantined to slaughter or can be moved to another approved premises on a certificate of inspection.

b. Movement of feeder swine from herds of unknown status, feeder pig cooperator herd plans, or herd cleanup plans. Approved identification shall be included on the certificate. This certificate is used for farm-to-farm or concentration point to farm movements.

64.155(4) A Farm-to-Farm Certificate of Veterinary Inspection or an Intrastate Certificate of Veterinary Inspection shall be used for moving identification-exempt native Iowa feeder pigs farm-to-farm according to 64.154(4) "b." Feeder swine purchased for resale by a pig dealer must be identified and accompanied by a Certificate of Inspection.

64.155(5) Import Interstate Certificates from out-of-state origins shall accompany shipments of breeding swine and feeder swine into Iowa.

a. Feeder swine: If a state of origin does not issue a monitored herd number, then the certificate shall include the statement, "These pigs are from a noninfected herd and the date of last test was _____," or "These pigs are from a monitored herd tested within the last 12 months. Date of last test was _____." The certificate shall include the following statement: "These feeder pigs are quarantined until moved to slaughter."

b. Breeding swine: Individual test results and date tested or noninfected herd number and date of last test shall be included on the certificate.

c. Feeder swine from low incidence state/area of origin. The certificate shall include the following statements, "These pigs were born and raised in the state/area of _____," (state/area name) and "These feeder pigs are quarantined until moved to slaughter."

d. Beginning January 1, 1998, all imported feeder swine, except those from qualified negative herds entering qualified negative herds, must be vaccinated for pseudorabies with a G1 deleted vaccine within 45 days of arrival if imported into a county with a pseudorabies prevalence greater than 3 percent. This requirement must be stated on the import interstate certificate. Imported swine consigned directly to slaughter are exempt from vaccination requirements.

64.155(6) Slaughter affidavits shall accompany all shipments of feeder swine or finished swine from concentration points moving direct to slaughter.

64.155(7) Transportation certificate. This certificate involves shipments of swine from farm or approved premises moving direct to slaughter as detailed in Iowa Code chapter 172B. Veterinary inspection not required.

64.155(8) Rescinded IAB 10/22/97, effective 10/1/97.

21—64.156(166D) Noninfected herds.

64.156(1) *Qualified pseudorabies negative herd—recertification.*

a. Recertification of a qualified pseudorabies negative herd and a qualified differential negative herd shall be by monthly testing, as detailed in Iowa Code section 166D.7(1)"a."

b. The status of a qualified pseudorabies negative herd will be revoked if:

- (1) A positive test is recognized and interpreted by a pseudorabies epidemiologist as infected.
- (2) Pseudorabies infection is diagnosed.
- (3) Recertification testing is not done on time.
- (4) Inadequate number of animals are tested.
- (5) Once a qualified pseudorabies negative herd is decertified, the herd must meet all requirements of Iowa Code section 166D.7, to recertify as a qualified pseudorabies negative herd.

64.156(2) *Iowa monitored feeder pig herd.*

a. Test requirements for a monitored feeder pig herd status include a negative herd test every six months of randomly selected breeding animals according to the following schedule:

1-10 head	Test all
11-35 head	Test 10
36 or more	Test 30 percent or 30, whichever is less.

Effective July 1, 2000, all breeding herd locations in Stage II counties must have a monitored or better status or move by restricted movement.

b. A monitored identification card will be sent by first-class mail to the herd owner shown on the test chart if test results qualify the herd as monitored. An expiration date which is six months from the date that the certifying tests were drawn will be printed on the card.

It is the owner's responsibility to retest the herd semiannually. The monitored status is voided on the date of expiration. A monitored herd status is revoked if:

- (1) A positive test is recognized and interpreted by a pseudorabies epidemiologist and interpreted as infected.
- (2) Pseudorabies infection is diagnosed.
- (3) Recertification test is not done on time.
- (4) Not enough tests, according to herd size and vaccination status, are submitted.

c. Additions of swine to a monitored herd shall be from noninfected herds, according to Iowa Code section 166D.7.

d. Feeder pigs may be sold for further feeding without additional testing while the "monitored" status is maintained and the feeder pigs have been maintained on the same site as the breeding herd.

e. Monitored, or higher, status feeder pigs sold may regain, and maintain, monitored status by a negative test of all or a random sample of 30 head of each segregated group, whichever is less, within 30 days prior to resale.

f. Nursery units located in Stage II counties and not in the vicinity of the breeding herd are required to maintain a monitored status on the nursery unit in order for the swine to be eligible to be relocated to a finishing premises. An official random-sample test shall be required for each segregated group of swine on an individual premises every six months for the maintenance of this monitored status. These testing requirements apply to swine eligible for relocation movement. Testing requirements for this random sampling are:

Test 10 head per building, minimum 14 head per site.

Effective July 1, 2000, all nursery locations in Stage II counties must have a monitored or better status or move by restricted movement.

g. Off-site finishing units located in the Stage II counties are required to maintain a monitored status on the finishing unit in order for the swine to be eligible to be sold to slaughter. An official random-sample test will be required for each segregated group of swine on an individual premises every six months for the maintenance of this monitored status. These testing requirements also apply to swine eligible for relocation movement. Testing requirements for this random sampling are:

Test 10 head per building, minimum 14 head per site.

Effective July 1, 2000, all finishing locations in Stage II counties must have a monitored or better status or move by restricted movement.

64.156(3) *Qualified differentiable negative herd—recertification.*

a. Recertification of a qualified differentiable negative herd will include monthly testing, as detailed in Iowa Code section 166D.7. A minimum of five breeding swine or 10 percent of the breeding herd, whichever is greater, must be tested each month.

b. The status of a qualified differentiable negative herd will be revoked if:

(1) A positive test is recognized and interpreted by a pseudorabies epidemiologist as infected.

(2) Pseudorabies infection is diagnosed.

(3) Recertification testing is not done on time.

(4) Inadequate number of animals are tested.

(5) Once a qualified differentiable negative herd is decertified, the herd must meet all requirements in Iowa Code section 166D.7 to recertify as a qualified differentiable negative herd.

64.156(4) *Maintaining qualified negative status (progeny).* Progeny from qualified negative (unvaccinated) or from qualified negative (vaccinated) herds moved to a facility not within the vicinity of the herd of origin and unexposed to lesser status swine may maintain qualified negative status by a monthly negative test of 10 percent or 60 head, whichever is less, of swine that have been on the premises for at least 30 days.

64.156(5) *Other qualified pseudorabies negative herds.* Any breeding herd in a Stage IV or V State/Area or an area outside the United States with a low incidence of pseudorabies equivalent to a Stage IV or V State/Area is recognized as a qualified pseudorabies negative herd.

64.156(6) *Fertility centers.* Breeding swine in a fertility center shall attain a “noninfected herd” status by an initial negative test of all breeding swine in the center. This status shall be maintained by a monthly negative test of a random sample of five head or 10 percent, whichever is greater, of the swine at the center. All additions of swine to the fertility center must originate from a “noninfected” herd, must be placed in isolation for 30 days or more, and must test negative for pseudorabies 20 days or more after being isolated.

a. Semen and germplasm must be identified to the fertility center of origin.

b. Imported semen or germplasm must originate from a fertility center, or “noninfected” herd, with requirements at least equivalent to the above, and be identified to the fertility center.

21—64.157(166D) Herd cleanup plan for infected herds (eradication plan).

64.157(1) The herd cleanup plan shall be a written plan approved and on file with the department.

64.157(2) The herd cleanup plan shall contain:

- a. Owner's name, location and herd number.
- b. Type of herd plan selected, e.g., offspring segregation, test and removal, depopulation.
- c. Description of the plan, which shall include the following requirements:
 - (1) The breeding herd shall be maintained on an approved vaccination program, at least four times per year;
 - (2) The progeny shall be weaned and segregated by five weeks of age or less, and progeny group isolation shall be maintained according to the terms of the herd plan;
 - (3) The herd must be visited on a regular basis (at least quarterly) by the herd veterinarian to monitor progress of the herd cleanup plan. This will include monthly testing if applicable, overseeing management procedures which may include all-in, all-out swine movement, ventilation, sanitation, disinfection, and vaccine handling;
 - (4) Vaccine shall be administered to the progeny swine at least once, or more often if required by the herd plan;
 - (5) Feeder pig movement or relocation from the premises of origin must be detailed in writing in the herd cleanup plan. Feeder pig movement or relocation from the premises of origin will only be allowed to approved premises and must be detailed in writing in the herd cleanup plan. Movement will not be allowed from the herd if the herd has experienced clinical symptoms of pseudorabies in the past 30 days. Effective April 19, 2000, all movements from infected premises shall be by restricted movement. "Movement" in this paragraph includes movement to a premises in the production system not in the vicinity of the current location, irrespective of whether there is a change of ownership;
 - (6) Culled breeding swine must move by restricted movement directly to slaughter (slaughtering plant or fixed concentration point) or to an approved premises in compliance with Iowa Code section 166D.10 as amended by 2000 Iowa Acts, Senate File 2312, section 16, and as detailed in the herd cleanup plan. No swine moved from infected herds may be represented as breeding swine;
 - (7) Herds identified as infected on or after August 1, 1999, with breeding swine, shall implement a test and removal herd cleanup plan which allows for the phased test and removal of bred animals for one farrowing cycle, followed by a whole herd test and removal plan. Effective August 1, 2000, a whole herd test and removal plan shall be implemented for all infected breeding herds. The herd plan shall include the following:
 1. All breeding swine, including boars, shall be tested within 14 days of the herd's being classified as infected. Testing shall also include progeny, if applicable.
 2. All breeding swine must be identified by an approved ear tag, or other approved identification method, at the time of blood collection.
 3. Until August 1, 2000, all seropositive, unbred breeding swine must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), within 15 days after blood collection. All seropositive, bred swine must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), within 15 days of weaning. All replacement breeding stock must be vaccinated prior to addition into the herd and must be retested 60 days after entry into the herd. Effective August 1, 2000, all seropositive animals, bred or unbred, must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), within 15 days of the whole herd test. All known positive animals in the herd on August 1, 2000, must be removed from the herd by restricted movement, direct to slaughter (slaughtering plant or fixed concentration point), by August 15, 2000.

4. A whole herd test shall be required within 30 days after the removal of the last known positive animal. Any additional seropositive animals must be removed from the herd by restricted movement, direct to slaughter, within 15 days of the collection date. Whole herd retests shall be required at 30-day intervals, with removal of positive animals within 15 days of the test, until it has been determined that the herd is noninfected.

5. Seropositive swine must be removed from the herd, by restricted movement, direct to a buying station or to a slaughtering establishment.

All swine movement from infected herds must be by restricted movement directly to slaughter or to an approved premises as detailed in the herd cleanup plan.

When a herd is designated a noninfected herd, or has been depopulated, by procedures detailed in Iowa Code section 166D.9, the plan is completed;

(8) Beginning October 1, 1999, a herd cleanup plan shall be implemented for all infected finishing herds which shall include the following:

1. A description of the premises, including the location, capacity, physical layout, owner's name, and herd number.

2. Vaccination requirements:

- Every animal, unless such animal is within three weeks of anticipated slaughter, must be vaccinated with an approved pseudorabies vaccine within seven days of notification by a regulatory official.

- New animals introduced into the infected premises are to be vaccinated with an approved pseudorabies vaccine according to the timetable outlined in the herd plan.

- If, through subsequent testing, additional buildings on the site are determined to be infected, all swine on the site shall be managed by all-in, all-out production.

3. Testing requirements:

- A minimum of 14 swine, selected randomly, per building, shall be tested immediately.

- Swine shall be retested, at a minimum of 14 animals, selected randomly, per building, every 45 days, if necessary, until the premises are determined to be noninfected.

4. Description, restrictions, and requirements of pig flow through the facilities.

5. All movements from infected finishing sites shall be by restricted movement and only to slaughter.

d. Specific movement limitations which may include approved destination locations, "restricted movement to slaughter," or other appropriate animal movement control measures.

e. Signatures of the herd owner, the owner's veterinarian, and the epidemiologist or the epidemiologist's representative.

64.157(3) Rescinded IAB 10/22/97, effective 10/1/97.

64.157(4) Rescinded IAB 10/22/97, effective 10/1/97.

64.157(5) If this herd cleanup plan is not followed, is discontinued, or is not progressing in a satisfactory manner as determined by the department, the herd is a quarantined herd and is subject to "restricted movement to slaughter," according to 2000 Iowa Acts, Senate File 2312, section 17, until a new and approved cleanup plan is in place and showing progress according to a designated epidemiologist.

64.157(6) Rescinded IAB 10/22/97, effective 10/1/97.

64.157(7) A deviation from a herd cleanup plan may be used in exigent circumstances if the deviation has the approval, in writing, of the epidemiologist and the state veterinarian.

21—64.158(166D) Feeder pig cooperator plan for infected herds.

64.158(1) A feeder pig cooperator plan shall be a written plan approved and on file with the department.

64.158(2) Feeder Pig Cooperator Plan Agreement—revised effective April 1, 1995.
Feeder Pig Cooperator Plan Agreement—Revised

Date:

Herd I.D. Number:

Owner's Name:

Address:

Telephone Number:

The Feeder Pig Cooperator Plan Agreement shall include the following:

1. The herd has not experienced clinical signs of pseudorabies within the previous 30 days.
2. Maintain the breeding herd on an approved vaccination program, at least four times per year.
3. Wean and segregate progeny by five weeks of age or less and maintain progeny group isolation until moved as feeder pigs.
4. The herd must be visited at least quarterly by the herd veterinarian to monitor progress of herd cleanup plan; this shall include quarterly testing, if applicable, overseeing management procedures including all-in, all-out swine movement, ventilation, animal waste handling, sanitation, disinfection and vaccine handling.
5. Feeder pigs may be marketed or moved intrastate as cooperator pigs by restricted movement to approved premises detailed in the herd cleanup plan provided that all requirements of this plan are followed.
6. All feeder pigs must be vaccinated prior to sale. Vaccine shall be administered according to individual's herd plan.
7. All feeder pigs must be identified prior to sale with an official pink feeder pig ear tag, or a tattoo, approved by the department, beginning with the letters PR. All movement of feeder pigs from the herd shall be by restricted movement and only be allowed to approved premises detailed in the herd cleanup plan. All feeder pigs are quarantined to farm of destination until sold to slaughter. Movement to slaughter must be by restricted movement.
8. Breeding swine shall move directly to slaughter, or an approved premises in compliance with Iowa Code section 166D.10 as amended by 2000 Iowa Acts, Senate File 2312, section 16, and as detailed in the herd cleanup plan, and by restricted movement. No swine from infected herds may be represented as breeding swine.
9. The producer shall maintain a record of all test charts, all sales transactions by way of health certificates or restricted movement permits, and vaccine purchases for at least two years. These records shall be available to department officials upon request.
10. When this herd is determined, through procedures as detailed in Iowa Code section 166D.9, to become a noninfected herd or is depopulated, the plan is completed.
11. I agree, if this plan is not followed, is discontinued, or is not progressing in a satisfactory manner as determined by the department, the herd is a quarantined herd and subject to restricted movement, direct to slaughter or to an approved premises.

I am currently enrolled in an approved herd cleanup plan. I further agree to comply with all the requirements contained in this Feeder Pig Cooperator Plan Agreement.

Herd Owner:

Date:

Herd Veterinarian:

Date:

21—64.159(166D) Herds of unknown status. Feeder pigs from herds of unknown status may not move after September 30, 1993; however, these herds may test to determine status and feeder pigs may be moved according to 64.156(1), 64.156(2), 64.156(3), 64.157(3), or 64.158(2).

The owner must provide test data, prior to movement, proving that these requirements have been met.

21—64.160(166D) Approved premises. The purpose of an approved premises is to maintain feeder swine and feeder pigs under quarantine with movement either direct to slaughter or to another approved premises. Effective June 1, 2000, all swine moved or relocated from an infected herd on an approved herd cleanup plan may only move by restricted movement to an approved premises for further feeding or to slaughter (slaughtering plant or fixed concentration point).

64.160(1) The following are requirements establishing, renewing, or revoking an approved premises permit:

a. A permit application, as part of the herd cleanup plan, must indicate the name of the premises operator and address of the premises.

b. To be valid, an approved premises must be detailed as part of a herd cleanup plan and approved by a department or inspection service official certifying that the facility meets the following guidelines:

(1) Must be a dry lot facility located in an area of confirmed cases of pseudorabies.

(2) Shall not be in the vicinity of a breeding herd. Effective June 1, 2000, an approved premises shall not be located in a county designated as in Stage III of the national pseudorabies eradication program, nor shall it be located in a county which has achieved 0 percent prevalence of pseudorabies infection among all herds in the county as of March 1, 2000, or later. Effective August 1, 2000, an approved premises shall not be located within one and one-half miles of a noninfected herd or three miles of a qualified negative herd.

(3) Shall be built such that it can be thoroughly cleaned and disinfected.

(4) The lay of the land or the facilities shall not be conducive to animal waste draining onto adjacent property.

(5) Only feeder swine and cull swine may be moved onto this premises. Boars and sows are to be maintained separate and apart.

(6) Swine on the premises must be maintained in isolation from other livestock.

c. The permittee must provide to the department or inspection service, during normal business hours, access to the approved premises and to all required records. Records of swine transfers must be kept for at least one year. The records shall include information about purchases and sales, names of buyers and sellers, the dates of transactions, and the number of swine involved with each transaction.

d. Swine must be vaccinated for pseudorabies according to the herd cleanup plan. Vaccination records must be available for inspection during normal business hours.

e. Dead swine must be disposed of in accordance with Iowa Code chapter 167. The dead swine must be held so as to prevent animals, including wild animals and livestock, from reaching the dead swine.

f. Swine must be moved direct to slaughter or to another approved premises by restricted movement and as detailed in the herd cleanup plan.

g. An approved premises permit may be revoked by following quarantine release methods as detailed in Iowa Code section 166D.9, or failure to comply with departmental operation rules, or if swine have been removed from the premises for a period of 12 or more months.

h. Renewal of an approved premises will not be permitted when:

(1) The approved premises is not compliant with the requirements of this rule.

(2) Federal law prohibits approved premises.

(3) The approved premises no longer is part of an approved herd cleanup plan, or the county where the approved premises is located no longer allows approved premises or the site of the approved premises no longer complies with requirements.

i. Revocation of an approved premises will result in the issuance of a quarantine by the department effective until quarantine release methods have been followed as detailed in Iowa Code section 166D.9, or the approved premises has been depopulated by restricted movement to slaughter or to another approved premises as detailed in the herd cleanup plan.

64.160(2) An approved premises will be considered permitted as long as the approved premises is compliant with all regulations and is part of an approved herd cleanup plan.

21—64.161(166D) Sales to approved premises. After June 1, 2000, all feeder pigs and cull swine except those from “noninfected herds” must be moved directly to an approved premises by restricted movement for further feeding; however, these pigs may continue to move as cooperator pigs if a “Feeder Pig Cooperator Plan Agreement—Revised” is approved by the department and movement is permitted by the department.

21—64.162(166D) Certification of veterinarians to initiate approved herd cleanup plans and approved feeder pig cooperator plan agreements and fee basis.

64.162(1) Requirements for certification. To be certified, the veterinarian shall meet both of the following requirements:

- a. Be an accredited veterinarian.
- b. Attend and complete continuing education sessions as determined by the Iowa pseudorabies advisory committee and the department.

64.162(2) Responsibilities. A certified veterinarian is authorized to do the following:

- a. Complete and submit herd plan and herd agreement forms (supplied by the department) within ten days of completion for approval by the department.
- b. Review and update herd plans and herd agreements and report to the department any changes made.

64.162(3) Revocation of certification. Failure to comply with the above requirements of this rule will result in revocation of certification.

64.162(4) Remuneration. Compensation will be made to the veterinarian or veterinarians certified to initiate herd plans and herd agreements. Payment will be made from pseudorabies program funds, if available and authorized for these purposes. Fees for payment shall be approved by the advisory committee and established by the department by order. Payment will be made for the following:

- a. Initial herd cleanup plan with or without an accompanying feeder pig cooperator agreement. Payment will be made upon submission of the completed form and department approval of the plan.
- b. Review of herd cleanup plan. Payment will be made upon submission of the completed form and department approval of the plan review.
- c. Upon completion of the herd cleanup plan and release of the infected status, the veterinarian will receive a payment.
- d. All other herd consultation or time devoted to herd plan implementation shall be at owner’s expense.

64.162(5) Fee basis. The following fees are allocated to the testing veterinarian when approved by the department, provided funding is available:

- a. Herd stop fee per stop not to exceed four stops per year.
- b. Bleeding fee per animal, not to exceed 100 tests per herd, per year.
- c. Differentiable vaccine reimbursement per dose, when dispensed during the first 24 months from the date of initial program area designation. Doses of pseudorabies differentiable vaccine are dispensed to infected herds on approved cleanup plans, based upon date of herd plan approval, according to the number of breeding swine.
- d. Fees for additional herd stops and tests may be allocated by approval from the department.

21—64.163(166D) Nondifferentiable pseudorabies vaccine disapproved. Transferred and amended, see 21—64.152(163,166D), IAB 8/19/92.

These rules are intended to implement Iowa Code chapters 163 and 166D.

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

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

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

41.71(2) *Authority of school personnel.*

a. School personnel may order:

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the eligible individual is substantially likely to result in injury to the individual or to others;
- b. Considers the appropriateness of the eligible individual’s current placement;
- c. Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the eligible individual’s current placement, including the use of supplementary aids and services; and
- d. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the eligible individual’s special education teacher meets the requirement of subrule 41.71(4).

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

41.71(4) Determination of setting.

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

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

- (1) Be selected so as to enable the eligible individual to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the individual’s current IEP, that will enable the individual to meet the goals set out in that IEP; and
- (2) Include services and modifications to address the behavior described in subparagraph 41.71(2)“a”(2) and subrule 41.71(3), that are designed to prevent the behavior from recurring.

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

41.72(1) Review process.

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

- (1) Not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and provided the procedural safeguards notice described in rule 41.104(256B,34CFR300); and
- (2) Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the eligible individual’s disability and the behavior subject to the disciplinary action.

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

281—41.135(256B,273,282) Sanctions.

41.135(1) *Suspension of financial aid.* Any financial aid provided to an agency in support of special education may be suspended in whole or in part if the agency is found to be in noncompliance with any of the provisions of applicable statutes or rules. Suspension of financial aid would be only for the specific special education not meeting compliance requirements.

41.135(2) *Noncompliance. When it has been determined that an area of noncompliance exists, the department shall notify the involved agency in writing of the violation, the required corrective action with timelines, appeal rights in accordance with 34 CFR 76.401(d), and the financial aid to be suspended if corrective action does not occur. If corrective action within the prescribed time limit does not occur, the department shall amend its certification to the director of the department of management so that the financial aid in question will be subtracted from funds available to the agency in the next scheduled payment period. In turn, in accordance with 34 CFR §300.197, any public agency in receipt of a notice from the department that the agency has failed to comply with such corrective action shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this rule to the attention of the public within the jurisdiction of the agency.

281—41.136 and 41.137 Reserved.

DIVISION XIII
STATE PLAN

281—41.138(256,256B,273,281) State plan of education for all individuals with disabilities. In accord with 20 U.S.C. §1413 and 34 CFR §300.110, July 1, 1999, the state must submit a state plan to the Secretary of Education.

41.138(1) *Plan contents and process.* The state plan shall meet the requirements of 34 CFR §§300.121 through 300.156 and §§300.280 through 300.284, July 1, 1999.

41.138(2) *Applicability of final approved plan.* The provisions of the state plan are applicable to, shall be adopted by and implemented by all political subdivisions of the state that are involved in and have responsibility for the education of eligible individuals. These would include the department, LEAs, AEs, and other state-operated special education programs as detailed in rule 41.1(256B,34CFR300).

281—41.139 and 41.140 Reserved.

DIVISION XIV
MONITORING OF COMPLIANCE

281—41.141(256B,442) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B and 273.

281—41.142(256B,273,34CFR300) Compliance with federal and Iowa Codes. Each agency shall adhere to the provision of, and implementing regulations and rules to, 20 U.S.C. §§1400 et seq., applicable portions of 29 U.S.C. §794 pertaining to eligible individuals and Title 42 U.S.C. §§2116 et seq., and Iowa Code chapters 256B and 273.

281—41.143(34CFR300) Monitoring.

41.143(1) The agency's adherence to federal and state code shall be monitored on a regular basis by the department in accord with 20 U.S.C. §§1232 et seq. The department shall conduct monitoring activities based on predetermined and disseminated standards and procedures. Each agency shall provide the department with reports, records and access to programs and personnel needed to conduct monitoring activities.

* Reference added pursuant to agency request, IAC Supplement 7/26/00.

41.143(2) Copies of applicable standards shall be disseminated to each private school and facility to which a public agency has referred or placed a child with a disability.

41.143(3) An opportunity shall be provided for those private schools and facilities to participate in the development and revision of standards that apply to them.

281—41.144(256B,273,282) Sanctions. When it has been determined that an area of noncompliance exists, the department shall notify the involved agency in writing of the violation and the required corrective action with timelines. If the corrective action within the prescribed timelines does not occur, the department shall implement sanctions as described in 41.135(256B,273,282).

These rules are intended to implement Iowa Code chapters 256B and 273 and 34 CFR Part 300.

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CHAPTER 42
Reserved

*Effective date of Chapter 12 delayed 70 days by the Administrative Rules Review Committee. Delay lifted by Committee on 7/8/85.

**Effective date of 41.2(3); 41.3(256B), definitions of "Autism," "Head injury," "Transition services," "Behaviorally disordered," paragraph "1," "Special education support programs and services"; 41.4(1); 41.18(2)"d"; 41.33(4); 41.33(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held August 3, 1993; delay lifted by this Committee on 9/15/93.

CHAPTER 13
PROGRAM EVALUATION

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25.62(6) Records. Any records maintained by the board or on behalf of the board shall be made available to the public for examination in compliance with Iowa's open records law, Iowa Code chapter 22. To the extent possible, prior to submitting applications, records and documents, applicants shall delete any confidential information. These records shall be maintained in the office of the division of mental health and developmental disabilities.

25.62(7) Conflict of interest. A board member cannot be a part of any presentation to the board of that board member's county's application for risk pool funds nor can the board member be a part of any action pertaining to that application.

25.62(8) Robert's Rules of Order. In cases not covered by these rules, Robert's Rules of Order shall govern.

441—25.63(426B) Application process.

25.63(1) Who may apply. A county may make an aggregate or individual application at any time on or before April 1 of any given year for the current fiscal year budget whenever the projected need exceeds the sum of 105 percent of the county's current fiscal year budget amount and the county's prior fiscal year accrual ending fund balance exceeds 25 percent of the prior fiscal year gross services fund expenditures.

The purpose of the mental health risk pool is to assist counties whose expenditures in the mental health, mental retardation, and developmental disabilities services fund exceed budgeted costs due to unanticipated expenses for new individuals or other unexpected factors. The mental health risk pool is not intended for multiyear usage or as a source of planned revenue.

25.63(2) How to apply. The county shall send Form 470-3723, Risk Pool Application, plus 15 copies, to the division. The division must receive the application no later than 4:30 p.m. on April 1 of each year; or, if April 1 is a holiday, a Saturday or Sunday, the division must receive the application no later than 4:30 p.m. on the first working day following. Facsimiles and electronic mail are not acceptable. The application shall be signed and dated by both the chairperson of the county board of supervisors and the central point of coordination administrator. Staff of the division shall notify each county of receipt of the county's application.

The county shall attach the following forms to the application:

- a. Form 634A, Revenues Detail.
- b. Form 634B, Service Area Detail (pages 1 to 10).
- c. Form 634C, Service Area 4 Supporting Detail (pages 1 to 8).
- d. Form 638R, Statement of Revenues, Expenditures, and Changes in Fund Balance—Actual and Budget (2 pages).
- e. If the budget has been amended, Form 653A-R, Record of Hearing and Determination on the Amendment to County Budget (sheet 2), for both the current fiscal year budget, as last amended, and the prior fiscal year gross services fund expenditures.

25.63(3) Request for additional information. Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county within four working days after April 1 or the first working day thereafter, if April 1 is a holiday, a Saturday or Sunday, and request the information needed to complete the application. The county shall submit the required information within five working days from the date of the division's request for the additional information.

441—25.64(426B) Methodology for awarding risk pool funding.

25.64(1) Notice of decision. The risk pool board shall notify the chair of the applying county's board of supervisors of the board's action. Copies shall be sent to the county auditor and the central point of coordination administrator.

25.64(2) Distribution of funds. The total amount of the risk pool shall be limited to the available pool for a fiscal year. If the total dollar amount of the approved applications exceeds the available pool, the board shall prorate the amount paid for an approved application. The funds will be prorated to each county based upon the proportion each approved county's request is of the total amount of all approved requests.

441—25.65(426B) Repayment provisions.

25.65(1) Required repayment. Counties shall be required to repay risk pool funds in the following situations:

a. A loan was granted to the county because the county did not levy the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund under Iowa Code section 331.424A. The county shall be required to repay the risk pool loan funds in the succeeding fiscal year.

b. The county had levied the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund, but the county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county. The county shall refund the difference between the amount of assistance granted and the actual need.

25.65(2) Year-end report. Each county granted risk pool funds shall complete a year-end financial report. The division shall review the accrual information and notify the mental health risk pool board if any county that was granted assistance in the prior year received more than the county's actual need based on the submitted financial report.

25.65(3) Notification to county. The chairperson of the mental health risk pool board shall notify each county by January 1 of each fiscal year of the amount to be reimbursed. The county shall reimburse the risk pool within 30 days of receipt of notification by the chairperson of the mental health risk pool board. If a county fails to reimburse the mental health risk pool, the board may request a revenue offset through the department of revenue and finance. Copies of the overpayment and request for reimbursement shall be sent to the county auditor and the central point of coordination administrator of the county.

441—25.66(426B) Appeals. The risk pool board may accept or reject an application for assistance from the risk pool fund in whole or in part. The decision of the board is final and is not appealable.

These rules are intended to implement Iowa Code section 426B.5, subsection 3.

441—25.67 to 25.70 Reserved.

DIVISION VI
TOBACCO SETTLEMENT FUND RISK POOL FUNDING

PREAMBLE

These rules provide for use of an appropriation from the tobacco settlement fund to establish a risk pool fund which may be used by counties with limited county mental health, mental retardation and developmental disabilities services funds to pay for increased compensation of the service staff of eligible purchase of service (POS) providers and establish the requirements for counties for receiving and repaying the funding. Implementation of the rate increases contemplated by the tobacco settlement fund in a timely manner will require cooperation among all eligible counties and providers.

441—25.71(78GA, HF2555) Definitions.

"Adjusted actual cost" means a POS provider's cost as computed using the financial and statistical report for the provider's fiscal year which ended during the state fiscal year beginning July 1, 1998 (state fiscal year 1999), as adjusted by multiplying those actual costs by 103.4 percent or the percentage adopted by the risk pool board in accordance with 2000 Iowa Acts, House File 2555, section 3, subsection 3, paragraph "c."

“Department” means the Iowa department of human services.

“Division” means the mental health and developmental disabilities division of the department of human services.

“Financial and statistical report” means a report prepared by a provider and submitted to host counties that is prepared in accordance with department rules for cost determination set forth in 441—Chapter 150.

“Host county” means the county in which the primary offices of a POS provider are located. However, if a POS provider operates separate programs in more than one county, “host county” means each county in which a separate program is operated.

“Purchase of service provider” or *“POS provider”* means a provider of sheltered work, work activity, supported employment, job placement, enclave services, adult day care, transportation, supported community living services, or adult residential services paid by a county from the county’s services fund created in Iowa Code section 331.424A under a state purchase of service or county contract.

“Risk pool board” means that board established by Iowa Code section 426B.5, subsection 3.

“Separate program” means a POS service operated in a county other than the county in which the provider’s home office is located and for which the provider allocates costs separately from similar programs located in the county where the provider’s home office is located.

“Services fund” means the fund defined in Iowa Code section 331.424A.

“Tobacco settlement fund loan” or *“TSF loan”* means the tobacco settlement fund risk pool funds a county received in a fiscal year in which the county did not levy the maximum amount allowed for the county’s mental health, mental retardation, and developmental disabilities services fund under Iowa Code section 331.424A. The repayment amount shall be limited to the amount by which the actual amount levied was less than the maximum amount allowed.

441—25.72(78GA, HF2555) Risk pool board. The risk pool board is organized and shall take action and keep minutes and records as set out in rule 441—25.62(426B).

A risk pool board member cannot be a part of any presentation to the board of that board member’s county’s application for tobacco settlement fund risk pool funds nor can the board member be a part of any action pertaining to that application. If a risk pool board member is employed by or is a board member of a POS provider whose increases in compensation caused the host county to apply to the fund, the board member cannot be a part of any presentation to the board nor can the board member be a part of any action pertaining to that application.

441—25.73(78GA, HF2555) Rate-setting process. For services provided on or after July 1, 2000, each county shall increase its reimbursement rates for each program to the lesser of the adjusted actual cost or 105 percent of the rate paid for services provided on June 30, 2000.

25.73(1) Financial and statistical report. Each provider of POS services shall submit a financial and statistical report to each host county for each program that the provider operates within that county. These reports shall include actual costs for each separate program for the provider’s fiscal year that ended during state fiscal year 1999 and state fiscal year 2000. These reports shall be submitted to the central point of coordination (CPC) administrator of the host county or counties no later than August 15, 2000.

25.73(2) Rate determination. The CPC administrator in each host county shall receive and review provider financial and statistical reports for each separate program for which that county is the host county. If the host county determines that all or part of the provider’s increase in costs is attributable to increases in service staff compensation and that the adjusted actual cost is more than the rate paid by the county on June 30, 2000, the CPC administrator shall notify the provider in writing of the new rate for each program no later than September 1, 2000.

If a rate paid for services provided on June 30, 2000, exceeds the adjusted actual cost, the county shall not be required to adjust the rate for services provided on or after July 1, 2000.

The provider shall, no later than September 11, 2000, send to the CPC administrator of any other counties with consumers in those programs a copy of the rate determination signed by the CPC administrator of the host county. A county may delay payment of the reimbursement rate established pursuant to this subrule until the risk pool board has completed action as to adopting or not adopting a different percentage for the definition of adjusted actual cost, provided however that any increased rates required by 2000 Iowa Acts, House File 2555, section 3, subsection 2, paragraph "c," shall be paid retroactively for all services provided on or after July 1, 2000.

25.73(3) Exemptions.

a. A POS provider that has negotiated a reimbursement rate increase with a host county as of July 1, 2000, has the option of exemption from the provisions of these rules. However, a county shall not be eligible to receive tobacco settlement funds for any rates established outside of the process established in these rules.

b. Nothing in these rules precludes a county from increasing reimbursement rates of POS providers by an amount that is greater than that specified in these rules. However, a county shall not be eligible for tobacco settlement funds for the amount of any rate increase in excess of the amount established pursuant to these rules.

441—25.74(78GA, HF2555) Application process.

25.74(1) Who may apply. If a county determines that payment of POS provider rates in accordance with these rules will cause the county to expend more funds in FY2001 than budgeted for POS services, the county may apply for assistance from the tobacco settlement fund. However, any fiscal year 2000 projected accrual basis fund balances in excess of 25 percent of fiscal year 2000 services fund gross expenditures will reduce the amount for which a county is eligible. In considering the cost of implementing these provisions, a county shall not include the cost of rate increases granted to any providers who fail to complete financial and statistical reports as provided in these rules.

25.74(2) How to apply. The county shall send the original and 15 copies of Form 470-3768, Tobacco Settlement Fund Risk Pool Application, to the division. The division must receive the application no later than 4:30 p.m. on September 25, 2000. Facsimiles and electronic mail are not acceptable. The application shall be signed and dated by the chairperson of the county board of supervisors, the county auditor, and the CPC administrator. Staff of the division shall notify each county of receipt of the county's application.

25.74(3) Request for additional information. Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county by October 5, 2000, and request the information needed to complete the application. The county shall submit the required information by October 16, 2000.

441—25.75(78GA, HF2555) Methodology for awarding tobacco settlement fund risk pool funding.

25.75(1) Review of applications. The risk pool board shall review all of the applications from counties for assistance from the tobacco settlement fund. If the total amount requested from the tobacco settlement fund does not exceed \$2 million, eligible counties shall be awarded funding pursuant to this division. The risk pool board shall determine for each county whether any or all of the assistance granted to that county is a TSF loan.

25.75(2) Notice of decision. The risk pool board shall notify the chair of the applying county's board of supervisors of the board's action no later than November 3, 2000. Copies shall be sent to the county auditor and the CPC administrator.

25.75(3) Distribution of funds. The total amount of the risk pool shall be limited to \$2 million. If the total dollar amount of the eligible applications exceeds the available pool, the risk pool board shall revise the percentage adjustment to actual cost to arrive at adjusted actual cost as defined in this division and prorate funding to the eligible counties. If it becomes necessary to revise the percentage adjustment used to determine adjusted actual cost, the risk pool board shall determine if applicant counties remain eligible under this program.

25.75(4) Notification of adjustment. If the risk pool board rolls back the percentage adjustment used to determine adjusted actual cost, the risk pool board shall notify the chair of the board of supervisors of all counties, and copies shall be sent to the county auditor and the CPC administrator of each county. Each host county shall recalculate the reimbursement rate under this division using the revised adjusted actual cost percentage and notify each provider in writing of the revised rate within 30 days of receiving notice of the percentage adjustment. The provider shall, within 30 days of receipt of notice, send to the CPC administrator of any other counties with consumers in those programs a copy of the revised rate determination signed by the CPC administrator of the host county.

441—25.76(78GA, HF2555) Repayment provisions.

25.76(1) Required repayment. Counties shall be required to repay TSF loans by January 1, 2002. Repayments shall be credited to the tobacco settlement fund.

25.76(2) Notification to county. In the notice of decision provided pursuant to these rules, the chairperson of the risk pool board shall notify each county of the portion, if any, of the assistance that is considered a TSF loan. If a county fails to reimburse the tobacco settlement fund by January 1, 2002, the board may request a revenue offset through the department of revenue and finance. Copies of the overpayment and request for reimbursement shall be sent to the county auditor and the CPC administrator of the county.

441—25.77(78GA, HF2555) Appeals. The risk pool board may accept or reject an application for assistance from the tobacco settlement fund risk pool fund in whole or in part. The decision of the board is final and is not appealable.

These rules are intended to implement 2000 Iowa Acts, House File 2555, section 3, as amended by Senate File 2452, section 4.

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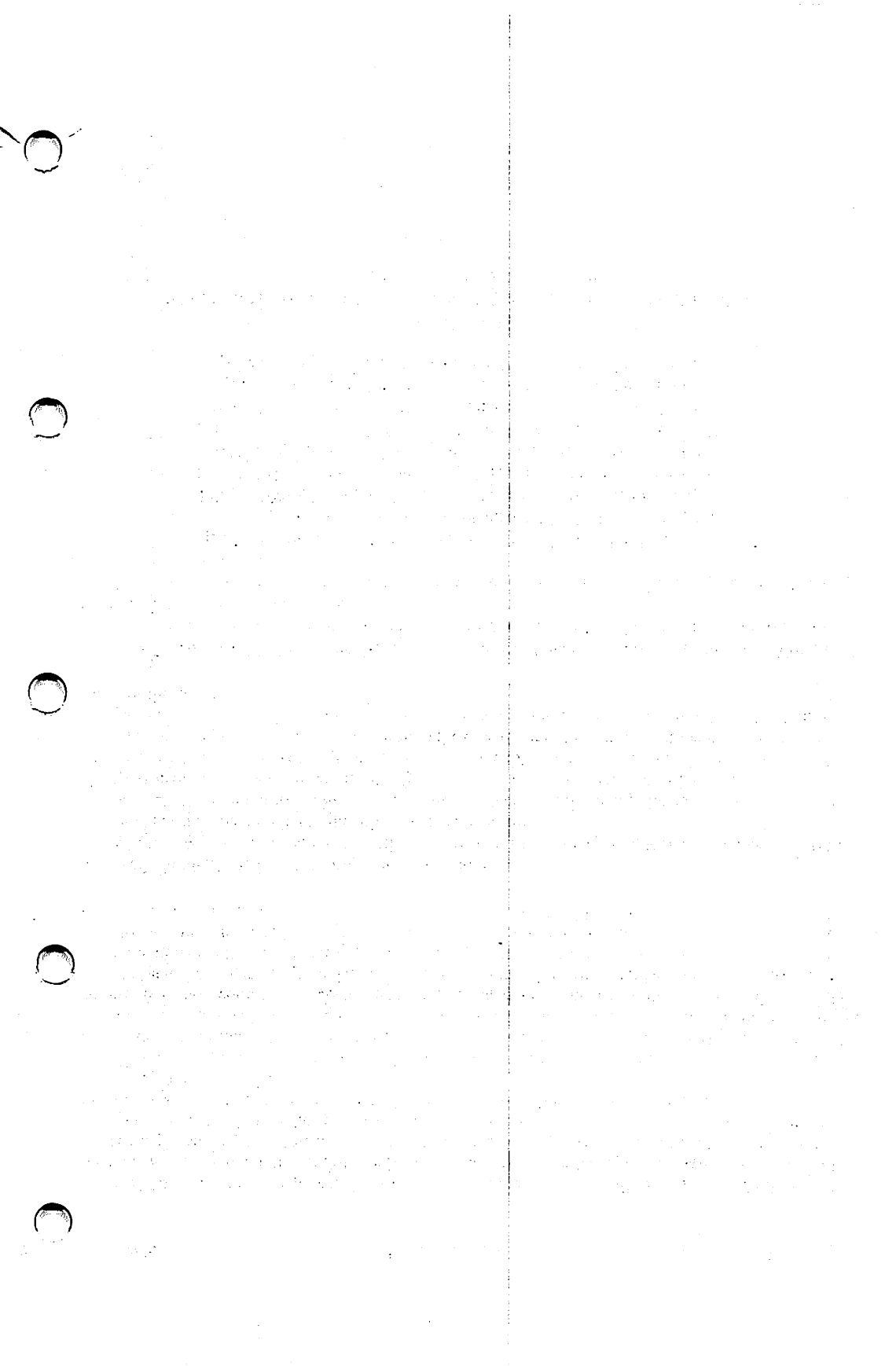
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CHAPTER 26
COUNTY MAINTENANCE OF EFFORT CALCULATIONS AND REPORTING
Rescinded IAB 5/5/99, effective 7/1/99

CHAPTER 27
Reserved



*INSPECTIONS DIVISION*CHAPTER 30
FOOD AND CONSUMER SAFETY

481—30.1(10A) Inspections division's food and consumer safety bureau. The inspections division's food and consumer safety bureau inspects egg handlers, food establishments (retail), food processing establishments (wholesale), food and beverage vending machines, hotels, and food service operations in schools, correctional and penal institutions.

481—30.2(10A) Definitions.

"Baked goods" means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

"Bed and breakfast home" means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home, but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

"Bed and breakfast inn" means a hotel which has nine or fewer guest rooms.

"Boarder" means a person who rents a room, rooms or apartment for at least a week. A boarder is considered permanent and is not a transient guest.

"Boarding house" means a house in which lodging is rented and meals are served to permanent guests. A boarding house is not a food service establishment or hotel unless it rents or caters to transient guests.

"Commissary" means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment's own outlets.

"Contractor" means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C, 137D or 137F.

"Criminal offense" means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

"Department" means the department of inspections and appeals.

"Egg handler" or *"handler"* means any person who engages in any business in commerce which involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food. An egg handler does not include a food establishment or home food establishment if either establishment obtains eggs from a licensed egg handler or supplier which meets standards referred to in rule 481—31.2(137F). Producers who sell eggs produced exclusively from their own flocks directly to egg handlers or to consumer customers are exempt from regulation as egg handlers.

"Farmers market" means a marketplace which operates seasonally as a common market for fresh fruits and vegetables on a retail basis for consumption elsewhere.

The following products may be sold at a farmers market without being licensed under Iowa Code section 137F.4 at the market location:

1. Baked goods except the following: soft pies and bakery products with custard or cream fillings, as well as other potentially hazardous items. These products must be labeled in accordance with rule 481—34.3(137D).
2. Wholesome, fresh eggs.
3. Honey which is labeled per rule 481—34.3(137D).

4. Prepackaged, not hazardous food products prepared in an establishment licensed under Iowa Code section 137F.4 as a food establishment or a food processing establishment.

5. Fresh fruits and vegetables.

6. Not potentially hazardous food prepared on the premises of a residence. This exemption does not include “home-style” canning, since food in hermetically sealed containers must come from a licensed food processing plant.

7. Jams and jellies.

“*Food establishment*” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school or the Iowa juvenile home. “Food establishment” does not include the following:

1. A food processing plant.

2. An establishment that offers only prepackaged foods that are not potentially hazardous.

3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.

4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.

5. Premises which operate as a farmers market.

6. Premises of a residence in which food that is not potentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food.

7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.

8. A private home that receives catered or home-delivered food.

9. Child day care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.

10. Supply vehicles, vending machine locations or boarding houses for permanent guests.

11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.

12. Premises covered by a current Class “A” beer permit as provided in Iowa Code chapter 123.

13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.

14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler’s license.

“*Food processing plant*” means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. “Food processing plant” does not include premises covered by a Class “A” beer permit as provided in Iowa Code chapter 123.

“*Food service establishment*” means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or subject to Iowa sales tax as provided in Iowa Code section 422.45.

“*Home food establishment*” means a business on the premises of a residence where potentially hazardous bakery goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed \$20,000. This term does not include a residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations. Residences which prepare or distribute honey, shell eggs or nonhazardous baked goods are not required to be licensed as home food establishments. Home food establishments with annual gross sales of \$1,000 or less in sales of potentially hazardous bakery products are exempt from licensing under Iowa Code section 137D.2, if the food is labeled and the label states that the food comes from a kitchen not under state inspection or licensure and that labeling complies with rule 481—34.3(137D).

"Hotel" means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests.

"License holder" means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C, 137D or 137F.

"Mobile food unit" means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

"Panned candies" are those with a fine hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

"Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum. "Potentially hazardous food" includes an animal food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. "Potentially hazardous food" does not include the following:

1. An air-cooled hard-boiled egg with shell intact.
2. A food with a water activity value of 0.85 or less.
3. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees Centigrade or 75 degrees Fahrenheit.
4. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

"Pushcart" means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

"Retail food establishment" means a food establishment that sells food or food products to consumer customers intended for preparation or consumption off the premises.

"Revoke" means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C, 137D or 137F. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.

"Salvage food" means food from truck wrecks, fires, tornadoes or other disasters which involve food products.

"Suspend" means to render a license issued under Iowa Code chapter 137C, 137D, 137F or 196 invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

"Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

"Transient guest" means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

"Vending machine" means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged, nonpotentially hazardous foods, panned candies, gumballs or nuts are exempt from licensing, but may be inspected by the department upon receipt of a written complaint.

481—30.3(137C,137D,137F,196) Licensing. A license to operate any of the above must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; location of buildings; or other data relative to the license requested. Applications are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

30.3(1) A license is not transferable. Licenses are not refundable unless the license is surrendered to the department prior to the effective date of the license.

30.3(2) A license is renewable and expires after one year.

30.3(3) A valid license shall be posted no higher than eye level where the public can see it. Vending machines shall bear a tag to affirm the license.

30.3(4) Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license.

Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

30.3(5) The regulatory authority may require documentation from a license holder of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing establishment. The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. Documentation shall include at least one of the following:

- a. A copy of the firm's business tax return;
- b. Quarterly sales tax data;
- c. A letter from an independent tax preparer;
- d. Other appropriate records.

This rule is intended to implement Iowa Code sections 10A.502(2), 137C.8, 137D.2 and 137F.4 to 137F.6.

481—30.4(137C,137D,196) License fees. The license fee is the same for an initial license and a renewal license. Licenses expire one year from the date of issuance, except for temporary food establishments. Applications for licenses are available from the Department of Inspections and Appeals, Inspections Division, Lucas State Office Building, Des Moines, Iowa 50319-0083; or from a contracting local health department. License fees are set by the Iowa Code sections listed below and charged as follows:

30.4(1) Retail food establishments are based on annual gross sales of food or food products to consumer customers intended for preparation or consumption off the premises (Iowa Code section 137F.6) as follows:

- a. For annual gross sales of less than \$10,000—\$30;
- b. For annual gross sales of \$10,000 to \$250,000—\$75;
- c. For annual gross sales of \$250,000 to \$500,000—\$115;
- d. For annual gross sales of \$500,000 to \$750,000—\$150;
- e. For annual gross sales of \$750,000 or more—\$225.

30.4(2) Food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6) or subject to Iowa sales tax as provided in Iowa Code section 422.45 as follows:

- a. For annual gross sales of less than \$50,000—\$50;
- b. For annual gross sales of \$50,000 to \$100,000—\$85;
- c. For annual gross sales of \$100,000 to \$250,000—\$175;
- d. For annual gross sales of \$250,000 to \$500,000—\$200;
- e. For annual gross sales of \$500,000 or more—\$225.

481—30.10(137C,137D,137F) Local contracts. The department may contract with municipal corporations to inspect and collect license fees from any establishment covered by these rules. Inspections shall be pursuant to 481—Chapters 30, 31 and 37. A list of contracts is available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

This rule is intended to implement Iowa Code section 137F.3.

481—30.11(22) Examination of records. Information collected by the inspections division is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director.

481—30.12(137C,137D,137F,196) Denial, suspension or revocation of a license to operate. Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

481—30.13(10A) Formal hearing. All decisions of the bureau may be contested by an adversely affected party. Request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, “Contested Case Hearings.”

30.13(1) The proposed decision of the administrative law judge becomes final 30 days after it is mailed.

30.13(2) Any request for administrative review of a proposed decision must:

- a. Be made in writing;
- b. Be filed with the director of the department of inspections and appeals within 30 days after the proposed decision was mailed to the aggrieved party (date of receipt by personal service or the post-marked date is time of filing);
- c. State the reason(s) for the request.

30.13(3) The decision of the director shall be based upon the record and becomes final agency action upon mailing.

481—30.14(137D,137F,196) False label or defacement. No person shall use any label required by Iowa Code chapter 137C, 137F or 196 which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by these chapters.

This rule is intended to implement Iowa Code section 137F.3.

These rules are intended to implement Iowa Code sections 10A.104, 10A.502 and 22.11 and Iowa Code chapters 137C, 137D, 137F and 196.

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CHAPTER 31
FOOD ESTABLISHMENT AND FOOD
PROCESSING PLANT INSPECTIONS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Chs 21 and 22]

481—31.1(137F) Inspection standards. Standards in the 1997 edition of the Food Code Recommendations of the Food and Drug Administration are used to inspect all food establishments. Exceptions to the Code are as follows:

31.1(1) Subparagraph 1-201.10(B)(31) and Section 3-403.10 are deleted.

31.1(2) Food prepared in a home food establishment, licensed under Iowa Code section 137D.2, can be offered for sale.

31.1(3) Paragraph 3-301.11(b) is changed to read:

a. Except when washing fruits and vegetables, food employees should, to the extent practicable, avoid contact with exposed, ready-to-eat food with their bare hands. Where food is routinely handled by employees, employers should adopt reasonable sanitary procedures to reduce the risk of the transmission of pathogenic organisms.

b. In seeking to minimize employee's physical contact with ready-to-eat foods, no single method or device is universally practical or necessarily the most effective method to prevent the transmission of pathogenic organisms in all situations. As such, each public food service establishment shall review its operations to identify procedures where ready-to-eat food must be routinely handled by its employees and adopt one or more of the following sanitary alternatives, to be used alone or in combination, to prevent the transmission of pathogenic organisms:

(1) The use of suitable food handling materials including, but not limited to, deli tissues, appropriate utensils, or dispensing equipment. Such materials must be used in conjunction with thorough hand-washing practices in accord with subparagraph (3).

(2) Single-use gloves, for the purpose of preparing or handling ready-to-eat foods, shall be discarded when damaged or soiled or when the process of food preparation or handling is interrupted. Single-use gloves must be used in conjunction with thorough hand-washing practices in accord with subparagraph (3).

(3) The use, pursuant to the manufacturer's instructions, of anti-microbial soaps, with the additional optional use of anti-bacterial protective skin lotions or anti-microbial hand sanitizers, rinses or dips. All such soaps, lotions, sanitizers, rinses and dips must contain active topical anti-microbial or anti-bacterial ingredients, registered by the United States Environmental Protection Agency, cleared by the United States Food and Drug Administration, and approved by the United States Department of Agriculture.

(4) The use of such other practices, devices, or products that are found by the division to achieve a comparable level of protection to one or more of the sanitary alternatives in subparagraphs (1) through (3).

c. Regardless of the sanitary alternatives in use, each public food service establishment shall establish:

(1) Systematic focused education and training of all food service employees involved in the identified procedures regarding the potential for transmission of pathogenic organisms from contact with ready-to-eat food. The importance of proper hand washing and hygiene in preventing the transmission of illness, and the effective use of the sanitary alternatives and monitoring system utilized by the public food service establishment, shall be reinforced. The content and duration of this training shall be determined by the manager of the public food service establishment.

(2) A monitoring system used to demonstrate the proper and effective use of sanitary alternatives utilized by the public food service establishment.

31.1(4) Section 3-501.16 shall be amended by adding the following: "Shell eggs shall be received and held at an ambient temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius."

31.1(5) Paragraph 3-502.12(A) shall be amended by adding the following: "Packaging of raw meat and raw poultry using an oxygen packaging method, with a 30-day 'sell by' date from the date it was packaged, shall be exempt from having a HACCP Plan that contains the information required in this section and Section 8-201.14."

31.1(6) Section 3-603.11 shall be amended by adding the following: "The following standardized language shall be used on the required consumer advisory: 'Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.'"

31.1(7) Section 5-203.15 shall be amended so that a carbonating device in a food establishment shall have a dual check valve which shall be installed so that it is upstream from the carbonating device and downstream from any copper in the water supply line.

31.1(8) Section 2-301.15 shall be amended by adding the following: "Establishments originally licensed prior to the effective date of this law, January 1, 1999, where a combination sink was approved by the department of inspections and appeals for both hand washing and use as a service sink can use this combination sink for both hand washing and as a service sink for the disposal of mop water as long as the establishment is not remodeled."

31.1(9) Section 5-203.13 is amended so that food service establishment license holders for establishments built prior to January 1, 1979, are not required to have a service or utility sink for the disposal of mop water unless the establishment is remodeled.

31.1(10) Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments.

31.1(11) Section 5-203.14 is amended by adding the following: "Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve."

31.1(12) Paragraph 5-402.11(C) is amended by adding the following: "A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air gap of not less than one inch between the outlet and the rim of the floor sink or receptor."

31.1(13) Paragraph 4-301.12(C) is amended by adding the following: "Establishments need not have a three-compartment sink when each of the following conditions is met:

1. Three or fewer utensils are used for food preparation;
2. Utensils are limited to tongs, spatulas and scoops;
3. The department has approved after verification that the establishment can adequately wash and sanitize these utensils."

31.1(14) Paragraph 3-201.16(B) shall be amended to permit wild morel mushrooms to be sold in food establishments.

31.1(15) Paragraphs 3-501.17(C) and (D) shall be amended so that aged cheese is not required to be date-marked.

31.1(16) Section 3-603.11 shall be amended so that a consumer advisory is not required when a food establishment serves undercooked whole muscle red meats.

481—31.2(137F) Food processing plant standards.

1. Standards used to inspect establishments where wholesale food is manufactured, processed, packaged or stored are found in the Code of Federal Regulations in 21 CFR, Part 110, April 1, 1998, publication, "Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding Human Food."

2. Standards used to inspect establishments where bakery products, flour, cereals, food dressings and flavorings are manufactured on a wholesale basis are found in the Code of Federal Regulations, in 21 CFR, Parts 136, 137 and 169, April 1, 1998, publication.

3. Standards used to inspect establishments which process low-acid food in hermetically sealed containers are found in 21 CFR, Part 113, April 1, 1998, "Thermally Processed Low-Acid Food Packaged in Hermetically Sealed Containers."

4. Standards used to inspect establishments which process acidified foods are found in 21 CFR, Part 114, April 1, 1998, "Acidified Foods."

5. Standards used to inspect establishments which process bottled drinking water are found in the Code of Federal Regulations in 21 CFR, Parts 129 and 165, April 1, 1998, publication, "Processing and Bottling of Bottled Drinking Water" and "Beverages."

6. In addition to compliance with 31.2"1," manufacturers of packaged ice must comply with the following:

- Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which includes the use of sanitizers to eliminate micro-organisms must be developed and used.

- Packaged ice must be tested every 120 days for the presence of bacteria.

- Plants that use a non-public water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination.

Copies of these regulations are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

481—31.3(137F) Trichinae control for pork products prepared at retail. Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 1998, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of "certified pork" as authorized by the department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service shall meet the requirements of this rule.

481—31.4(137F) Demonstration of knowledge. Section 2-102.11 shall be amended by adding the following: "Completion of a certification program, as defined in 481—Chapter 32, by the person in charge who has shown proficiency of the required information through passing a test that is part of an approved program. The certification program has been reviewed by the department as meeting the requirements in 481—Chapter 32."

481—31.5(137F) Labeling. The following labeling standards are required in addition to those in the Food Code. Labels on or with packaged foods shall be in legible English and state:

1. The true name, brand or trademark of the article;

2. The names of all ingredients in the food, beginning with the one present in the largest proportion and in descending order of predominance;

3. The quantity of the contents in terms of weight, measure or numerical count;

4. The name and address of the manufacturer, packer, importer, distributor or dealer.

Foods and food products labeled in conformance with the labeling requirements of the government of the United States as listed in the Code of Federal Regulations in 21 CFR, April 1, 1998, publication, Parts 101 and 102, are considered in compliance with the Iowa labeling law.

481—31.6(137F) Adulterated food and disposal. No one may produce, distribute, offer for sale or sell adulterated food. "Adulterated" is defined in the federal Food, Drug and Cosmetic Act, Section 402.

Adulterated food shall be disposed of in a reasonable manner as determined by the department. The destruction of adulterated food shall be watched by a person approved by the department.

481—31.7(137F) Mobile food units/pushcarts. In addition to the Food Code provisions outlined in the FDA Food Code Mobile Food Establishment Matrix, mobile food units/pushcarts must comply with the following:

31.7(1) Licenses. All mobile food units/pushcarts must be licensed by the department. Applications for licenses are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. The unit shall be inspected by a representative of the department and determined to be in compliance with the rules and regulations of the department prior to the granting of the license.

31.7(2) Personnel.

a. The person in charge shall take appropriate action to ensure that no person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a mobile food unit/pushcart in any capacity in which there is a likelihood of the person's contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons. The person in charge shall require food employee applicants and food employees to report information about the employee's health and activities as they relate to diseases transmissible through food.

b. Employees shall have clean garments, aprons and effective hair restraints. Smoking, eating or drinking in the mobile food unit/pushcart is not allowed. All unauthorized persons are to be kept out of the mobile food unit/pushcart.

c. All employees shall be under the direction of the person in charge. The person in charge shall ensure that workers are effectively cleaning their hands, that potentially hazardous food is adequately cooked, held or cooled, and that all multiuse equipment or utensils are adequately washed, rinsed and sanitized.

31.7(3) Food.

a. *Approved food source.* All food supplies shall come from a commercial manufacturer or a source that complies with both state and federal laws. The use of food in hermetically sealed containers that is not prepared in an approved food processing plant is prohibited.

b. *Food preparation.* Unless washing fruits and vegetables, food employees shall, to the extent practicable, avoid direct, bare-hand contact with ready-to-eat food. All establishments shall train food employees on the need and public health reasons for adequate hand washing and personal hygiene. The person in charge shall monitor employee hand-washing practices to ensure that employees are effectively cleaning their hands. One of the following alternatives shall be used by food employees when handling ready-to-eat food:

(1) Single-use gloves, utensils, deli tissue, spatulas, tongs or dispensing equipment; or

(2) An approved antibacterial soap with all operations that permit limited bare-hand contact with ready-to-eat food.

c. *Date marking.* All ready-to-eat foods that are potentially hazardous shall be date-marked, if held more than 24 hours, and discarded after seven days if the food is kept at an internal temperature of 41°F or below.

d. *Food protection.* All food shall be covered and stored off the floor. Condiments such as ketchup, mustard, coffee creamer and sugar shall be served in individual packets or from squeeze containers or pump bottles. Milk shall be dispensed from the original container or from an approved dispenser. Ice used as a food or a cooling medium shall be made of drinking water and be manufactured in an approved source. Fruits and vegetables must be washed before being used or sold. All food shall be protected from customer handling, coughing or sneezing by wrapping, sneeze guards or other effective means. All cooking and serving areas shall be adequately protected from contamination.

f. *Thermometers.* Each refrigeration unit shall have a numerically scaled thermometer to measure the air temperature of the unit accurately. A metal stem thermometer shall be provided where necessary to check the internal temperature of both hot and cold food. Thermometers must be accurate and have a range from 0°F to 220°F.

g. *Food display.* Foods on display must be covered. The public is not allowed to serve itself from opened containers of food or uncovered food items. Condiments such as ketchup, mustard, coffee creamer and sugar shall be served in individual packets or from squeeze containers or pump bottles. Milk shall be dispensed from the original container or from an approved dispenser. All fruits and vegetables must be washed before being used or sold. Food must be stored at least six inches off the ground. All cooking and serving areas shall be adequately protected from contamination. Barbeque areas shall be roped off or otherwise protected from the public. All food shall be protected from customer handling, coughing or sneezing by wrapping, sneeze guards or other effective means.

h. *Food preparation.* Unless washing fruits and vegetables, food employees shall, to the extent practicable, avoid direct, bare-hand contact with ready-to-eat food. Establishments shall train food employees on the need and public health reasons for adequate hand washing and personal hygiene. The person in charge shall monitor employee hand-washing practices to ensure that employees are effectively cleaning their hands. One of the following alternatives shall be used by food employees when handling ready-to-eat food:

- (1) Single-use gloves, utensils, deli tissue, spatulas, tongs or dispensing equipment; or
- (2) An approved antibacterial soap with all operations that permit limited bare-hand contact with ready-to-eat foods.

i. *Approved food source.* All food supplies shall come from a commercial manufacturer or an approved source. The use of food in hermetically sealed containers that is not prepared in an approved food processing plant is prohibited. Transport vehicles used to supply food products are subject to inspection and shall protect food from physical, chemical and microbial contamination.

j. *Leftovers.* Leftovers may not be used, sold or given away in a temporary food establishment. Hot-held foods that are not used by the end of the day must be discarded.

31.12(3) Utensil storage and warewashing.

a. *Single-service utensils.* The use of single-service plates, cups and tableware is strongly recommended. The use of multiuse eating or drinking utensils must be approved by the department.

b. *Dishwashing.* An adequate means to heat the water and a minimum of three basins large enough for complete immersion of the utensils are required to wash, rinse and sanitize utensils or food-contact equipment.

c. *Sanitizers.* Chlorine bleach or another approved sanitizer shall be provided for warewashing sanitization and wiping cloths. An appropriate test kit shall be provided to check the concentration of the sanitizer used. The person in charge shall demonstrate knowledge in the determination of the correct concentration of sanitizer to be used.

d. *Wiping cloths.* Wiping cloths shall be stored in a clean, 100 ppm chlorine sanitizer solution or equivalent. Sanitizing solution shall be changed as needed to maintain the solution in a clean condition.

31.12(4) Water.

a. *Water supply.* An adequate supply of clean water shall be provided from an approved source. Water storage units and hoses shall be food grade and approved for use in storage of water. If not permanently attached, hoses used to convey drinking water shall be clearly and indelibly identified as to their use. Water supply systems shall be protected against backflow or contamination of the water supply. Backflow prevention devices, if required, shall be maintained and adequate for their intended purpose.

b. *Wastewater disposal.* Wastewater shall be disposed of in an approved wastewater disposal system sized, constructed, maintained and operated according to law.

31.12(5) Premises.

a. Hand-washing container. An insulated container with at least a two-gallon capacity with a spigot, basin, soap and dispensed paper towels shall be provided for hand washing. The container shall be filled with hot water.

b. Floors, walls and ceilings. If required, walls and ceilings shall be of tight design and weather-resistant materials to protect against the elements and flying insects. If required, floors shall be constructed of tight wood, asphalt, rubber or plastic matting or other cleanable material to control dust or mud.

c. Lighting. Adequate lighting shall be provided. Lights above exposed food preparation areas shall be shielded.

d. Food preparation surfaces. All food preparation or food contact surfaces shall be of a safe design, smooth, easily cleanable and durable.

e. Garbage containers. An adequate number of cleanable containers with tight-fitting covers shall be provided both inside and outside the establishment.

f. Toilet rooms. An adequate number of approved toilet and hand-washing facilities shall be provided at each event.

g. Clothing. Personal clothing and belongings shall be stored at a designated place in the establishment, adequately separated from food preparation, food service and dish-washing areas.

These rules are intended to implement Iowa Code section 137F.7.

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CHAPTER 34
HOME FOOD ESTABLISHMENTS

481—34.1(137D) Inspection standards.

34.1(1) All ingredients must come from a licensed or approved source except for fresh fruits and vegetables, nonhazardous baked goods and honey or eggs. The use of food in hermetically sealed containers not prepared in a licensed food processing plant is prohibited.

34.1(2) All food products and ingredients shall be stored in original containers. If removed from the original container, food and ingredients must be stored in labeled and closed containers. Container must be of a material that will not cause the food to become adulterated.

34.1(3) All food shall be in sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption. Food products shall not be stored on the floor.

34.1(4) All potentially hazardous food must be refrigerated at 41°F or less, or held at 140°F or higher to control bacteria growth. Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165°F or higher before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.

34.1(5) Food storage facilities must be kept clean and located to protect food from unsanitary conditions or contamination from any source at all times.

34.1(6) The floors, walls, ceilings, utensils, machinery, equipment and supplies in the food preparation area and all vehicles used in the transportation of food must be kept thoroughly clean. All food contact surfaces shall be easy to clean, smooth, nonabsorbent, and free of cracks or open seams.

34.1(7) All food must be protected against insects and rodents at all times. Outside doors, windows, and other openings must be fitted with screens and self-closing doors, if not otherwise protected. No dogs, cats, or other pets are allowed in the room where food is prepared or stored.

34.1(8) All garbage and refuse must be kept in containers and removed from the premises regularly to eliminate insects and rodents, offensive odors, or health or fire hazards. Garbage and refuse containers must be durable, easy to clean, insect- and rodent-resistant and of material that neither leaks, nor absorbs liquid.

34.1(9) All food handlers must be free from contagious or communicable diseases, sores or infected wounds, and must keep their hair covered and restrained.

34.1(10) All food handlers must keep themselves and their clothing clean. Hands must be washed as frequently as necessary to maintain good sanitation.

34.1(11) Smoking is not permitted while handling or preparing food or in food preparation or storage areas.

34.1(12) All establishments must have an adequate supply of hot and cold potable water under pressure from an approved source. Facilities must ensure that equipment, utensils, and containers used in the preparation of food shall be washed, rinsed and sanitized. If the residence is not served by a public water system, the water must be tested annually for nitrites and coliform. Records of water tests must be maintained by license holders who are not served by a public system. These records must be available to the regulatory authority upon request.

34.1(13) All establishments must have proper toilet facilities, equipped with a hand-washing lavatory, complete with hot and cold potable water under pressure and hand soap. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near the hand-washing facility.

34.1(14) Rescinded IAB 9/22/99, effective 10/27/99.

481—34.2(137D) Enforcement. All critical violations (four- and five-point items) shall be corrected within 10 days. Within 15 days, the license holder shall make a written report to the regulatory authority, stating the action taken to correct the critical violation. All noncritical violations shall be corrected by the next routine inspection.

Violation of these rules or any provision of Iowa Code chapter 137D is a simple misdemeanor. The department may employ various remedies if violations are discovered.

A license may be revoked.

An injunction may be sought.

A case may be referred to a county attorney for criminal prosecution.

481—34.3(137D) Labeling requirement. All labels shall contain the following information in legible English:

1. Name and address of the person(s) preparing the food,
2. Common name of the food,
3. The names of all ingredients in the food, beginning with the one present in the largest proportion and continuing in descending order of predominance, and
4. The quantity of the contents in terms of weight, measure or numerical count.

481—34.4(137D) Annual gross sales. Annual gross sales shall not exceed \$20,000. The license holder shall maintain a record of sales of food licensed under Iowa Code section 137D.1(3). The record shall be available to the regulatory authority when requested.

481—34.5(137D) Criminal offense—conviction of license holder.

34.5(1) The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed home food establishment; and

b. Is convicted of a felony as a result.

34.5(2) The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed home food establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

34.5(3) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

34.5(4) The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

This rule is intended to implement Iowa Code section 137D.8(3).

These rules are intended to implement Iowa Code chapter 137D.

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[Filed 7/5/00, Notice 5/31/00—published 7/26/00, effective 8/30/00]

CHAPTER 37
HOTEL AND MOTEL INSPECTIONS

481—37.1(137C) Building and grounds. Owners or managers are expected to keep hotels clean. This means there shall be no litter nor accumulation of refuse anywhere on the premises.

The floors, walls, and ceilings shall be kept clean and in good repair.

37.1(1) Screens or self-closing doors shall be used to keep flies, mosquitoes and other pests out of hotel lobbies, kitchens, or any other indoor area. Other effective methods are acceptable.

37.1(2) All garbage must be kept in metal or plastic containers with tight-fitting lids. Garbage must be removed regularly so it does not create offensive odors, a problem with insects or rodents, or health or fire hazards.

37.1(3) Any room or article which becomes infested with insects or vermin shall be cleaned or chemically treated until there are no more insects or vermin.

481—37.2(137C) Guest rooms. Hotels built or extensively remodeled as determined by the department, after January 1, 1979, shall provide ventilation in guest rooms with windows or mechanical devices. The furniture, drapes and accessories shall be kept clean and in good repair.

481—37.3(137C) Bedding. All materials used on a bed or any sleeping place shall be kept clean and in good repair.

37.3(1) There shall be an under sheet and top sheet for every bed. Pillows shall have pillow slips. The sheets shall be large enough to completely cover the mattress.

37.3(2) Each guest shall be furnished clean sheets and pillow slips.

37.3(3) All other bedding shall be aired between guests and shall be kept clean.

481—37.4(137C) Lavatory facilities. Hotels built or remodeled after January 1, 1979, shall have lavatory facilities in each guest room, except for bed and breakfast inns.

37.4(1) Each guest room shall be equipped with hot and cold running water. The fixtures must be easy to clean. The floors shall be nonabsorbent and impermeable so they can be washed with water.

37.4(2) Lavatory rooms shall be well-lighted and shall be vented to the outside of the building. This may be done with electric units.

37.4(3) Each guest shall have a clean towel each day.

37.4(4) Bed and breakfast inns shall provide at least one restroom which is available to overnight guests. The restroom must be equipped as provided in subrules 37.4(1) to 37.4(3).

481—37.5(137C) Glasses and ice.

37.5(1) Each guest shall have clean glasses to use. All cups, glasses or utensils usable more than once shall be sanitized by:

a. Immersion for at least one-half minute in clean, hot water at a temperature of at least 170°F; or

b. Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75°F; or

c. Immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F; or

d. Immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 CFR 178.1010 that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75°F for one minute.

37.5(2) When hot water is used for sanitizing, the following equipment shall be used:

a. An integral heating or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F; and

b. A numerically scaled indicating thermometer, accurate to $\pm 3^\circ\text{F}$, convenient to the sink for frequent checks of water temperature.

37.5(3) Ice kept for guests to use shall be protected from contamination. Lids on ice machines or storage bins shall be tight. Containers used to store ice shall be continuously drained and there shall be an air gap in addition to the drain. Ice containers and utensils shall be designed so that the surfaces are made of a material that is safe for use as a food contact surface and so that the surface can be adequately cleaned.

481—37.6(137C) Employees. No employer shall allow a person who has a communicable disease, as defined in Iowa Code chapter 139, to work in a hotel.

481—37.7(137C) Room rates. A list visible to the public posted near the office shall indicate room numbers and floor and the cost per day per person. The cost per day per person shall also be posted in each room.

481—37.8(137C) Inspections. Hotels shall be inspected at least once biennially. An inspector may enter a hotel at any reasonable hour and shall be given free access to every part of the premises for each inspection. The inspector shall receive any help needed to make a thorough and complete inspection.

481—37.9(137C) Enforcement. Violation of these rules or any provision of Iowa Code chapter 137C is a simple misdemeanor. The department may employ various remedies if violations are discovered.

A license may be revoked.

An injunction may be sought.

A case may be referred to a county attorney for criminal prosecution.

481—37.10(137C) Criminal offense—conviction of license holder.

37.10(1) The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed hotel or motel establishment; and

b. Is convicted of a felony as a result.

37.10(2) The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed hotel or motel establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

37.10(3) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

37.10(4) The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

This rule is intended to implement Iowa Code section 137C.10(3).

These rules are intended to implement Iowa Code chapter 137C.

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PERSONNEL DEPARTMENT[581]

[Created by 1986 Iowa Acts, Senate File 2175]

[Merit Employment Department[570] prior to July 1, 1986]

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CHAPTER 1 DEFINITIONS

[Prior to 11/5/86, Merit Employment Department[570]]

581—1.1(19A) Definitions.

“*Absence without leave*” means any absence of an employee from duty without specific authorization.

“*Act*” means Iowa Code chapter 19A creating the department of personnel.

“*Agency*” means a department, independent agency, or statutory office provided for in the Iowa Code section 7E.2.

“*Appointing authority*” means the appointed or elected chief administrative head of a department, commission, board, independent agency, or statutory office or that person’s designee.

“*Base pay*” means a fixed rate of pay for an employee that is exclusive of shift or educational differential, special or extraordinary duty pay, leadworker pay, or any other additional special pay.

“*Call back pay*” means extra pay for eligible employees who are directed by the appointing authority to report back to work outside of their regular scheduled work hours that are not contiguous to the beginning or the end of their scheduled work hours.

“*Certification*” means the referral of available names from an eligible list to an agency for the purpose of making a selection in accordance with these rules.

“*Certified disability program*” means that program covering persons with disabilities who have been certified by the vocational rehabilitation division of the department of education or the department for the blind as being able to perform the duties of a job class without participation in examinations used for the purpose of ranking qualified applicants on nonpromotional eligible lists.

“*Class*” means one or more positions so similar in duties, responsibilities, and qualifications that each may be assigned to the same job title and pay plan.

“*Classification plan*” means the printed list of job classifications and the related elements assigned to each. The classification plan is published annually by the department and revised as necessary.

“*Compensatory leave*” means leave accrued as a result of overtime, call back, standby, holidays, or holiday work.

*“*Confidential employee*” means, for purposes of merit system coverage, the personal secretary of: an elected official of the executive branch or a person appointed to fill a vacancy in an elective office, the chair of a full-time board or commission, or the director of a state agency; as well as the nonprofessional staff in the office of the auditor of state, and the nonprofessional staff in the department of justice except those reporting to the administrator of the consumer advocate division.

“*Confidential employee*” means for purposes of collective bargaining coverage, a representative of the employer who, as a major function of the job, determines and effectuates employment relations policy for the appointing authority, exercises independent discretion in establishing such policies, or is so closely related to or aligned with management as to potentially place the employee in a position of conflict of interest between the employer and coworkers. It also means any employee who works for the department, who has access to information subject to use in collective bargaining negotiations, or who works in a close continuing relationship with representatives associated with negotiating collective bargaining agreements on behalf of the state, as well as the personal secretary of: an elected official of the executive branch or a person appointed to fill a vacancy in an elective office, the chair of a full-time board or commission, or the director, deputy director, or division administrator of a state agency.

*Objection filed 12/2/86, see “Objection, 1.1” following. This definition was amended IAB 1/15/97, effective 2/19/97.

“Demotion” means the change of a nontemporary employee from one class to another having a lower pay grade. Demotions of permanent employees may be disciplinary, in lieu of layoff, or voluntary. Demotions of probationary employees may be disciplinary or voluntary.

“Department” means the Iowa department of personnel.

“Director” means the director of the Iowa department of personnel or the director’s designee.

“Double spouse” means a husband and wife both employed by the state of Iowa.

“Examination” means the screening of persons who meet the qualifications for job classifications.

“Fee-for-services contractor” means a person or entity that provides services on a contracted basis and who is paid a predetermined amount under that contract for rendering those services.

“Grievance” means an expressed difference, dispute, or controversy between an employee and the appointing authority, with respect to circumstances or conditions of employment.

“Health care provider” means a doctor of medicine or osteopathy who is authorized to practice medicine or perform surgery by the state in which the doctor practices, or any other person determined by the U.S. Secretary of Labor to be capable of providing health care services.

“Immediate family” means the employee’s spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee’s spouse, and other persons who are members of the employee’s household.

“In loco parentis” means in the place of a son, daughter or parent and charged with the same rights, duties, and responsibilities as a son, daughter or parent.

“IRC” means Internal Revenue Code.

“Job classification” means one or more positions sufficiently similar in kind and level of duties and responsibilities that they may be grouped under the same title, pay plan, pay grade, and other elements included in the classification plan.

“Lead work” means a responsibility assigned to an employee by management to direct (instruct, answer questions, distribute and balance work load, accept, modify or reject completed work, maintain attendance records, report infractions and provide input on staffing decisions) the work of two or more employees (federal, state, county, municipal and private employment organization, volunteers, inmates or residents).

“Long-term disability” means a condition of an employee who is determined by the state of Iowa’s long-term disability insurance carrier to be unable to work because of illness or injury.

“Merit system” means those positions or employees in the state personnel system determined by the director to be covered by the provisions of Iowa Code chapter 19A as it pertains to qualifications, examinations, probation, and just cause discipline and discharge hearings.

“Minimum qualifications” means the minimum education, experience, or other background required to be considered eligible to apply for, or otherwise perform the duties of a particular job classification. Minimum qualifications are published in classification descriptions, and pertain only to positions covered by merit system provisions.

“Nonpay status” means that period of time when an employee does not work during scheduled work hours and the work absence is not covered by any kind of paid leave. This includes employees who do not supplement workers’ compensation payments with paid leave.

“Overtime” means those hours that exceed 40 in a workweek for which an employee is entitled to be compensated.

“Overtime covered class, employee, or position” means a class, employee, or position determined to be eligible for premium overtime compensation in accordance with the federal Fair Labor Standards Act.

“Overtime exempt class, employee, or position” means a class, employee, or position determined to be ineligible for premium overtime compensation.

“Pay increase” means a periodic step or percentage increase in pay within the pay range for the class based on time spent, performance, or both.

“Pay plan” means one of the various schedules of pay grades and salaries established by the director to which classes in the classification plan are assigned.

“Permanent employee” means any executive branch employee (except board of regents employees) who has completed at least six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in Iowa Code section 19A.2A, unnumbered paragraph 3, it further means those employees who have completed the period of probationary status provided for in Iowa Code subsection 19A.9(8).

“Position” means the grouping of specific duties and responsibilities assigned by an appointing authority that comprise a job to be performed by one employee. A position may be part-time or full-time, temporary or permanent, occupied or vacant, eligible or not eligible to be covered by a collective bargaining agreement, or covered or not covered by merit system provisions. Each position in the executive branch of state government shall be assigned one of the job classifications published in the classification plan.

“Position classification review” means the process of studying the kind and level of duties and responsibilities assigned to a position by comparing those duties and responsibilities to classification descriptions, classification guidelines, or other pertinent documents in order to determine the proper job classification to which a position will be assigned.

“Premium rate” means compensation equal to one and one-half hours for each hour of overtime.

“Probationary employee” means any executive branch employee (except board of regents employees) who has completed less than six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in Iowa Code section 19A.2A, unnumbered paragraph 3, it further means those employees who have not completed the period of probationary status provided for in Iowa Code subsection 19A.9(8).

“Promotion” means the acceptance by a nontemporary employee of an offer by an appointing authority to move to a position in a class with a higher pay grade and may involve movement between positions covered by merit system provisions and positions not covered by merit system provisions.

“Reassignment” means the movement of an employee and the position the employee occupies within the same organizational unit or to another organizational unit at the discretion of the appointing authority. A reassignment may include a change in duties, work location, days of work or hours of work, and may be temporary or permanent. A reassignment may result in a change from the employee’s previous job classification.

“Reclassification” means the change of a position from one job classification to another based upon changes in the kind or level of the duties and responsibilities assigned by an appointing authority.

“Red-circled salary” means an employee’s salary that exceeds the maximum for the pay grade in the pay plan to which the employee’s class is assigned.

“Regular rate of pay” means the total compensation an employee receives including base pay, shift or educational differential, special or extraordinary duty pay, leadworker pay, or any other additional special pay.

“Same pay grade” means those pay grades in the various pay plans having the same pay grade number as well as those pay grades using a three-step pay range where those steps correspond to the top three steps of a six-step range. A three-step pay grade shall be considered the same as the corresponding six-step pay grade in determining whether an action is a promotion, demotion, or transfer.

“Serious health condition” means an illness, injury or impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential care facility or continuing treatment (i.e., two or more visits or treatments, or one visit that results in a continuing regimen of treatment) by a health care provider causing an absence from school or work of more than three consecutive days.

“Service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, or examination to determine the fitness of the person to perform such duty.

“Shift” means one segment of a 24-hour period in the work schedule of an appointing authority (e.g., day, evening, night shift).

“Shift differential” means extra pay for eligible employees who work shifts other than the day shift.

“Special duty assignment” means the temporary assignment of a permanent employee to a position in another class.

“Standby” means those times when eligible employees are required by the appointing authority to restrict their activities during off-duty hours so as to be immediately available for duty when required by the appointing authority, and is other than simply the requirement to leave word of their whereabouts in case of the need to be contacted.

“Supervision” means a responsibility assigned to an employee by management to direct the work of two or more employees and to hire, evaluate, reward, promote, transfer, lay off, recall, respond to grievances and discipline those employees.

“Temporary” means nonpermanent employment for a limited period of time.

“Temporary services” means staffing provided by an outside vendor under an authorized contract, such as a temporary employment service, for a limited period of time.

“Transfer” means the movement of an employee from a position in a job class to a vacant position for which the employee qualifies in the same or different job class in the same pay grade. A transfer may include a change in duties, work location, days of work or hours of work. A transfer may be voluntary at the request of the employee, or involuntary at the discretion of the appointing authority.

“Uniformed services” means the United States armed forces and organized reserves (army, navy, air force or marines), the army national guard and the air national guard when engaged in active duty for training, inactive duty training, or full-time national guard duty, organized reserve duty, the commissioned corps of the public health service, coast guard, and any other category of persons designated by the President in time of war or emergency.

“Veteran” means any person honorably separated from active duty with the armed forces of the United States who served in any war, campaign, or expedition during the dates specified in Iowa Code section 35C.1.

“Work time” means all hours spent performing the duties of an assigned job; travel between job sites during or after the employee’s regular hours of work (where no overnight expenses are involved); rest periods allowed during the employee’s regular hours of work; and meal periods when less than 30 consecutive minutes is provided.

“Workweek” means a regularly recurring period of time within a 168-hour period of seven consecutive 24-hour days.

This rule is intended to implement Iowa Code section 19A.9.

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**See IAB Personnel Department.

OBJECTION

At its November meeting the administrative rules review committee voted to object to that portion of 581 IAC 1.1 which relates to the definition of a confidential employee. It is the opinion of the committee this definition is unreasonable in that it overly restricts the availability of confidential secretaries. This definition appears as part of ARC 7103 and is published in IX IAB 10 (11-5-86).

This rule in pertinent part provides a confidential employee is the secretary of an elected official. All other secretaries are not defined as confidential and are protected by the merit provisions of Chapter 19A, Iowa Code. In the committee's opinion this definition is too narrow and should be broadened to include the secretary of the deputy official and the secretaries of the division heads.

The authority for this rule is found in Senate File 2175, section 205, which re-defined the exemptions from the merit system. Part of this re-definition included the elimination of the following language:

"3. Three principal assistants or deputies for each elective official and one stenographer or secretary for each elective official and each principal assistant or deputy thereof, also all supervisory employees and their confidential assistants."

While this specific exemption was deleted from Chapter 19A, S.F. 2175 added a generic exclusion for "all confidential employees." The committee believes that the deletion of section 19A.3(3) did not mean that all division level or higher secretaries were to be covered by merit. The committee believes that the re-write of section 19A.3 was intended to reduce the number of automatic exemptions (from twenty-four to seventeen) and to vest in the Personnel Department authority to create exemptions as needed in particular situations.

The committee feels that deputy and division level secretaries are within those "particular situations" where the department should provide an exemption by rule. Agencies headed by elected officials are unique. The management of those agencies is based on agenda developed by a political as well as administrative process. The highest level managers and their immediate staff should be directly accountable to the official who campaigned on that agenda and they should be expected to have some loyalty for that agenda.

CHAPTER 2
COVERAGE AND EXCLUSIONS
[Prior to 11/5/86, Merit Employment Department[570]]

581—2.1(19A) State personnel system. The state personnel system shall include and apply to all positions in the executive branch of state government, except those specifically excluded by law.

581—2.2(19A) Merit system. The merit system shall include and apply to those positions in the state personnel system which have been determined by the director to be covered by the provisions of Iowa Code chapter 19A, as it pertains to qualifications, examinations, probation, and just cause discipline and discharge hearings, hereafter referred to as merit system provisions. Whenever the director determines that a position should be covered by or not covered by merit system provisions, the director shall notify the appointing authority in writing of the decision and the effective date.

2.2(1) Exclusion of division administrators and policy-making positions. The appointing authority of each agency shall submit to the director for approval the position number and title of each position referred to in Iowa Code section 19A.3 proposed for exclusion from coverage by the merit system provisions referred to in Iowa Code section 19A.2A, unnumbered paragraph 3. Subsequent changes in the number or duties of these positions shall be submitted to the director for exclusion approval.

2.2(2) Exclusion of confidential employees. Confidential employees excluded from coverage by merit system provisions shall be as provided for in 581—Chapter 1.

2.2(3) Other exclusions. For further information regarding exclusions from merit system coverage, refer to Iowa Code section 19A.3.

581—2.3(19A) Confidential collective bargaining exclusion. An appointing authority may request the director to exclude a position in a class covered by a collective bargaining agreement from coverage by that agreement based upon the definition of a confidential employee in these rules. The request shall be submitted to the director in writing and include the reasons why the position should be excluded. The director shall notify the appointing authority of the decision.

Whenever a position in a class covered by a collective bargaining agreement has been excluded by the director under this rule, the employee in the position shall be subject to these rules.

581—2.4(19A) Personnel services contracts. Individuals providing services to the state pursuant to an authorized fee-for-services contract, including persons supplied by a temporary employment service, are not employees of the state. Persons providing services under this rule who are determined to have a common law employer-employee relationship with the state may, however, be subject to withholding for certain taxes, social security, Medicare and FUTA.

These rules are intended to implement Iowa Code section 19A.9 and Iowa Code chapters 19A, 19B and 70A.

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**See IAB Personnel Department

CHAPTER 4 PAY

[Prior to 11/5/86, Merit Employment Department[570]]

581—4.1(19A) Pay plan adoption. The director shall adopt pay plans for all classes and positions in the executive branch of state government, except as otherwise provided for in the Iowa Code.

581—4.2(19A) Pay plan content. Pay plans shall have numbered pay grades showing minimum and maximum salaries and intermediate salary steps, if applicable.

581—4.3(19A) Pay plan review and amendment. The director shall review pay plans at least annually and, taking into account the results of collective bargaining and other factors, may adjust pay ranges or reassign classes to different pay grades.

581—4.4(19A) Pay administration.

4.4(1) Employees. The director shall assign classes to pay plans and grades and shall assign employees to classes. Employees shall be paid either at one of the established steps or at a rate between the minimum and maximum of the pay grade of the class to which assigned. Pay decisions shall be at the discretion of the appointing authority, unless otherwise provided for in this chapter or by the director.

4.4(2) Appointed officials. Unless otherwise provided for in the Iowa Code or these rules, the staff of the governor, full-time board and commission members, department directors, deputy directors, division administrators, independent agency heads and others whose appointments are provided for by law or who are appointed by the governor may be granted pay increases of any amount at any time within the pay grade of the class or position to which appointed.

4.4(3) Total compensation. An employee shall not receive any pay other than that provided for the discharge of assigned duties, unless employed by the state in another capacity or specifically authorized in the Iowa Code, an Act of the general assembly or these rules.

4.4(4) Part-time employment. Pay for part-time employment shall be proportionate to full-time employment and based on hourly rates.

4.4(5) Effective date of changes. All pay changes shall be effective on the first day of a pay period, unless otherwise approved by the director. Original appointments, reemployment and reinstatements shall be effective on the employee's first day of work.

4.4(6) General pay increases. The director shall administer general pay increases for employees that have been authorized by the legislature and approved by the governor. An employee in a noncontract class whose pay has been red-circled above the maximum pay rate of the class to which assigned shall not receive a general pay increase, unless specifically authorized by the Acts of the general assembly or otherwise provided for in these rules.

4.4(7) Pay corrections. An employee's pay shall be corrected if it is found to be in violation of these rules or a collective bargaining agreement. If the correction is the result of an error or omission, the pay may be corrected within 12 pay periods following the date the employee's pay was incorrectly set or the transaction that should have occurred was omitted. Corrections shall be made on the first day of a pay period.

a. Retroactive pay. An employee may receive retroactive pay for a period of up to 90 calendar days preceding the date the error was corrected or the omission occurred. Requests for retroactive pay beyond 90 calendar days or which extend into a previous fiscal year must be submitted to the state appeal board.

b. Overpayment and underpayment. If an error results in an employee's being overpaid for wages, except for FICA, state and federal income taxes and IPERS contributions shall be collected. Also, premiums for health, dental and life insurance benefits that have been underpaid shall be subject to collection. An employee may choose to repay the amount from wages in the pay period following discovery of the error, have the overpayment deducted from succeeding pay periods not to exceed the number of pay periods during which the overpayment occurred, or the employee or appointing authority may submit an alternate repayment plan to the director. The director shall notify the appointing authority of the decision on the alternate repayment plan. The appointing authority shall submit the repayment plan on forms prescribed by the department beginning with the document correcting the employee's pay. If the employee terminates, the amount remaining shall be deducted from wages, vacation payout, applicable sick leave payout and any wage correction payback from IPERS.

581—4.5(19A) Appointment rates. An employee shall be paid at the minimum pay rate for the class to which appointed, except in the following instances:

4.5(1) Individual advanced rate. For new hires or promotions and upward reclassifications of employees in contract classes, the appointing authority may grant steps or pay rates in excess of the minimum. The appointing authority shall maintain a written record of the justification for the advanced rate. The record shall be a part of the official employee file. All employees possessing equivalent qualifications in the same class and with the same appointing authority may be adjusted to the advanced rate.

4.5(2) Blanket advanced rate. If there is a scarcity of applicants, an appointing authority may submit a written request to the director documenting the economic or employment conditions that make employment at the minimum pay rate for a class unlikely. The director may authorize appointments beyond the minimum rate for the class as a whole or in a specific geographical area. All current employees and new or promoted employees under the same conditions and in the same class shall be paid the higher rate. This rate shall remain in effect until rescinded by the director.

4.5(3) Trainee. The director may authorize trainee appointments below the minimum pay rate for a class as provided for in rule 581—8.9(19A). Pay shall be set one step or 5 percent below the minimum rate for each semester or equivalent amount of training the appointee lacks in meeting the minimum qualifications for the class to which appointed. Pay increases shall be automatic and coincide with the successful completion of each semester or additional equivalent amounts of training.

4.5(4) Internship. When an appointment is made, the employee may be paid from the lowest pay rate in the pay plan to which the class is assigned up to 15 percent above the minimum of the pay grade for the class.

4.5(5) Temporary and seasonal. When an appointment is made to a class on a temporary or seasonal basis, the employee may be paid at any rate within the pay grade to which the class is assigned.

4.5(6) Overlap. When an appointment is made on an overlap basis, the employee shall be paid in accordance with this chapter. See rule 581—8.12(19A).

581—4.6(19A) Payroll transactions.

4.6(1) *Pay at least at minimum.* If a transaction results in an employee's being paid from a different pay plan or pay grade, the employee shall be paid at least the minimum pay rate of the class to which assigned, except as provided in subrules 4.5(3) and 4.5(4).

4.6(2) *Pay not to exceed maximum.* If a transaction results in an employee's being paid from a different pay plan or pay grade, the employee's pay shall not exceed the maximum pay rate of the class to which assigned, except as provided in subrule 4.6(3) or 4.6(13) or rule 4.8(19A).

4.6(3) *Red-circling.* If the pay of an employee in a noncontract class exceeds the maximum pay for the class to which assigned, the employee's pay may be maintained (red-circled) above the maximum for up to one year. Requests to change the time period or the red-circled rate must first be submitted to the director for approval. If approved, the appointing authority shall notify the employee in writing of any changes in the time period and the pay. If an employee's classification or agency changes, a request to rescind the red-circling may be submitted by the appointing authority to the director for approval. The director may also require red-circling in certain instances.

4.6(4) *Pay plan changes.* If a transaction results in an employee's being paid from a pay plan without steps, the employee shall be paid at the employee's current pay rate, except as provided in subrules 4.6(1) and 4.6(2). When the transaction results in an employee's being paid from a pay plan with steps, the employee shall be paid at a step in the pay plan that is closest to but not less than the employee's current pay rate, except that for demotions the employee's pay shall be at the discretion of the appointing authority so long as it is not greater than it was prior to the demotion. For setting eligibility dates, see subrule 4.7(5).

4.6(5) *Pay grade changes.* If a transaction results in an employee in a noncontract class being paid in a higher pay grade, the employee's pay may be increased by up to 5 percent for each grade above the employee's current pay grade, except as provided in subrules 4.6(1) and 4.6(2). The implementation of pay grade changes for employees in contract classes shall be negotiated with the applicable collective bargaining representative. For setting eligibility dates, see subrule 4.7(5).

4.6(6) *Promotion.* For setting eligibility dates, see subrule 4.7(5).

a. Noncontract classes. If an employee is promoted to a noncontract class, the employee may be paid at any rate in the pay grade of the pay plan to which the employee's new class is assigned, except as provided in subrules 4.6(1) and 4.6(2).

b. Contract classes. If an employee is promoted to a contract-covered class without steps, the employee shall receive a 5 percent pay increase. If promoted to a contract-covered class with steps, the employee shall receive a one-step pay increase, except as provided in subrules 4.5(1), 4.6(1), 4.6(2), and 4.6(4).

c. Leadworker. If an employee who is receiving additional pay for leadworker duties is promoted, the pay increase shall be calculated using the employee's new base pay plus the leadworker pay.

4.6(7) *Demotion.* If an employee demotes voluntarily or is disciplinarily demoted, the employee may be paid at any step or pay rate that does not exceed the employee's pay at the time of demotion, except as provided in subrules 4.6(1), 4.6(2) and 4.6(4). For setting eligibility dates, see subrule 4.7(5).

4.6(8) *Transfer.* If an employee transfers under these rules to a different class, the employee shall be paid at the employee's current pay rate, except as provided in subrules 4.6(1), 4.6(2) and 4.6(4).

4.6(9) *Reclassification.* If an employee's position is reclassified, the employee shall be paid as provided for in subrule 4.6(6), 4.6(7) or 4.6(8), whichever is applicable. For setting eligibility dates, see subrule 4.7(5).

4.6(10) *Return from leave.* If an employee returns from an authorized leave, the employee shall be paid at the same step or pay rate as prior to the leave, including any pay increases to which the employee would have been eligible if not on leave, except as provided for in subrules 4.6(1) and 4.6(2). For setting eligibility dates, see subrule 4.7(5).

4.6(11) Recall. If an employee is recalled in accordance with 581—subrule 11.3(6), the employee shall be paid at the same step or pay rate as when laid off or bumped, except as provided in subrules 4.6(1) and 4.6(2). For setting eligibility dates, see subrule 4.7(5).

4.6(12) Reinstatement. When an employee is reinstated, the employee may be paid at any step or pay rate for the class to which reinstated. When the rate of pay is decided to be greater than the pay at the time of separation, including any pay grade, pay plan, class or general salary increases, the decision to do so must be in accordance with subrule 4.5(1). For setting eligibility dates, see subrule 4.7(5).

4.6(13) Change of duty station. If an employee is promoted, reassigned or voluntarily demoted at the convenience of the appointing authority and a change in duty station beyond 25 miles is required, the employee may receive a one-step or up to 5 percent pay increase. The pay may exceed the maximum pay for the class to which assigned. Notice must first be given to the director. Subsequent changes in duty station may result in the additional pay being removed.

581—4.7(19A) Within grade increases.

4.7(1) General. An employee may receive a periodic step or percentage increase in base pay that is within the pay grade and pay plan of the class to which assigned upon completion of a minimum pay increase eligibility period.

a. Pay increase eligibility periods. The minimum pay increase eligibility period for employees paid from pay plans without steps shall be 52 weeks, except that it shall be 26 weeks for new hires and employees who receive an increase in base pay as a result of a promotion, reclassification or pay grade change. Minimum pay increase eligibility periods for employees paid from pay plans with steps shall be the number of weeks in the pay plan that corresponds to the employee's step.

b. Noncreditable periods. Except for required educational and military leave, periods of leave without pay exceeding 30 calendar days shall not count toward an employee's pay increase eligibility period.

c. Reduction of time periods. The director may authorize a reduction in pay increase eligibility periods for classes where there are unusual recruitment and retention circumstances.

4.7(2) Noncontract classes. An employee in a noncontract class may be given any amount of within grade pay increase up to the maximum pay rate for the employee's class. The pay increase shall be at the beginning of the pay period following completion of the employee's prescribed minimum pay increase eligibility period and shall not be retroactive, except as provided for in subrule 4.4(7).

a. Performance. Within grade pay increases shall be based on performance, and are not automatic, except as provided in subrule 4.5(3), and may be delayed beyond completion of the employee's minimum pay increase eligibility period. To be eligible, a within grade pay increase must be accompanied by a current performance evaluation on which the employee received a rating of at least "meets job expectations." Time spent on required educational or military leave shall be considered to "meet job expectations."

b. Lump sum. When budgetary conditions make it infeasible to grant within grade pay increases, an appointing authority may instead grant a lump sum increase. The increase shall not be added to the employee's base pay and shall be allowed only once in a fiscal year. Lump sum pay increases must be requested in writing from the director.

4.7(3) Contract classes. Within grade pay increases for employees in contract classes shall be in accordance with the terms of their collective bargaining agreement.

581—4.10(19A) Phased retirement. An employee who participates in the phased retirement program shall receive 10 percent of the employee's regular biweekly pay in addition to being paid for the number of hours the employee works or is in pay status during the pay period. An employee who is on leave without pay during an entire pay period shall not receive the additional 10 percent for that pay period.

581—4.11(19A) Overtime.

4.11(1) Administration. Job classes shall be designated by the director as overtime eligible or overtime exempt.

4.11(2) Eligible job classes. An employee in a job class designated as overtime eligible shall be paid at a premium rate (one and one-half hours) for every hour in pay status over 40 hours in a workweek.

4.11(3) Exempt job classes. An employee in an overtime exempt job class shall not be paid for hours worked or in pay status over 40 hours in a workweek, except as specifically provided for in a collective bargaining agreement.

4.11(4) Method of payment. Payment of overtime for employees in noncontract classes shall be in cash or compensatory time. The decision shall rest with the employee, except that the appointing authority may require overtime to be paid in cash. Employees in noncontract classes may elect compensatory time for call back, standby, holiday hours and for working on a holiday. Payment of overtime for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.

4.11(5) Compensatory time. An overtime eligible employee in a noncontract class may accrue up to 80 hours of compensatory time before it must be paid off. Compensatory time may be paid off at any time, but it shall be paid off if the employee separates, transfers to a different agency, or moves to a class with a different overtime eligibility designation. The paying off of compensatory time for employees in classes covered by a collective bargaining agreement shall be in accordance with the terms of the applicable agreement.

4.11(6) Holiday hours. Holiday hours that have already been paid at a premium rate shall not be counted in calculating overtime.

These rules are intended to implement Iowa Code section 19A.9.

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**See IAB Personnel Department

CHAPTER 5
RECRUITMENT, APPLICATION AND EXAMINATION

[Prior to 11/5/86, Merit Employment Department [570]]

581—5.1(19A) Recruitment. Classes are closed to application unless specifically opened for recruitment.

5.1(1) *Open recruitment announcements.* The director shall give public notice of positions opened for recruitment for a minimum of 15 calendar days following the announcement date. Recruitment may be limited to a specific geographic area or a specific selective background area or both. Recruitment announcements shall be posted publicly. Copies may also be sent to newspapers, radio stations, educational institutions, professional and vocational associations, and other recruitment sources.

5.1(2) *Content of announcements.* Announcements shall specify the job title, vacancy number, salary range, location, method for making application, closing date for receiving applications, minimum qualifications, and any selective requirements. All announcements must include a statement indicating that the state of Iowa is an affirmative action and equal employment opportunity employer. Announcements for continuous recruitment shall include a statement indicating that applications will be accepted until further notice.

5.1(3) *Advertising.* The appointing authority shall send to the director copies of all advertisements announcing employment opportunities that are to be placed in any publication, and any additional information required by the director. The appointing authority shall comply with any policies established by the director regarding advertising.

581—5.2(19A) Applications.

5.2(1) *Applicant information.* Applicant information shall be on forms prescribed by the director unless an alternate method has been authorized. Applicants must supply at least their name, current mailing address, signature and social security number; however, if an applicant requests, a nine-digit number will be assigned by the department to be used in lieu of the social security number. If other than the social security number is requested, it shall be the applicant's responsibility to ensure that all future correspondence directed to the department regarding the applicant's records contains the assigned nine-digit number. All other information requested on the application will assist the department in accurately and completely processing and evaluating the application. Applications that are not complete may not be regarded as an official application and may not be processed. The director may require an applicant to submit documented proof of the possession of any license, certificate, degree, or other evidence of eligibility or qualification to satisfactorily perform the essential duties of the job with or without a reasonable accommodation.

5.2(2) *Verifying applicant information.* The director may at any time verify statements contained in an application and seek further information concerning an applicant's qualifications. If information is obtained which affects or would have affected an applicant's qualifications, standing on an eligible list, or status if already employed, the director may make the necessary adjustment or take other appropriate action, including termination if the applicant has already been employed.

5.2(3) *Applicant files.* Applications accepted for processing and necessary related materials will be placed in the applicant files in the department and retained for no less than one year. Applications for jobs which result in the hire of the applicant will be placed in the employee files in the department and retained for no less than the period of employment.

5.2(4) *Application for eligible lists.* Persons may apply to be on eligible lists as follows:

a. *Promotional lists.* Promotional applicants shall meet the minimum qualifications. Promotional applicants may be subject to keyboard examinations, background checks, psychological examinations, and other examinations used for further screening. The following persons may apply to be on promotional eligible lists at any time:

(1) Permanent employees, including permanent employees of the board of regents and community-based corrections;

(2) Persons enrolled in work experience programs who have successfully completed at least 90 calendar days in the program; and

(3) Persons who have been formally enrolled in the department's intern development program for a period of at least 90 calendar days.

b. All-applicant lists. The following persons may apply to be on all-applicant lists:

(1) Persons laid off and eligible for recall;

(2) Judicial branch employees;

(3) Legislative branch employees;

(4) Probationary or provisional probationary employees;

(5) Permanent employees, including permanent employees of the board of regents and community-based corrections;

(6) Temporary employees not on the promotional list and volunteers (including persons enrolled in work experience programs who are not on the promotional list) following 60 calendar days' service with the state;

(7) Nonpermanent employees of the board of regents and community-based corrections; and

(8) Former permanent employees who resigned or retired from state employment in good standing.

5.2(5) *Application pending license or graduation.* An applicant who does not meet the minimum education or license requirements, but who is currently enrolled in an education program that will result in meeting such requirements, may be placed on the eligible list with a "pending graduation" or "pending license" status provided the applicant will meet or has a reasonable expectation of meeting, the requirements within the following nine months. The applicant may be selected for employment, but may not be appointed until all qualification requirements are met.

5.2(6) *Disqualification or removal of applicants.* The director may refuse to place an applicant on a list of eligibles, refuse to refer an applicant for a vacancy, refuse to approve the appointment of an applicant, or remove an applicant from a list of eligibles for a position if it is found that the applicant:

a. Does not meet the minimum qualifications or selective requirements for the job class or position as specified in the job class description, vacancy announcement, administrative rules, or law.

b. Is incapable of performing the essential functions of the job classification or position and a reasonable accommodation cannot be provided.

c. Has knowingly misrepresented the facts when submitting information relative to an application, examination, certification, appeal, or any other facet of the selection process.

d. Has used or attempted to use coercion, bribery or other illegal means to secure an advantage in the application, examination, appeal or selection process.

e. Has obtained screening information to which applicants are not entitled.

f. Has failed to submit the application within the designated time limits.

g. Was previously discharged from a position in state government.

h. Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.

i. Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a threat to state property or to the safety of others.

j. Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed in accordance with rule 581—12.3(19A). Formal appeal of disqualification or removal shall be in accordance with 581—subrule 12.2(4).

5.2(7) Qualifications. Applicants must meet the qualifications for the class as well as any selective requirements associated with a particular class or position as indicated in the class description. The director shall determine whether or not an applicant meets such qualifications and requirements.

Applicants and employees may, as a condition of the job, be required to have a current license, certificate, or other evidence of eligibility or qualification. Employees who fail to meet and maintain this requirement shall be subject to discharge in accordance with rule 581—8.9(19A) or 581—subrule 11.2(4).

Any fees associated with obtaining or renewing a license, certificate, or other evidence of eligibility or qualification shall be the responsibility of the applicant or employee unless otherwise provided by statute.

581—5.3(19A) Examinations.

5.3(1) Purpose of examinations. The director or appointing authority may conduct examinations to assess the qualifications of applicants. Possession of a valid license, certificate, registration, or work permit required by the Iowa Code or the Iowa Administrative Code in order to practice a trade or profession may qualify as evidence of an applicant's basic qualifications.

5.3(2) Types of examinations. Examinations may include, but are not limited to, written, oral, physical, or keyboard tests, and may screen for such factors as education, experience, aptitude, psychological traits, knowledge, character, physical fitness, or other standards related to job requirements.

5.3(3) Background checks. Background checks and investigations, including, but not limited to, checks of arrest or conviction records, fingerprint records, driving records, financial or credit records, and child or dependent adult abuse records, constitute an examination or test within the meaning of this subrule, Iowa Code chapter 19A and 161—subrule 8.1(1). Confidential documents provided to the director by other agencies in conjunction with the administration of this rule shall continue to be maintained in their confidential status. The director is subject to the same policies and penalties regarding the confidentiality of the documents as any employee of the agency providing the documents.

Background checks shall be conducted only after receiving approval from the director concerning the areas to be checked and the standards to be applied in evaluating the information gathered. Background checks are subject to the following limitations and requirements:

a. Arrest record information, unless otherwise required by law, shall not be considered in the selection of persons for employment unless expressly authorized by the director.

b. The appointing authority shall notify the director of each job class or position that requires applicants to undergo any type of background check. The notification shall document the clear business necessity for the background check and the job relatedness of each topic covered in the inquiry.

c. The director shall provide a statement that shall be presented by the appointing authority to each applicant that is to be investigated under this subrule. This statement shall inform the applicant that the applicant is subject to a background check as a condition of employment and the topics to be covered in the background check. It shall also inform the applicant that all information gathered will be treated as confidential within the meaning of Iowa Code section 22.7, but that all such information gathered shall be available to the applicant upon request through the agency authorized to release such information, unless otherwise specifically provided by law. The statement shall be signed and dated by the applicant and shall include authorization from the applicant for the appointing authority to conduct the background check as part of the application and selection process and to share the information gathered with the director.

d. Information obtained from a background check is not necessarily a bar to an applicant's employment.

e. Appointing authorities shall send information periodically to the director on forms prescribed by the director. This information shall include the following:

- (1) The total number of applicants for each position who were eligible for a background check.
- (2) A list of all applicants for whom background checks were conducted, by organizational unit, name, social security number, type of background check, and result (pass or fail).
- (3) Documentation of specific business necessity and job relatedness when any inequitable rejection rate is identified by the director.

581—5.4(19A) Development and administration of examinations.

5.4(1) Examination development. The director shall oversee the development, purchase, and use of examination materials, forms, procedures, and instructions.

5.4(2) Examination administration. The director or appointing authority shall arrange for suitable locations and conditions to conduct examinations. Locations in various areas of the state and out of state may be used. Examinations may be postponed, canceled, or rescheduled.

a. *Examination of persons with disabilities.* Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies for accommodations established by the department. Persons in the certified disability program or any other formal waiver program established by the department may be exempt from examinations.

b. *Special admittance.* Requests for special admittance after the closing date for application shall be submitted in writing to the director or the appointing authority. The request shall explain why the applicant seeks special admittance.

c. *Retaking examinations.* Applicants may not retake aptitude, psychological, video-based or other examinations for 60 calendar days following the last date the examination was taken except as provided for in rule 581—5.6(19A). Violation of the waiting period for an examination shall result in the current examination score being voided and an additional 60-calendar-day waiting period being imposed.

Keyboard examinations, such as typing, may be retaken at any time without a waiting period, if equipment is available.

The most recent examination score shall determine the applicant's qualification for the corresponding eligible lists.

Applicants who are required to take examinations covered by the rules or procedures of other agencies are subject to applicable rules or procedures on retakes for such examinations of that agency.

5.4(3) Examination materials.

a. All examination materials, including working papers, test booklets, test answer sheets and test answer keys are not public records under Iowa Code chapter 22. All examination materials are the property of the department and shall not be released without the consent of the director.

b. *Removing examination material.* Any unauthorized person who removes examination material from an examination site, who participates in unauthorized distribution of examination materials, who is in unauthorized possession of examination material or who otherwise compromises the integrity of the examination process shall be subject to discipline, up to and including discharge if employed by the state, as well as prosecution.

581—5.5(19A) Scoring examinations. All applicants shall be given uniform treatment in all phases of the examination scoring process applicable to the job class or position and status of the applicant. Applicants may be required to obtain at least a minimum score in any or all parts of the examination process in order to receive a final score or to be allowed to participate in the remaining parts of an examination.

5.5(1) Adjustment of errors. Examination scoring errors will be corrected. A correction shall not, however, invalidate any list already issued or any appointment already made and shall not extend the life of the score.

5.5(2) Points for veterans. Veterans' points shall be applied to veterans as defined in Iowa Code section 35C.1.

a. "Veteran" means a resident of this state who served in the armed forces of the United States at any time during the following dates and who was discharged under honorable conditions:

- (1) World War I from April 6, 1917, through November 11, 1918.
- (2) Occupation of Germany from November 12, 1918, through July 11, 1923.
- (3) American expeditionary forces in Siberia from November 12, 1918, through April 30, 1920.
- (4) Second Haitian suppression of insurrections from 1919 through 1920.
- (5) Second Nicaragua campaign with marines or navy in Nicaragua or on combatant ships from 1926 through 1933.
- (6) Yangtze service with navy and marines in Shanghai or in the Yangtze valley from 1926 through 1927 and 1930 through 1932.
- (7) China service with navy and marines from 1937 through 1939.
- (8) World War II from December 7, 1941, through December 31, 1946.
- (9) Korean conflict from June 25, 1950, through January 31, 1955.
- (10) Vietnam conflict from February 28, 1961, through May 7, 1975.
- (11) Lebanon or Grenada service from August 24, 1982, through July 31, 1984.
- (12) Panama service from December 20, 1989, through January 31, 1990.
- (13) Persian Gulf conflict from August 2, 1990, through the date the President or the Congress of the United States declares a cessation of hostilities. However, if the United States Congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf conflict for purposes of determining whether a veteran is entitled to receive military benefits as a veteran of the Persian Gulf conflict, that date shall be substituted for August 2, 1990.

b. "Veteran" also includes the following:

- (1) Former members of the reserve forces of the United States who served at least 20 years in the reserve forces after January 28, 1973, and who were discharged under honorable conditions. However, a member of the reserve forces of the United States who completed a minimum aggregate of 90 days of active federal service, other than training, and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.
- (2) Former members of the Iowa national guard who served at least 20 years in the Iowa national guard after January 28, 1973, and who were discharged under honorable conditions. However, a member of the Iowa national guard who was activated for federal duty, other than training, for a minimum aggregate of 90 days and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.
- (3) Former members of the active, oceangoing merchant marine who served during World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, who were discharged under honorable conditions.
- (4) Former members of the women's air force service pilots and other persons who have been conferred veteran status based on their civilian duties during World War II in accordance with federal Pub. L. No. 95-202, 38 U.S.C. Section 106.

c. Proof of eligibility for points must be provided by the applicant in the form of a certified photocopy of a DD214 Form (Armed Forces Report of Transfer or Discharge) or other official document containing dates of service or a listing of service medals and campaign badges.

d. Applicants who were awarded a Purple Heart, or who have a service-connected disability, or who are receiving disability compensation or pension under laws administered by the U.S. Veterans Administration may request to have a maximum of ten points added to examination scores. Proof of current disability dated within the last 24 months and updated every 24 months after initial application must be submitted for continued eligibility.

581—5.6(19A) Review of written examination questions. Applicants may request to review their incorrectly answered questions on department administered written examinations except that aptitude, psychological, and video-based examinations are not subject to review. An applicant who reviews written examination questions may not retake that examination or an examination with the same or similar content for 60 calendar days following the review and then only if the class is open for recruitment. Violation of this waiting period shall result in the current examination score being voided and an additional 60-calendar-day waiting period being imposed.

These rules are intended to implement Iowa Code section 19A.9 as amended by 2000 Iowa Acts, House File 2463, section 12.

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**See IAB Personnel Department

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CHAPTER 6 ELIGIBLE LISTS

[Prior to 11/5/86, Merit Employment Department[570]]

581—6.1(19A) Establishment of eligible lists. The director shall establish and maintain various lists of eligible applicants for use in filling vacant positions. Eligible lists may be by job class or specific position. Eligible lists may be continuous or may be abolished after a vacancy is filled. The following are types of eligible lists:

6.1(1) Recall lists. These lists shall consist of the names of permanent employees who were separated by layoff; or who moved to another class or had their work hours reduced in lieu of layoff. Recall shall be in accordance with 581—subrule 11.3(6).

6.1(2) Promotional lists. Promotional lists shall consist of the names of permanent employees and those as designated in 581—paragraph 5.2(4)“a” who have applied for a job class and who have met the minimum qualifications and other promotional screening requirements for the class. The length of time of eligibility for promotion from these lists need not be the same as that for appointment from nonpromotional lists.

6.1(3) All-applicant lists. All-applicant lists shall consist of the names of all persons who have applied for positions, met the minimum qualifications for the class, and undergone, as necessary, the designated screening for the class. Persons in the certified disability program or any other formal waiver program established by the department shall be identified as such and placed on the all-applicant list.

581—6.2(19A) Removal of names from eligible lists. The director may remove names from an eligible list for a particular job class(es) for any of the following reasons in addition to those cited in 581—subrule 5.2(6):

1. Failure by the applicant to maintain a record of current address as evidenced by the return of a properly addressed letter or other similar evidence.
2. Failure by the applicant to respond to a written inquiry from the director or an appointing authority as to availability within five workdays following the date the inquiry was sent.
3. Receipt of a statement that the applicant no longer wants to be on the list for the class.
4. Declination of an appointment or promotion under previously agreed to conditions.
5. Appointment to a job class.
6. Abolition or expiration of an eligible list for a job class(es).
7. In the case of promotional lists, separation from state service.
8. Correction of erroneous placement on a list.
9. Violation of any of the provisions of Iowa Code chapter 19A or these rules. Applicants removed for this reason shall be notified in writing by the director within five workdays following removal. Appeal of removal for this reason shall be in accordance with 581—subrule 12.2(4).
10. Failure by the applicant to maintain contact as instructed by the department concerning current availability, mailing address and telephone number.

581—6.3(19A) Statement of availability. It shall be the applicant's responsibility to notify the director in writing of any change in address or other changes affecting availability for employment. The director may at any time verify the availability of applicants. The names of applicants shall be withheld from all eligible lists which do not meet the stated conditions and locations under which the applicants have indicated availability.

These rules are intended to implement Iowa Code section 19A.9.

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**See IAB Personnel Department

CHAPTER 7
FILLING VACANCIES

[Prior to 11/5/86, Merit Employment Department[570]]

581—7.1(19A) Method of filling vacancies. Vacancies shall be filled through promotion, transfer, demotion, recall, reinstatement or original appointment. The method and order in which vacancies are filled shall be determined by the director, taking into consideration the provisions of collective bargaining agreements and these rules. Vacancies shall be announced before a list of applicants is issued to an appointing authority.

581—7.2(19A) List requests. An appointing authority shall submit a request form when filling a vacancy.

581—7.3(19A) Types of lists. The following types of lists may be issued.

7.3(1) Recall list. The director will provide the names of those persons who are eligible for recall on the date and time issued in accordance with the provisions of 581—subrule 11.3(6) or applicable collective bargaining agreements.

7.3(2) Promotional list. The director will provide the names of qualified applicants who are permanent employees and those designated in 581—subrule 5.2(4) who have indicated availability for the conditions and location specified in the vacancy announcement.

7.3(3) All-applicant list. The director will provide the names of all qualified applicants who have indicated availability for the conditions and location specified in the vacancy announcement.

581—7.4(19A) Selective lists. The director may provide lists of only those eligibles for a position who possess specific education, experience or other selective qualifications required to perform the duties of a position. The director may establish procedures for determining and approving selective qualifications, processing requests and issuing selective lists.

581—7.5(19A) Expiration of a list. The expiration of a list shall be 90 calendar days following the date of issue unless otherwise approved by the director. All appointments or promotions must be reported to the director before the expiration date of the list. Effective dates of appointments or promotions must be no later than 60 days after the expiration date of the list unless otherwise authorized by the director, except that appointments or promotions “pending graduation” or “pending license” shall be allowed to be effective up to nine months following the expiration date of the list.

581—7.6(19A) Incomplete lists. If the number of names available on a list is less than six, the appointing authority will be granted provisional appointment authority.

581—7.7(19A) Referral and appointment of “conditional” applicants. The names of applicants who are on the eligible list for a class “pending graduation” or “pending license” are considered to be “conditional.” If a “conditional” applicant is selected, the appointment shall not be effective until the applicant has met the minimum requirements for qualification. Appointments shall be made in accordance with subrule 581—5.2(5) and rule 581—7.5(19A).

581—7.8(19A) Adjustment of errors. An error in the compilation or issuance of a list, if called to the attention of the director prior to the filling of the vacancy, shall be corrected and a new list issued. Except for a recall list, such correction shall not result in the removal of any eligible already certified nor invalidate any appointment already made.

These rules are intended to implement Iowa Code section 19A.9 as amended by 2000 Iowa Acts, House File 2463, section 12.

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**See IAB Personnel Department

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CHAPTER 8 APPOINTMENTS

[Prior to 11/5/86, Merit Employment Department[570]]

581—8.1(19A) Filling vacancies. Unless otherwise provided for in these rules or the Iowa Code, the filling of all vacancies shall be subject to the provisions of these rules. No vacant position in the executive branch shall be filled until the position has been classified in accordance with Iowa Code chapter 19A and these rules.

An employee who has participated in the phased retirement program shall not be eligible for permanent employment for hours in excess of those worked at the time of retirement. An employee who has participated in the early retirement or early termination program shall not be eligible for any state employment.

A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

581—8.2(19A) Probationary appointment. Probationary appointments may be made only to authorized and established positions unless these rules provide otherwise. Appointments to positions covered by merit system provisions shall be made in accordance with 581—Chapter 7 when applicable.

581—8.3(19A) Provisional appointment. If the director is unable to provide at least six applicants for a position, an appointing authority may provisionally appoint a person who meets the minimum qualifications for the class to fill the position pending the person's appointment from an eligible list.

No provisional probationary appointment shall be continued for more than 30 calendar days after the date of original appointment.

Successive provisional appointments shall not be permitted. An employee with provisional status shall not be eligible for promotion, demotion, transfer, or reinstatement to any position nor have reduction in force or appeal rights, but provisional probationary employees shall be eligible for vacation and sick leave and other employee benefits.

An employee shall receive credit for time spent in provisional status that is contiguous to the period of probationary status.

581—8.4(19A) Temporary appointment. Persons may be appointed with temporary status to any class. They may be paid at any rate of pay within the range for the class to which appointed.

Temporary appointments may be made to temporary positions or to permanent positions, or on an overlap basis to unauthorized positions, and may be made to any class and at any rate of pay within the range for the class to which appointed.

A temporary appointment shall not exceed 780 work hours in a fiscal year.

A temporary employee shall have no rights to appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits.

A person appointed with temporary status shall only be given another temporary type of appointment to the extent that the total number of hours worked in all temporary appointments in a fiscal year does not exceed 780 hours.

581—8.5(19A) Reinstatement. A permanent employee who left employment for other than just cause may be reinstated with permanent or probationary status to any class for which qualified at the discretion of an appointing authority. Reinstatement shall not require appointment from a list of eligibles.

A permanent employee who demotes may at any time be reinstated to a position in the class occupied prior to the demotion at the discretion of the appointing authority. Reinstatement shall not require appointment from a list of eligibles.

Former employees who are reinstated shall accrue vacation at the same rate as at the time they separated from state employment, and the employee's previous vacation anniversary date minus the period of separation shall be restored. This paragraph shall be effective retroactive to January 1, 2000.

581—8.6(19A) Internship appointment. The director may authorize an appointing authority to make an internship appointment to an established position, or if funds are available, to an unauthorized position.

8.6(1) Internship appointments shall expire upon attainment of a degree.

8.6(2) Employees with internship status shall have no rights of appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits of state employment, nor shall credit be given for future vacation accrual purposes.

8.6(3) Successful completion of an internship appointment of at least 90 calendar days shall authorize the appointee to be on promotional or all-applicant lists. Only persons formally enrolled in the department's intern development program are eligible to be on promotional lists. Successful completion shall be as determined by the director at the time of enrollment.

581—8.7(19A) Seasonal appointment. The director may authorize appointing authorities to make seasonal appointments to positions. Seasonal appointments may be made to any class and at any rate of pay within the range for the class to which appointed. Seasonal appointments may, however, be made only during the seasonal period approved by the director for the agency requesting to make the appointment, and must be concluded by the end of that period. To be eligible to make seasonal appointments, the appointing authority must first submit a proposed seasonal period to the director for approval. Such period shall not exceed six months in a fiscal year; however, the appointment may start as early as the beginning of the pay period that includes the first day of the seasonal period and may end as late as the last day of the pay period that includes the last day of the seasonal period.

Persons appointed with seasonal status shall have no rights of appeal, transfer, promotion, demotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits.

A person appointed with seasonal status to a classification covered by a collective bargaining agreement shall not work in excess of 780 hours in that status in such a class or classes, nor shall that person accumulate more than 780 hours worked in any combination of temporary statuses in any agency or any combination of agencies during a fiscal year.

581—8.8(19A) Overlap appointment. When it is considered necessary to fill a position on an overlap basis pending the separation of an employee, the appointment of a new employee may be made in accordance with these rules for a period not to exceed 60 calendar days. An overlap appointment must be in the same class as the authorized position being overlapped, unless otherwise approved by the director. Any overlap appointment for a longer period must first be approved by the director.

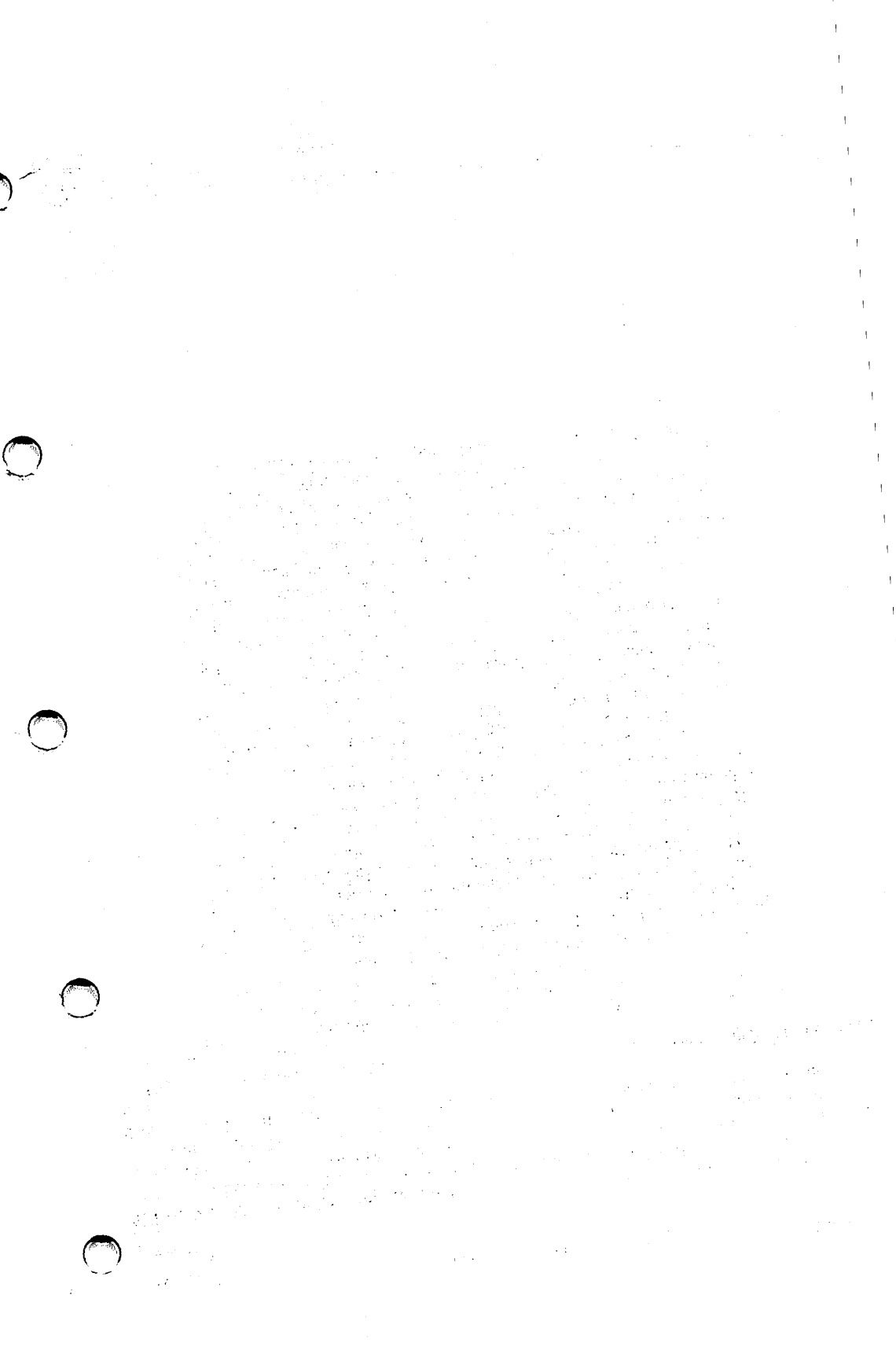
581—8.9(19A) Rescinding appointments. If, after being appointed, it is found that an employee should have been disqualified or removed as provided for in these rules, the director may rescind the appointment. An employee with permanent status may appeal the director's decision to the public employment relations board. The appeal must be filed within 30 calendar days after the date the director's decision was issued. Decisions by the public employment relations board constitute final agency action.

These rules are intended to implement Iowa Code section 19A.9 as amended by 2000 Iowa Acts, House File 2463, section 12.

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**Rule 8.12 inadvertently omitted 8/12/87 and added 9/9/87.



CHAPTER 9
PROBATIONARY PERIOD
[Prior to 11/5/86, Merit Employment Department[570]]

581—9.1(19A) Duration. All original full-time or part-time appointments to permanent positions shall require a six-month period of probationary status. Employees with probationary status shall not be eligible for promotion, reinstatement following separation, or other rights to positions unless provided for in this chapter, nor have reduction in force, recall, or appeal rights.

A six-month period of probationary status may, at the discretion of the appointing authority and with notice to the employee and the director, be required upon reinstatement, and all rules regarding probationary status shall apply during that period.

The provisions of this chapter shall apply to all executive branch employees, except employees of the board of regents, unless collective bargaining agreements provide otherwise.

581—9.2(19A) Disciplinary actions. In addition to less severe progressive discipline measures, the appointing authority may demote, suspend, reduce pay within the same pay grade, or discharge an employee during the period of probationary status without right of appeal. The appointing authority shall notify the employee in writing of the effective date of the action, and in the case of a suspension or reduction in pay, the duration of the action. In no case shall suspension extend beyond 30 calendar days, nor beyond the end of the probationary period. A copy of the notice shall be sent to the director by the appointing authority.

Disciplinary demotion during the period of probationary status to a position covered by merit system provisions shall require that the employee meet the minimum qualifications for the class. If demoted, the total required period of probationary status shall include the time spent in the higher class. The pay shall be set in accordance with 581—subrule 4.6(7).

581—9.3(19A) Voluntary demotion during the period of probationary status. Voluntary demotion during the period of probationary status to a position covered by merit system provisions shall require that the employee meet the minimum qualifications for the class. The total required period of probationary status shall include the time spent in the higher class. The pay shall be set in accordance with 581—subrule 4.6(7).

581—9.4(19A) Promotion during the period of probationary status. A probationary employee who is promoted during the period of probationary status to a position covered by merit system provisions shall be hired in accordance with 581—subrule 7.3(2). The total required probationary period shall include the probationary service in the class from which promoted. The rate of pay shall be set in accordance with 581—subrule 4.6(6).

581—9.5(19A) Transfer during the period of probationary status. A probationary employee who is transferred during the period of probationary status by the appointing authority to a position covered by merit system provisions must meet the minimum qualifications required for the class. The total required period of probationary status shall include the probationary time spent in the class from which transferred. The rate of pay shall be set in accordance with 581—subrule 4.6(8).

581—9.6(19A) Reclassification during the period of probationary status. An employee who is reclassified during the period of probationary status need only meet the minimum qualifications for the class. The total required period of probationary status shall include the probationary time spent in the previous class. The rate of pay shall be in accordance with 581—subrule 4.6(9).

581—9.7(19A) Leave without pay during the period of probationary status. A probationary employee may be granted leave without pay at the appointing authority's discretion in accordance with these rules. When a probationary employee is granted leave without pay, the employee's probationary period shall not be extended by the amount of leave granted unless the leave is for education or training.

581—9.8(19A) Vacation and sick leave during the period of probationary status. Probationary employees shall accrue and may be granted vacation and sick leave in accordance with the provisions of these rules.

581—9.9(19A) Probationary period for promoted permanent employees. This rule shall only apply to promotion within an appointing authority's department and to positions covered by merit system provisions.

An employee may be required to serve a six-month probationary period in the class to which promoted before the promotion becomes permanent.

At any time during the promotional probationary period the appointing authority may return the employee to the formerly held class. Return under this probationary period rule shall not be considered a demotion and there shall be no right to an appeal. The former salary and pay increase eligibility date shall be restored with credit allowed for the time spent in the higher class.

These rules are intended to implement Iowa Code section 19A.9.

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CHAPTER 10
PROMOTION, TRANSFER, TEMPORARY ASSIGNMENT, REASSIGNMENT
AND VOLUNTARY DEMOTION

[Prior to 11/5/86, Merit Employment Department[570]]

581—10.1(19A) Promotion.

10.1(1) An appointing authority may promote an employee with permanent status if the employee meets the minimum qualifications and other promotional screening requirements for the position. The employee must be on the list of eligibles for the position and available under the conditions stated on the list request.

10.1(2) Agencies shall collect and forward to the director data on the characteristics of applicants considered for promotion in accordance with the director's requirements and these rules.

581—10.2(19A) Reassignment. An appointing authority may reassign an employee. Reassignments may be intra-agency or interagency. Interagency reassignments require the approval of both the sending and the receiving appointing authorities.

An employee who refuses a reassignment may be discharged in accordance with rule 581—11.2(19A), except as provided for in the second unnumbered paragraph of this rule. If the employee is discharged, and if the employee had permanent status, and if the reassignment would have been in excess of 25 miles, the employee shall have recall rights in accordance with subrule 581—11.3(6), paragraph "c."

If the reassignment of an employee would result in the loss of merit system coverage, an appointing authority may not reassign that employee without the employee's written consent regarding the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

581—10.3(19A) Temporary assignments.

10.3(1) An appointing authority may assign a permanent employee to special duty when that employee is temporarily needed in another position. This assignment shall be without prejudice to the employee's rights in or to the regularly assigned position. Unless there is a statutory requirement to the contrary, the employee need not be qualified for the class to which temporarily assigned.

10.3(2) An appointing authority may temporarily assign a permanent employee duties that are extraordinary for the employee's class. These duties may be of a level higher than, lower than, or similar to the duties regularly assigned to the employee's class, and may be in addition to or in place of some or all of the employee's regularly assigned duties.

10.3(3) Requests shall be submitted to the director in writing for assignments to special duty or extraordinary duty that exceed three complete pay periods and shall explain the need and the period of time requested. Temporary assignments shall not initially be approved for a period longer than one year. Extensions may be requested. Requests shall be submitted on forms prescribed by the director.

10.3(4) An appointing authority may make temporary assignments without additional pay for up to three consecutive pay periods in a fiscal year. Approval of temporary assignments without additional pay beyond three consecutive pay periods may be granted by the director.

10.3(5) An appointing authority shall provide restricted duty work assignments, without change to an employee's class and regular pay rate, for those employees who have a medical release to return to restricted duty following a job-related illness or injury. The original period of restricted duty shall be the hourly equivalent of 20 workdays (which shall be on a pro-rata basis for part-time employees), or until the employee is medically released for full duty, whichever is less. Extensions to the original period may be requested by the appointing authority for approval by the director. Exceptions to this subrule must be approved by the director.

581—10.4(19A) Voluntary demotion. An appointing authority may grant an employee's written request for a demotion to a lower class. If the voluntary demotion involves movement from a position covered by merit system provisions to one that is not, the request must clearly indicate the employee's knowledge of the change in merit system coverage. If the employee objects to the change in coverage, the demotion shall not take effect. Also, no demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being qualified. A copy of the voluntary demotion request shall be sent by the appointing authority to the director at the time of the demotion.

Voluntary demotion may be either intra-agency or interagency, and shall not be subject to appeal under these rules.

581—10.5(19A) Transfer. An employee may request a voluntary transfer. The decision to grant or deny the request is the appointing authority's.

An appointing authority may involuntarily transfer an employee. To do so, any applicable collective bargaining agreement provisions regarding transfer must first be exhausted. Transfers may be interagency or intra-agency. Involuntary interagency transfers require the approval of both the sending and the receiving appointing authorities.

To be eligible to transfer, the employee must meet any minimum qualifications and selective requirements for the position.

If the transfer of an employee would result in the loss of merit system coverage, the transfer shall not take place without the affected employee's written consent to the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

These rules are intended to implement Iowa Code section 19A.9 as amended by 2000 Iowa Acts, House File 2463, section 12.

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**See IAB Personnel Department

b. Financial hardship. A participating employee may request that the company allow the withdrawal of some or all of the funds from the policy based on a financial hardship and in accordance with 401(k) regulations. Deferrals to a TSA will not be allowed for one year after such withdrawal according to IRC Section 403(b)(7).

c. Method of payment. The employee must notify the company of the intent to withdraw funds.

d. Federal and state withholding taxes. It shall be the responsibility of the company or mutual fund provider, when making payments to the former employee, to withhold the required federal and state income tax based on W-4P, to remit them timely to the proper government agency, and to file all necessary reports as required by federal and state regulations, including IRS Form 1099R.

e. Federal penalties.

(1) Under IRC Section 72(t), an additional tax of 10 percent of the amount includable in gross income applies to early withdrawal for qualified plans as defined in IRC Section 4974(c). A Section 403(b) contract is a qualified plan for these purposes.

(2) Eligible rollover distributions from a contract described in IRC Section 402(f)(2)(a) must be directed entirely to another TSA or IRA plan within 60 days following the withdrawal, or the funds must be left in the original contract. If the funds are not directed to a new qualified plan provider, the payor is required by IRC Section 3405(c) to withhold the mandatory percentage.

(3) A 15 percent excise tax applies if a participant takes an excess distribution in one year that is greater than the amount provided for in IRC Section 4980(a). Effective with the Small Business and Job Protection Act of 1996, the 15 percent excise tax has been repealed during years beginning after December 31, 1996, and before January 1, 2000.

15.12(9) Group plans.

a. Availability. Iowa Code section 19A.30 provides that the director may arrange for the purchase of group contracts for employees.

b. Size of groups. One or more employees shall constitute a group under this program.

15.12(10) General.

a. Orientation and information meetings. Agencies may hold orientation and information meetings for the benefit of their employees using materials developed or approved by the plan administrator, but there shall be no solicitation of employees by companies allowed at such meetings. The presence of a representative of a company will be interpreted as solicitation.

b. Location of policies. The company shall send the original policy to the employee.

c. Number of companies. Employees shall be limited to deferring contributions to only one company at a time. Only life insurance companies or mutual fund providers authorized to do business in the state of Iowa may sell policies under the plan, and then only if they agree to perform the specified administrative functions under the plan.

d. Company changes.

(1) If a participating employee wishes to change deferrals to another company, the employee shall submit forms to the plan administrator in accordance with paragraph 15.12(6) "b." The new company policy shall be effective on the first day of the month following the initial month of payroll deduction.

(2) The funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy in accordance with applicable IRC Section 403(b) provisions. It is the responsibility of the employee and the company's agent to coordinate this change with the affected companies.

(3) An employee may change companies at any time during the calendar year. However, if the employee has already made one change during the current calendar quarter, the amount being deferred must remain the same as of the effective date of the change.

e. Deferred compensation or tax-sheltered annuity participation—maximum contribution. Employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax-sheltered annuities shall be allowed to participate in one or the other of the programs, but not both. If, in the same calendar year, an eligible employee changes from a deferred compensation plan to a tax-sheltered annuity plan or vice versa, the maximum deferral for that calendar year for both plans combined may not exceed \$7500, and all deferrals made in that calendar year, regardless of which plan, must be included when determining the remaining amount that can be deferred in that calendar year.

f. Employee termination from a tax-sheltered annuity eligible agency. When an employee leaves an agency that is eligible for tax-sheltered annuity participation under IRC Section 403(b), no further tax-sheltered annuity deductions will be allowed.

g. Direct transfer/rollover.

(1) An eligible roll-over distribution that is directly rolled over to an eligible retirement plan is considered to be a distribution followed by an immediate rollover. Amounts are subject to Section 403(b)(11) or 403(b)(7) withdrawal restrictions and are not eligible for rollover. Spousal consent and other similar participant and beneficiary protection rules apply.

(2) A direct transfer pursuant to IRS ruling 90-24 is not treated as a plan distribution. Amounts subject to Section 403(b)(11) or 403(b)(7) withdrawal restrictions may be transferred to another Section 403(b) funding vehicle provided the new funding vehicle imposes as stringent withdrawal restrictions as the old funding vehicle imposed prior to the transfer.

(3) A direct transfer may not be made to an IRA and is not limited to the participant or spouse beneficiary. Any beneficiary under an IRC Section 403(b) annuity is eligible to effect a direct transfer between Section 403(b) funding vehicles under IRS ruling 90-24.

(4) A participant may roll over an eligible roll-over distribution within 60 days following the date the distribution is received.

15.12(11) Forms. The administration of the TSA program shall be accomplished through the forms described in this subrule. Except as otherwise provided, all forms shall be developed by the plan administrator and distributed by the agency of employment.

a. Salary reduction agreement. This form shall authorize the plan administrator to make a stated dollar deduction from the participating employee's compensation as part of an IRC Section 403(b) plan.

b. Application for policy. A policy application form shall be supplied by the company to which the participating employee elects to defer compensation. The completed form shall be approved by the participating employee. The completed application form shall show the owner and beneficiary of the policy to be the participating employee.

15.12(12) Forfeiture. Section 403(b)(1)(c) of the IRC provides that an employee's interest in a Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.

15.12(13) Nontransferability. The interest of the employee in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.

581—15.13(19A) Health flexible spending account. The director administers the medical spending account program for employees of the state of Iowa. The plan is permitted under IRC § 125. Administration of the plan shall comply with all applicable federal regulations and the plan document. To the extent that the provisions of the plan document or administrative rule conflict with IRC § 125, the provisions of IRC § 125 shall govern. For purposes of this rule, the plan year is a calendar year.

15.13(1) Employee eligibility. All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the medical spending program. Temporary employees are not eligible to participate in this program. Employees subject to a collective bargaining agreement shall have their eligibility determined by the collective bargaining agreement.

15.13(2) Enrollment. An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing medical spending salary reduction amounts during the plan year, provided they have a qualifying change in status as defined in the plan document, and as permitted under IRC § 125. To continue participation, employees shall reenroll each year during the open enrollment period.

15.13(3) Modification or termination of participation in the plan. An employee may modify or terminate participation in the plan, provided the employee has a qualifying change in status as defined in the plan document, and as permitted under IRC § 125. Employees who have terminated state employment and are later rehired within the same plan year cannot reenroll in the medical spending program until the subsequent plan year.

15.13(4) Continuation of coverage. The medical spending account shall provide the opportunity to continue coverage as required by applicable state and federal laws.

15.13(5) Eligible health care expenses. The types of expenses eligible for reimbursement shall be consistent with medical expenses as defined under IRC § 213.

15.13(6) Acceptable proof of eligible expense. Only those expenses for which appropriate documentation is submitted shall be eligible for reimbursement. Such documentation shall include the date upon which the expense was incurred; sufficient evidence that the expense is an eligible health care expense; evidence that the expense has been incurred and will not be reimbursed under an otherwise qualified health plan authorized by IRC § 105 and 106; and the amount of such expense.

15.13(7) Appeal process. In the event that a participant disagrees with a determination as to reimbursement from the health flexible spending account program, a formal appeals mechanism is hereby provided. The participant may submit a formal appeal in writing to the director (or designee). Such appeal must be accompanied by a previous written request for favorable consideration to the designated administrator of the program, along with evidence as to an unfavorable determination in response to this request. Upon receipt of a qualified appeal, the director (or designee) shall provide a written determination within 30 days of receipt. Such determination shall be final and binding. This appeal process is not a contested case proceeding as defined by Iowa Code chapter 17A.

15.13(8) Third-party administrator. The director may contract with a third-party administrator to perform such actions as are reasonably necessary to administer the health flexible spending account program.

581—15.14(19A) Deferred compensation match program. The director is authorized by the governing body to administer a deferred compensation match program for employees of the state of Iowa and those of other eligible participating governmental employers. The program shall be qualified under Section 401(a) IRC and Iowa Code section 509A.12. The assets and income of the program shall be held in trust for the exclusive benefit of the participating employee or the participating employee's beneficiary. The trustee shall be the director of the Iowa department of personnel. The director shall adopt various investment options for the investment of program funds by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

The program shall match eligible participant contributions to the deferred compensation plan with contributions by the employer. Eligibility of participants and the rate of employer matching contributions shall be subject to determination by the trustee and the governing body. The only voluntary participant contributions that the program shall accept are eligible rollover contributions.

These rules are intended to implement Iowa Code sections 19A.1 to 19A.9 and 2000 Iowa Acts, House File 2463, section 13.

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PUBLIC SAFETY DEPARTMENT[661]

Rules transferred from agency number 680 to 661 to conform with the reorganization numbering scheme in general

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5.3(4) If, after such review, the submitter disputes the specialist's findings, the submitter may request that the disputed questions be referred to the national fire protection association or other similar generally recognized authority, at the submitter's expense, and the specialist submits the blueprints and specifications to the national fire protection association or other similar generally recognized authority for their analysis.

5.3(5) If the submitter disputes the findings of the national fire protection association, the submitter may appeal to the fire marshal under the procedures of 661—Chapter 10.

661—5.4(17A,100,101,101A) Inspections. Certain buildings as designated in the Iowa Code shall comply with the Iowa Code and fire safety rules. The fire marshal determines and enforces such compliance. To do so, the fire marshal may enter such building or premises at any time without notice to inspect it.

5.4(1) Such inspection may be of a particular system in the building. For example, the electrical, heating, exit, valve, piping and venting systems may be inspected. The inspection may include the entire building. For example, the building may be so dilapidated as to be especially liable to fire.

5.4(2) Such inspection is conducted by the fire marshal or by a consultant as requested by the fire marshal. A consultant would be a person with the necessary degree of training, education or experience to examine a system within a building required to be in compliance with the law or rules and determine if such system or systems is in compliance with such requirements.

5.4(3) Inspections are conducted without announcement and occur on a random basis, upon anyone's request, upon any complaint or when fire appears to be possible. For example, the presence of flammable liquids or gases or the odor thereof outside a building storing such gases or liquids may cause an inspection.

5.4(4) When the member or consultant arrives at the building that is to be inspected, the member or consultant usually advises the owner. If a person in such a position cannot be contacted, the inspection commences anyway. If the owner or representative wishes to accompany the member or consultant, they may do so, but the inspection is not delayed.

5.4(5) The member or consultant examines the system or systems being inspected to determine compliance with the laws or rules. To guide the inspection, the member or consultant uses state rules or a manual recommended by the national fire protection association or a similar acceptable fire protection agency.

5.4(6) Upon completion of an inspection, the member or consultant completes written inspection orders. The original is filed in the fire marshal's office by county; a copy is filed in the member's office in a geographical area file; and a copy is left with the fire department having jurisdiction.

5.4(7) Upon completion of the inspection, if the building does not comply with applicable laws or rules, the member or consultant identifies specifically such noncompliance and notifies the owner. The owner may be ordered to correct or repair the deficiency or may order the building removed or demolished.

a. Copies of the notice of deficiencies or order are distributed to the fire marshal's office and the fire department having jurisdiction and a copy is filed in the member's office.

b. The time to comply with the order is determined by the member considering the likelihood of fires, the possibility of personal injury or property loss, the cost, availability of materials and labor to correct, repair, remove or demolish and other reasonable, relevant information.

c. If the owner of the building does not agree with the deficiency findings and order, the owner asks the fire marshal to review the order. The provisions of 661—Chapter 10 are then used.

d. Failure to comply with an order may incur penalties.

661—5.5(100) Certificates and inspection fees.

5.5(1) *Certificates for license.* Several Iowa statutes provide that a license to conduct certain functions cannot be issued until the fire marshal has approved the building to be used for such function. Upon receipt of a written request, the fire marshal conducts or has conducted an inspection using the procedures contained in the building inspection rule 5.4(17A,100,101,101A). Upon completion of an inspection showing the building to be in compliance, the fire marshal issues a certificate. If the building is found to be in noncompliance, the certificate applicant may file a petition requesting a review and the same procedure is used as if an order were being requested to be reviewed. Upon completion of the review process, if the building is found to be in compliance, a certificate is then issued.

5.5(2) *Inspection fees.* The following fees shall apply respectively to inspections of the facilities of the types listed where a certificate of inspection from the fire marshal is required in order to obtain licensure or certification under Iowa law. The inspection fee shall be paid by check made payable to "Fire Marshal Division, Iowa Department of Public Safety" prior to the issuance of the certificate provided for in subrule 5.5(1).

a. The inspection fee for a health care facility licensed or seeking licensure pursuant to Iowa Code chapter 135C or a group home licensed or seeking licensure in this state is \$2 per bed.

b. The inspection fee for an elder group home certified or seeking certification pursuant to Iowa Code chapter 231B or an assisted living facility licensed or seeking licensure pursuant to Iowa Code chapter 231C is \$7.50 per bed.

c. The inspection fee for a child care facility licensed or seeking licensure pursuant to Iowa Code chapter 237A is \$20 per facility.

d. When an initial inspection which requires a fee pursuant to paragraphs "a," "b," or "c" of this subrule results in a finding of a deficiency or deficiencies which require a reinspection, the initial reinspection shall be performed without the imposition of any additional fee. If the original deficiency or deficiencies have not been corrected at the time of the initial reinspection, then a fee of \$100 for each additional reinspection after the initial reinspection is required until the original deficiency or deficiencies have been corrected.

e. The fee for a suitability inspection of a prospective site for a facility which may seek licensure or certification from the state of Iowa is \$100.

This rule is intended to implement Iowa Code chapter 100 as amended by 2000 Iowa Acts, House File 2552.

661—5.6(17A,80,100) Fire investigations.

5.6(1) The fire marshal has the authority to investigate any fire in the state of Iowa.

5.6(2) City and township officers have the primary responsibility to and shall investigate fires. The city or township officer shall file a report of each fire with the fire marshal's office within one week of the fire even if the fire marshal's division participated in, assisted with, directed or supervised the fire investigation. Upon written request, the fire marshal may grant an extension of the time for filing this report for a period not to exceed 14 days. The request shall set forth compelling reasons for such extension.

5.6(3) The city or township officer shall immediately report a fire that involves death or suspected arson and does so by contacting the member assigned to that area or, if not available, the fire marshal's office or the fire marshal or assistant or, if no such contact can be made, the officer asks the county sheriff to relay the information to the Iowa police radio or teletype system (patrol communications division). The officer's report will be recorded or logged.

- 5.6(4)** The notice of a fire involving death or arson contains the following information, if known:
- a.* If death has occurred or is suspected, the name, age and address of person or persons deceased or missing; the date, time and address of the fire; and the suspected cause of fire.
 - b.* If arson is suspected, the date, time, address of the fire; the reasons for suspecting arson; whether there is obvious evidence of arson and if there is an arson suspect.
 - c.* Whether an explosion occurred.
- 5.6(5)** If Iowa police radio has been so notified, it immediately notifies the fire marshal or the nearest available member of the fire marshal's division.
- 5.6(6)** The fire marshal may, while investigating the cause of a fire, compel witnesses and others to testify under oath and to submit books, records and other documents.
- a.* This is in the discretion of the fire marshal and may be exercised anytime, including fires that involve an extensive loss, a death, arson or explosion, or suspected arson.
 - b.* The fire marshal may allow a person to submit to a polygraph examination.
- 5.6(7)** The fire marshal notifies the person compelled to give testimony or information.
- 5.6(8)** The fire marshal may assist a local officer in the investigation of any fire. The fire marshal may superintend, direct or conduct the investigation of a fire and may request the participation of a consultant when:
- a.* Requested by state or local authority to do so.
 - b.* A death has occurred, an extensive amount of property has been destroyed, arson is suspected or an explosion has occurred.
 - c.* A person is identified as an arson suspect.
 - d.* There is obvious physical evidence of arson.
 - e.* The fire marshal deems it necessary.
- 5.6(9)** The fire marshal, when participating in the investigation of a fire, may request the person in control of the premises to execute a consent to search.



5.42(2) Notwithstanding the requirements of 16 CFR 1209.33, the manufacturer shall contract with an independent National Voluntary Laboratory Accreditation Program (NVLAP) laboratory, administered by the United States Department of Commerce, National Bureau of Standards, which is approved to perform the tests necessary for compliance with the standards.

a. The manufacturer shall include in the laboratory service a follow-up inspection program which will include at least six unannounced inspections per year.

b. The testing laboratory shall obtain enough samples from production and inventory and may also purchase sufficient bags to ensure that the samples are a representative cross section of the material being tested.

c. In the event that samples obtained by the testing laboratory fail to meet the test standards, the manufacturer, with the approval of the testing laboratory, shall take whatever action is necessary to correct the production process and bring the product into compliance.

5.42(3) In addition to the labeling requirements of 16 CFR 1209.9, the containers of cellulose insulation shall indicate that a follow-up inspection program is being carried out.

661—5.43 to 5.49 Reserved.

These rules are intended to implement Iowa Code chapters 100 and 100A.

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MEANS OF EXIT

661—5.50(100) Exits.

5.50(1) Scope. The fire marshal shall adopt, amend, promulgate and enforce rules and standards relating to safe exiting from new and existing buildings, facilities and structures as defined in Iowa Code section 100.35, in and for churches, lodge halls, courthouses, assembly halls, theaters, opera houses, hotels, colleges, schoolhouses, hospitals, health care facilities, amphitheatres, dormitories, restaurants, taverns, night clubs, public meeting places, apartment buildings and any other buildings or structures used for, but not limited to, such purposes as deliberation, worship, entertainment, amusement or awaiting transportation.

5.50(2) The standards adopted by the commissioner of labor of the state of Iowa pursuant to Iowa Code section 88.5 with regard to fire safety, fire protection, exits and exit lights, and the elimination of fire hazards as they existed on January 1, 1982, are hereby adopted as the standards applicable to buildings, facilities and structures utilized by manufacturers.

5.50(3) The state fire marshal may, where buildings, structures or facilities are being constructed and enforced to local, state or federal codes equivalent to or more restrictive than the rules promulgated within, accept such codes as meeting the intent of this chapter.

5.50(4) General requirements. Every new and existing building, structure or facility, addition to, or portion thereof shall be provided with a safe means of exit as required by the provisions within this chapter.

EXCEPTION: As provided for by the specific occupancies enforced by the state fire marshal under the state fire marshal's jurisdiction.

5.50(5) An approved type of fire extinguishers shall be provided on each floor, so located as to be accessible to the occupants and spaced so no person must travel more than 75 feet from any point to reach the nearest fire extinguisher.

5.50(6) In all buildings or structures of such size, arrangement or use, where delayed detection of a fire could endanger the occupants, the fire marshal may require an automatic fire detection and alarm system.

5.50(7) All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. This includes fire extinguishing equipment, alarm systems, doors and their appurtenances, electric service, including appliances, cords and switches, heating and ventilation equipment, sprinkler systems, and exit facilities.

5.50(8) Excessive storage of combustible or flammable materials such as papers, cartons, magazines, paints, old clothing, furniture and similar materials shall not be permitted.

5.50(9) The state fire marshal shall require compliance with nationally recognized standards when the occupancy uses, stores, develops or handles hazardous materials. Equipment used in conjunction with these types of materials must be of a type designated for the use so as to provide the necessary safety to life and property.

5.50(10) Food preparation facilities shall be protected and maintained in accordance with the standard for the "Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment," No. 96, 1987 edition of the National Fire Protection Association.

5.50(11) Definitions. The following definitions apply to rules 661—5.50(100) to 661—5.105(100):

a. "*Balcony*," exterior exit, is a landing or porch projecting from the wall of a building, and which serves as a required exit. The long side shall be at least 50 percent open, and the open area above the guardrail shall be so distributed as to prevent the accumulation of smoke or toxic gases.

5.301(8) In the case of an installation for storage, handling or use of flammable or combustible liquids within buildings, or enclosures at any establishment or occupancy covered in this chapter, the drawing shall be in such detail as will show whether applicable requirements are to be met.

5.301(9) Rescinded IAB 11/22/95, effective 1/1/96.

661—5.302(101) Tank valves. Rescinded IAB 3/17/93, effective 5/1/93.

661—5.303(101) Bulk plants. Property shall be kept free from weeds, high grass, rubbish and litter, and shall be kept neat, clean and orderly throughout.

661—5.304(101) Motor vehicle and aircraft fuel dispensing.

5.304(1) Except as allowed by rule 661—5.305(101), the standard “NFPA 30A Automotive and Marine Service Station Code,” 1993 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing dispensing motor vehicle fuel into the fuel tanks of motor driven vehicles with the following amendments:

a. Rescinded IAB 11/22/95, effective 1/1/96.

b. Add a new subsection 2-4.2.3 to read as follows:

2-4.2.3 Tanks having a capacity of not more than 6,000 gallons for motor vehicle fuel dispensing systems that comply with 9-3.5 shall be located at least:

a. 40 feet from the nearest important building on the same property;

b. 40 feet away from any property that is or may be built upon, including the opposite side of a public way;

c. 100 feet away from any residence or place of assembly;

EXCEPTION: All distances may be reduced by 50 percent for tanks installed in vaults that comply with 2-4.4, UL listed aboveground double-walled tanks that have a two-hour fire-resistive rating or Approved UL listed aboveground steel tanks encased with a 6-inch thick reinforced concrete shell.

c. Add a new subsection 5-2 to read as follows:

5-2 Basements.

5-2.1 No basement or excavation shall be constructed under any service station building.

5-2.2 Basements in existing service station buildings shall be eliminated or converted to meet 5-1 when extensive remodeling or renovation of the structure takes place.

5.304(2) The standard “NFPA 407 Standard for Aircraft Fuel Servicing,” 1990 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing ground fuel servicing of aircraft with liquid petroleum fuel.

5.304(3) to 5.304(5) Rescinded IAB 3/17/93, effective 5/1/93.

661—5.305(101) Storage in isolated areas. The standard “NFPA 395 Standard for the Storage of Flammable and Combustible Liquids on Farms and Isolated Construction Projects,” 1988 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing flammable and combustible liquids on farms and isolated construction projects.

661—5.306(101) Minimum rules for above ground gasoline and diesel fuel tanks and dispensing at service stations located in cities of 1000 or less population. Rescinded IAB 6/12/91, effective 5/17/91.

661—5.307(101) Registration of existing and new tanks—fees. All existing, new, replacement and out-of-service aboveground tanks of 1101 gallon capacity or greater shall be registered with the state fire marshal. This includes aboveground tanks storing regulated substances as defined in 40 Code of Federal Regulations, Parts 61 and 116, and Section 401.15, July 1, 1988, including, but not limited to, petroleum which includes crude oil, heating oil offered for resale, motor fuels and oils such as gasoline, diesel fuels and motor oil.

5.307(1) Registration form. Registration forms for aboveground storage tanks may be obtained from the fire marshal division. A completed registration form shall be submitted to the fire marshal division by the date on which it is due and accompanied by a check made payable to the "Fire Marshal Division, Iowa Department of Public Safety" for \$10 for each tank registered or reregistered. No cash will be accepted.

5.307(2) Registration deadlines and late fees. All tanks registered prior to October 1, 1999, are due to be reregistered on October 1, 2000, and October 1 of each year thereafter. Any tank registered for the first time on or after October 1, 1999, is due to be reregistered on the first day of the month following the anniversary date of the initial registration and on the same date of each year thereafter. A late fee of \$25 per tank shall be imposed for failure to register a tank or tanks prior to the last day of the month in which the registration fee is due.

5.307(3) Registration tag or decal. Upon receipt of the required registration form and fees, a separate tag or decal for each tank and a copy of the registration form shall be returned to the sender. The tag or decal must be attached to the fill pipe within one foot of where it connects to the tank. Where such installation is impracticable, the tag or decal may be applied to the fill pipe within one foot of where the transport connection is made or to the tank within one foot of the fill pipe.

Rule 5.307 is intended to implement Iowa Code chapter 101 as amended by 2000 Iowa Acts, Senate File 2430.

661—5.308 and 5.309 Reserved.

661—5.310(101) Safety.

5.310(1) Premises shall be kept clean, and free from oil and grease, rubbish, or trash. Only approved water solutions, or detergents, floor sweeping compounds and grease absorbents shall be used for cleaning floors.

5.310(2) Cleaning of parts, in, or around, the service station shall be done with nonflammable solvent except that a flammable solvent with a flash point above 100°F may be used for the purpose provided adequate ventilation is supplied and no sources of ignition are present in the cleaning area.

5.310(3) No dwelling unit or facilities for the attendant shall be maintained in or on the premises of any self-service station closer than 100 feet from Class I or 50 feet from Class II flammable liquid dispensing devices.

661—5.311(101) Underground leakage of flammable and combustible liquids. The standard of "Underground Leakage of Flammable and Combustible Liquids," No. 329, 1987 edition of the National Fire Protection Association, and the following rule entitled "Testing underground tanks," shall be the rules governing underground leakage of flammable and combustible liquids in the state of Iowa.

661—5.312(101) Testing underground tanks. Air tests of underground tanks or piping containing product shall not be permitted.

661—5.313(101) Observation wells. Observation wells may be required on new and existing tanks when a high environmental risk exists or in the event of suspected tank failure or leakage. When installed pursuant to this rule, observation wells shall meet the following requirements and shall be:

1. A minimum of 4 inches in diameter and adequately identified to avoid confusion with product fill openings.
2. Installed to a depth of 24 inches below the tank bottom or to the top of the concrete slab, if used for anchoring.
3. Installed with pipe section having 0.020-inch maximum slots with the slots extending to within approximately 12 inches of grade.
4. Capped and protected from traffic.

661—5.314(101) Crankcase drainings. Rescinded IAB 11/22/95, effective 1/1/96.

661—5.315 to 5.349 Reserved.

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EDITOR'S NOTE: Subrule 5.305(3) which was delayed 70 days from November 8, 1979, is renumbered and amended at 5.305(2) to be effective January 17, 1980. Subrule 5.305(2) renumbered as 661—5.305(100), 7/15/87.

OIL BURNING EQUIPMENT

661—5.350(101) Rules generally. The standard, “NFPA 31 Installation of Oil Burning Equipment,” 1992 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing oil burning equipment in the state of Iowa.

661—5.351 to 5.399 Reserved.

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**STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND
ISOLATED CONSTRUCTION PROJECTS**

661—5.400(101) Rules generally. The standard, "NFPA 37 Installation and Use of Stationary Combustion Engines and Gas Turbines," 1990 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing the installation and use of stationary combustion engines and gas turbines in the state of Iowa.

661—5.401 to 5.449 Reserved.

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**TRANSPORTATION AND DELIVERY OF FLAMMABLE AND COMBUSTIBLE LIQUIDS
BY TANK VEHICLES**

661—5.450(101) Rules generally. The standard, "NFPA 385 Standard for Tank Vehicles for Flammable and Combustible Liquids," 1990 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing the transportation of flammable and combustible liquids in tank vehicles in the state of Iowa.

This rule is intended to implement Iowa Code chapter 101.

661—5.451 to 5.499 Reserved.

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Subrule 5.305(3) which was delayed 70 days from November 8, 1979, is renumbered and amended as 5.305(2) to be effective January 17, 1980. Effective date of 5.400 and 5.450 to 5.452 delayed by the Administrative Rules Review Committee 70 days. These amendments published in IAC 10/3/79, ARC 0596.

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8.302(8) “*Sexual exploitation*” means sexual exploitation by a counselor or therapist in violation of Iowa Code section 709.15.

8.302(9) “*Sexually violent offense*” means any of the following indictable offenses:

- a. Sexual abuse as defined in Iowa Code section 709.1.
- b. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
- c. Sexual misconduct with offenders in violation of Iowa Code section 709.16.
- d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.
- e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs “a” through “d” of this subrule if committed in this state.

8.302(10) “*Sexually violent predator*” means a person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14071(a)(3)(B), (C), (D), and (E).

8.302(11) “*Aggravated offense*” means a conviction for any of the following offenses:

- a. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
- b. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
- c. Sexual abuse in the third degree in violation of Iowa Code section 709.4, subsection 1.
- d. Lascivious acts with a child in violation of Iowa Code section 709.8, subsection 1.
- e. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
- f. Burglary in the first degree in violation of Iowa Code section 713.3, subsection 1, paragraph “d.”
- g. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
- h. Murder, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.

8.302(12) “*Full-time or part-time*” means a period of time exceeding 14 days or an aggregate period of time exceeding 30 days during any calendar year pursuant to 42 U.S.C. § 14071(a)(3)(F).

661—8.303(692A) Forms and procedures. The following forms and procedures are prescribed for use with the Iowa sex offender registry. Supplies of these forms may be obtained by contacting the Iowa sex offender registry at the division of criminal investigation.

8.303(1) Notification. Form DCI-144, “Notification of Registration Requirement,” which notifies offenders of their duty to register with the Iowa sex offender registry shall be provided to persons identified as being required to register. Failure to provide offenders with Form DCI-144 does not relieve offenders of their duty to register with the Iowa sex offender registry.

8.303(2) Registration.

a. Form DCI-145, “Sex Offender Registration,” shall be completed by or on behalf of each offender and submitted to the sheriff of the county in which the offender will be residing and to the division of criminal investigation, in order to satisfy the registration requirements of the Iowa sex offender registry.

b. Form DCI-145 shall also be used to report changes of residence, telephone number, or name of registrants. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county of residence each time the registrant’s place of residence, telephone number, or name changes within five days of the change of residence, telephone number, or name, whether within or outside the state of Iowa. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

If a registrant moves from one county to another, the registrant shall submit copies of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

When the department receives notification that a registrant has changed residence to a location outside of Iowa, the department shall notify the registering state agency in the registrant's new state of residence of the registrant's name, new address, and telephone number.

c. Upon initial submission of Form DCI-145, the form shall be accompanied by current photographs and fingerprints of the offender. Current photographs of the registrant shall accompany submission of Form DCI-145 upon each subsequent submission of Form DCI-145 unless the registrant's appearance has not changed significantly in the judgment of the submitting agency.

d. A list of all registrants within a county shall be provided each month by the division of criminal investigation to the county sheriff. Each county sheriff may provide copies of these lists to other law enforcement, criminal justice, and juvenile justice agencies with jurisdiction in the county.

8.303(3) Annual verification. Form DCI-146, "Annual Verification of Address," shall be mailed by the division of criminal investigation to each registrant to the last address known to the registry annually during the month of original registration. Form DCI-146 shall be returned by the registrant to the division of criminal investigation within ten days of receipt. Form DCI-146 shall be mailed to the registrant in an envelope clearly stating that it is to be returned to the division of criminal investigation if the addressee no longer resides at the address indicated and that Iowa law prohibits its being forwarded.

EXCEPTION: Form DCI-146 shall be mailed quarterly by the division of criminal investigation to each registrant who is a sexually violent predator to the last address known to the registry and shall be completed and returned to the division of criminal investigation by the registrant within ten days of receipt.

8.303(4) Application for determination. Form DCI-148, "Application for Determination," shall be completed by a registrant to initiate a request that the department review whether one or more offenses of which the registrant has been convicted require registration with the Iowa sex offender registry or whether the time period during which the registrant is required to register has expired. A registrant who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts which the registrant intends to present to the department in support of the application. Failure to submit any of the required orders shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, and relevant statutory provisions, the commissioner may refer the matter to an administrative law judge or presiding officer for a hearing.

8.303(5) Decision of determination. Form DCI-149, "Decision of Determination," shall be used by the division of criminal investigation to notify a registrant who has submitted a request for determination (Form DCI-148) of the results of that review. A completed Form DCI-149 shall be mailed to any registrant who has filed a completed Form DCI-148 within 90 days of the receipt by the division of criminal investigation of the completed Form DCI-148 and all required supporting documents. A decision of determination shall be signed by the commissioner and shall constitute final agency action for the purposes of Iowa Code chapter 17A.

If an administrative law judge or presiding officer has been assigned to hold a hearing regarding an application for determination, the administrative law judge or presiding officer shall prepare a proposed decision of determination. The proposed decision of determination shall be reviewed by the commissioner who may uphold or modify the proposed decision of determination and shall then sign a final decision of determination. The final decision of determination shall constitute final agency action for the purposes of Iowa Code chapter 17A.

8.303(6) Request for information. Form DCI-150, "Request for Registry Information," shall be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry shall submit a completed copy of Form DCI-150 to a sheriff or police department. A separate form shall be submitted for each person about whom information is being requested.

8.303(7) Confidential background investigation. A government agency conducting a confidential background investigation shall submit a completed Form DCI-151 to the division of criminal investigation to request information regarding the individual about whom the background investigation is being conducted.

8.303(8) Affirmative public notification.

a. Form DCI-152, "Notice of Intent to Make Affirmative Public Notification," shall be used by the division of criminal investigation to notify a registrant that the division intends to engage in affirmative public notification regarding the registrant in accordance with subrule 8.304(1).

b. Form DCI-153 shall be used by the division of criminal investigation to carry out affirmative public notification regarding a particular registrant in accordance with subrule 8.304(1). Additional information, including, but not limited to, a photograph of the registrant may be attached to Form DCI-153.

8.303(9) Confidential records. Completed forms filled out pursuant to rules 8.301(692A) through 8.399 are confidential records that may not be released to the public.

EXCEPTION: Completed copies of Form DCI-150 are public records only if public release of a form is authorized by the person completing the form.

661—8.304(692A) Release of information. The purpose of release of information from the Iowa sex offender registry is to afford protection to the public. The procedures specified here are intended to maximize the degree of protection afforded the public from potential risks presented by registrants while ensuring registrants their due process rights.

8.304(1) Affirmative public notification for public protection. A criminal or juvenile justice agency may initiate affirmative public notification regarding the identity and location of a specific registrant subsequent to the completion of a risk assessment of the registrant by the division of criminal investigation, the department of corrections, the department of human services, or a juvenile court officer which has resulted in a finding that the registrant is "at risk." A request for confirmation that a risk assessment resulting in classifying the registrant as "at risk" has been completed may be sent to the division of criminal investigation by mail, electronic mail via the Internet to isor@dps.state.ia.us, facsimile transmission or via the Iowa on-line warrants and articles (IOWA) system.

A criminal or juvenile justice agency shall not initiate affirmative public notification regarding an individual who has been convicted of kidnapping or false imprisonment, and the crime did not involve attempted sexual abuse or sexual abuse, and the person has not committed another offense that would require the person to register.

a. *Risk assessment.* An assessment of the risk presented by a registrant shall be prepared prior to any affirmative public notification regarding that registrant. The assessment of risk for a registrant shall be prepared by the division of criminal investigation for a registrant who has moved to Iowa but is not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; federal parolees or probationers; persons who have been released from a county jail but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; and persons who are convicted and released by the courts and are not incarcerated or placed under supervision pursuant to the court's sentencing order. Risk assessments shall be prepared by the department of corrections, juvenile court officers, or the department of human services for registrants as specified in 1999 Iowa Acts, Senate File 294 [1999 Iowa Code Supplement section 692A.13A]. Risk assessments shall be completed following procedures prescribed by the department of corrections.

b. *Risk categories.* The assessment of risk presented to the community by a registrant shall result in placement of the registrant into one of the following categories: "low risk" or "at risk." "At risk" includes registrants who have been assessed to be a "moderate risk" or "high risk."

All registrants are by virtue of their presence on the registry classified as "low-risk" offenders, unless they are classified as offenders "at risk" on the basis of assessments completed by the division of criminal investigation, department of corrections, department of human services, or a juvenile court officer.

c. *Affirmative public notification procedures.* The means, method, and scope of release of information shall be based upon the determination of level of risk presented by a registrant. The following forms of notification may be utilized for each level of risk assessed.

(1) Low risk. For a registrant classified as presenting a low risk to the community, notification of the registrant's name, current address, criminal history, and a current photograph of the registrant may be provided to any law enforcement agency likely to encounter the registrant. These shall include, but are not limited to, any county or municipal agency with jurisdiction over the registrant's place of residence, place of employment or school or any other place to which the registrant is known to travel on a frequent basis.

(2) At risk. For a registrant classified as "at risk," the notification described in subparagraph (1) shall be completed. Also, persons likely to encounter the registrant may be notified through the following means. The department shall consult with the county attorney, sheriff, and local law enforcement agencies with jurisdiction in the registrant's place of residence, employment, school attendance, and other locations that the registrant is known to frequent, regarding appropriate forms of affirmative public notification. Form DCI-153 shall be used to carry out affirmative public notification initiated by the division of criminal investigation.

1. Notification of agencies or organizations in the community in which the registrant lives, is employed or attends school, or is known to frequent, where there are potential victims.

2. Personal or written notification of neighbors in the vicinity of the residence of the registrant, the registrant's place of employment or school, or other places the registrant is known to frequent.

3. Releases to media outlets which cover the community or communities in which the registrant resides, is employed or attends school, or is known to frequent including but not limited to the registrant's name and photograph.

4. Distribution of leaflets to residences and businesses in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

5. Posting of notices in public locations in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

(3) Responsibility for affirmative public notification. Affirmative public notification is intended to be a process of cooperation between the department of public safety and local law enforcement agencies with jurisdiction in locations where the registrant resides, is employed, attends school, or is known to frequent.

(4) Any county sheriff or police department shall provide access to the list of all registrants classified as "at risk" within the county in which the sheriff or police department has jurisdiction to any person who requests such a list; however, records of persons protected under 18 U.S.C. § 3521 shall not be disclosed.

(5) Subject to the availability of sufficient funds, the department shall provide electronic access to information from the Iowa sex offender registry regarding registrants who:

1. Commit a criminal offense against a minor, an aggravated offense, sexual exploitation, a sexually violent offense, or another relevant offense on or after July 1, 1999, of this Act and who have been assessed to be a "moderate risk" or "high risk."

2. Committed an offense prior to July 1, 1999, and who have been assessed to be a "moderate risk" or "high risk" and whose opportunity to request a hearing regarding the assessment of risk has lapsed.

d. Findings—prior notice—right to appeal—affirmative public notification by department.

(1) When a risk assessment has been completed by the division of criminal investigation, the department of corrections, or the department of human services, the agency which conducted the risk assessment shall notify, or cause to be notified, the registrant of the initial finding, by providing to the registrant a completed copy of Form DCI-152. Procedures for notifying a registrant of the results of a risk assessment and providing for appeals thereof shall be subject to the rules of the agency conducting the risk assessment. Copies of the risk assessment and related documents, including any appeals and documentation of the results of appeals, shall be provided to the division of criminal investigation. When a risk assessment has been completed by a juvenile court officer, the juvenile court officer shall notify the division of criminal investigation of the results of the risk assessment and provide a copy of the risk assessment to the division of criminal investigation.

When a risk assessment has been completed by the division of criminal investigation or the division of criminal investigation has received a completed risk assessment from a juvenile court officer, notice shall be given by the division of criminal investigation to the registrant by personal service or by certified mail, return receipt requested, 14 days prior to the commencement of any affirmative public notification, unless it is impracticable to give timely notice. No additional notice is required. Notice is deemed provided if the registrant refuses delivery of certified mail or if certified mail is undeliverable because the registrant has not complied with registry requirements to provide a current address. The notice shall contain the following information:

1. The result of the risk assessment;

2. A description of the scope of affirmative public notification which may result from the risk assessment;

3. That unless application is made for a hearing on or before the date mentioned in the notice, affirmative public notification may take place at any time thereafter while the person remains a registrant;

4. That the offender may make application for a hearing by filing a written request for a hearing and mailing or serving it on the department at an address prescribed on the notice so it is received on or by the date mentioned in the notice;

5. That if application is made and received by the department by 4:30 p.m. on or by the date mentioned in the notice, there will be no affirmative public notification until and unless the result of the risk assessment is affirmed, or is modified, through the hearing process.

(2) A registrant who has received notice from the division of criminal investigation that a risk assessment has been completed by the division of criminal investigation or a juvenile court officer may appeal the result of the risk assessment in writing to the administrative services division of the department of public safety within 14 days of the date on which the notice is sent to the registrant by the division of criminal investigation.

(3) Affirmative public notification shall not proceed until at least 14 days after notice of the result of the risk assessment has been mailed or delivered to the registrant.

EXCEPTION: If the director of the division of criminal investigation finds that the registrant presents an immediate threat to the safety of the public, affirmative public notification may proceed at the same time as notice is sent to the registrant. In such a case, the notice shall inform the registrant that affirmative public notification may proceed immediately, based upon the finding that the registrant presents an immediate threat to the safety of the public.

(4) If the department does not receive a written application for a hearing within the time guidelines set forth above, the department may undertake affirmative public notification if the result of the risk assessment was that the registrant is "at risk."

(5) When the department receives an application for a hearing, the department shall refer the matter to an administrative law judge or a presiding officer pursuant to Iowa Code section 17A.11. The department shall submit all written documents supporting the initial finding to the presiding officer with the application for hearing. The administrative law judge or presiding officer shall set a hearing within seven days after receiving the application for hearing from the department and provide notice to the parties along with the documentary evidence received from the department. The administrative law judge or presiding officer shall set the hearing as expeditiously as possible in recognition of the public protection interests of Iowa Code chapter 692A.

(6) All documents relating to the hearing shall be confidential prior to, during, and after the hearing. The hearing itself shall be conducted *in camera*.

(7) Rule 661—10.321(17A), which governs introduction and consideration of evidence, shall apply to proceedings under this rule.

(8) The department shall have the burden of proof by a preponderance of the evidence to support the result of the risk assessment.

(9) After hearing the evidence and argument of the parties, the administrative law judge or presiding officer shall issue a written order affirming, reversing, or modifying the result of the risk assessment. The order shall contain concise findings of fact and conclusions of law. A copy of the order shall be promptly mailed to each party. The order itself shall remain confidential, in accordance with Iowa Code section 692A.13.

(10) The registrant or the director of the division of criminal investigation may appeal the administrative law judge's or presiding officer's order to the commissioner of public safety. Appeal must be served in writing within 14 days from the date of the order. If the order is not appealed within the 14-day time period, it shall be considered a final decision, and the department or other criminal or juvenile justice agency may undertake affirmative public notification, if warranted by the result of the risk assessment.

(11) The commissioner shall consider an appeal on the record made before the administrative law judge or presiding officer. The commissioner shall not consider any additional facts on appeal. The commissioner may, at the commissioner's discretion, request written briefs or oral argument in an appeal. The commissioner shall issue a written decision affirming, reversing, or modifying the order of the presiding officer. A copy of the decision shall be promptly mailed to each party. The decision, and all related information, shall remain confidential, in accordance with Iowa Code section 692A.13. The commissioner's decision shall constitute final agency action for purposes of Iowa Code section 17A.19.

(12) Subsequent affirmative public notification. For a registrant who has been assessed as “at risk” and who has been notified of the result of the risk assessment and the possibility of affirmative public notification, a criminal or juvenile justice agency may initiate affirmative public notification in any area in which the registrant resides, is employed, attends school, or frequents subsequent to the initial notification to the registrant.

e. Affirmative public notification initiated by other criminal or juvenile justice agency. A criminal or juvenile justice agency may initiate affirmative public notification with regard to a registrant subsequent to the completion by the division of criminal investigation, the department of corrections, the department of human services, or a juvenile court officer of a risk assessment finding that the registrant is “at risk.” Prior to initiating affirmative public notification, the agency initiating it shall provide notice to the registrant of the agency’s decision to initiate affirmative public notification, of the intended scope and manner of affirmative public notification, and of the registrant’s right to contest the decision. A copy of the notice shall be submitted to the division of criminal investigation at the same time as it is transmitted to the registrant. The notice shall contain instructions to the registrant as to the procedures for contesting the decision and the time allowed to do so. Affirmative public notification shall not proceed until the time allowed for contesting the decision has expired or, if the decision is contested, until the decision has been upheld. Any written or published form of affirmative public notification shall prominently display the identity of the agency initiating the notification.

Any criminal or juvenile justice agency initiating affirmative public notification regarding any registrant is authorized to request assistance in carrying out affirmative public notification from other law enforcement agencies with jurisdiction in areas in the vicinity of the registrant’s residence, place of employment or school, or other places which the registrant is known to frequent.

8.304(2) Release of information in response to individual request. A sheriff or police department that receives a completed Form DCI-150 shall inquire of the division of criminal investigation as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the subject about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department shall notify the person making the inquiry that the subject about whom the inquiry was made is a registrant and shall provide the requester with the following information: name of registrant, address of registrant, age of registrant, gender of registrant, and physical description of registrant.

8.304(3) Release of information for confidential background investigations. The division of criminal investigation may release additional information regarding a registrant to personnel of criminal justice agencies or to personnel of government agencies conducting confidential background investigations.

8.304(4) Release of information for bona-fide research. Information from the Iowa sex offender registry may be released to persons conducting bona-fide research. A person conducting bona-fide research may request access to information from the Iowa sex offender registry by submitting a completed Form DCI-155 to the division of criminal investigation. Information identifying persons who have requested information about registrants using Form DCI-150 shall not be released to researchers unless permission has been obtained from each person who would be identified.

8.304(5) Submission of information to the National Sex Offender Registry. The division shall submit sex offender registry data as required to the National Sex Offender Registry of the Federal Bureau of Investigation.

661—8.305(692A) Expungement of records.

8.305(1) *Expungement upon reversal of conviction.* The division of criminal investigation shall expunge the registration of any registrant if the conviction which forms the basis for the registrant's being required to register is reversed upon receipt of a certified copy of the court order reversing the conviction, providing that the person has been convicted of no other offense which would require registration.

8.305(2) *Expungement upon expiration of registration period.* The division of criminal investigation shall expunge a registrant's registration upon expiration of the period during which the registrant is required to register, provided that the registrant has not subsequently been convicted of an offense that would require registration.

661—8.306 to 8.399 Reserved.

These rules are intended to implement Iowa Code Supplement chapter 692A as amended by 2000 Iowa Acts, Senate File 2031.

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PUBLIC TRANSIT

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