State of Iowa

Iowa Administrative Code Supplement

Biweekly
August 9, 2000

KATHLEEN K. BATES
ADMINISTRATIVE CODE EDITOR

STEPHANIE A. HOFF
ASSISTANT EDITOR

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

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

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

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

INSTRUCTIONS
FOR UPDATING THE
IOWA ADMINISTRATIVE CODE

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

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

UPDATING INSTRUCTIONS
August 9, 2000, Biweekly Supplement
[Previous Supplement dated 7/26/00]

	Remove Old Pages*	Insert New Pages
CORRECTIONS DEPARTMENT[201]	Analysis, p. 1, 2 Ch 20, p. 1—Ch 20, p. 6 Ch 20, p. 25, 26	Analysis, p. 1, 2 Ch 20, p. 1—Ch 20, p. 6a Ch 20, p. 25, 26
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]	Analysis, p. 1, 2 Ch 20, p. 1—Ch 20, p. 4 Ch 25, p. 3, 4 Ch 25, p. 9, 10	Analysis, p. 1, 2 Ch 20, p. 1—Ch 20, p. 7 Ch 25, p. 3, 4 Ch 25, p. 9, 10
IOWA FINANCE AUTHORITY[265]	Analysis, p. 1—Analysis, p. 3 Ch 1, p. 3, 4 Ch 9, p. 9, 10 Ch 12, p. 1—Ch 12, p. 28	Analysis, p. 1—Analysis, p. 3 Ch 1, p. 3, 4 Ch 9, p. 9, 10 Ch 12, p. 1
Educational Examiners Board[282]	Analysis, p. 1—Analysis, p. 4 Ch 14, p. 1, 2 Ch 14, p. 23—Ch 14, p. 30	Analysis, p. 1—Analysis, p. 4 Ch 14, p. 1, 2 Ch 14, p. 23—Ch 14, p. 31
ELDER AFFAIRS DEPARTMENT[321]	Ch 28, p. 1—Ch 28, p. 6	Ch 28, p. 1—Ch 28, p. 7
GENERAL SERVICES DEPARTMENT[401]	Ch 1, p. 3, 4	Ch 1, p. 3, 4

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

	Remove Old Pages*	Insert New Pages
HUMAN SERVICES DEPARTMENT[441]	Analysis, p. 3, 4	Analysis, p. 3, 4
	Analysis, p. 17—Analysis, p. 20	Analysis, p. 17—Analysis, p. 20
	Ch 28, p. 7, 8	Ch 28, p. 7—Ch 28, p. 9
	Ch 52, p. 1—Ch 52, p. 4	Ch 52, p. 1—Ch 52, p. 4
	Ch 99, p. 3, 4	Ch 99, p. 3, 4
	Ch 99, p. 7, 8	Ch 99, p. 7, 8
	Ch 99, p. 29—Ch 101, p. 5	Ch 99, p. 29—Ch 101, p. 5
	Ch 177, p. 1—Ch 177, p. 6	Ch 177, p. 1—Ch 177, p. 6
Racing and Gaming Commission[491]	Analysis, p. 1—Ch 1, p. 6	Analysis, p. 1—Ch 1, p. 5
	Ch 4, p. 5—Ch 4, p. 8	Ch 4, p. 5—Ch 4, p. 8
	Ch 4, p. 19—Ch 6, p. 2	Ch 4, p. 19—Ch 5, p. 7
	Ch 7, p. 3, 4	Ch 7, p. 3, 4
	Ch 7, p. 13, 14	Ch 7, p. 13, 14
	Ch 7, p. 21, 22	Ch 7, p. 21, 22
	Ch 9, p. 5—Ch 9, p. 12	Ch 9, p. 5—Ch 9, p. 12
	Ch 9, p. 31	Ch 9, p. 31
	Ch 10, p. 7—Ch 10, p. 10	Ch 10, p. 7—Ch 10, p. 10
	Ch 10, p. 13, 14	Ch 10, p. 13—Ch 10, p. 14d
	Ch 10, p. 33, 34	Ch 10, p. 33, 34
	Ch 13, p. 3, 4	Ch 13, p. 3, 4
	Ch 13, p. 19—Ch 21, p. 3	Ch 13, p. 19
	Ch 22, p. 5—Ch 24, p. 6	Ch 22, p. 5—Ch 24, p. 6
	Ch 24, p. 17—Ch 26, p. 2	Ch 24, p. 17—Ch 26, p. 2
	Ch 26, p. 11, 12	Ch 26, p. 11, 12
Environmental Protection Commission[567]	Ch 64, p. 21—Ch 64, p. 24	Ch 64, p. 21—Ch 64, p. 24
Natural Resource Commission[571]	Ch 15, p. 1—Ch 15, p. 4	Ch 15, p. 1—Ch 15, p. 4
	Ch 15, p. 9, 10	Ch 15, p. 9, 10
	Ch 15, p. 13, 14	Ch 15, p. 13—Ch 15, p. 16
	Ch 78, p. 1—Ch 78, p. 3	Ch 78, p. 1—Ch 78, p. 3
Emergency Management Division[605]	Analysis, p. 1—Ch 10, p. 2	Analysis, p. 1—Ch 10, p. 2
Dental Examiners Board[650]	Analysis, p. 3, 4	Analysis, p. 3, 4
	Ch 27, p. 1—Ch 27, p. 3	Ch 27, p. 1—Ch 27, p. 4
Pharmacy Examiners Board[657]	Ch 10, p. 17—Ch 10, p. 19	Ch 10, p. 17—Ch 10, p. 19

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

	Remove Old Pages*	Insert New Pages
TRANSPORTATION DEPARTMENT[761]	Analysis, p. 13, 14	Analysis, p. 13, 14
	Ch 142, p. 1—Ch 151, p. 2	Ch 142, p. 1—Ch 151, p. 2
	Ch 425, p. 3, 4	Ch 425, p. 3, 4
	Ch 425, p. 7, 8	Ch 425, p. 7, 8
	Ch 425, p. 11	Ch 425, p. 11
	Ch 602, p. 1, 2	Ch 602, p. 1, 2
	Ch 602, p. 9	Ch 602, p. 9
	Ch 605, p. 3—Ch 605, p. 7	Ch 605, p. 3—Ch 605, p. 7
	Ch 630, p. 1, 2	Ch 630, p. 1, 2
WORKFORCE DEVELOPMENT DEPARTMENT[871]	Analysis, p. 1, 2	Analysis, p. 1, 2
	Ch 12, p. 1	Ch 12, p. 1—Ch 13, p. 2
Labor Services Division[875]	Analysis, p. 1, 2	Analysis, p. 1, 2
	Ch 1, p. 39, 40	Ch 1, p. 39—Ch 1, p. 42
Index Volume	"F" Tab, p. 1-31	"F" Tab, p. 1-32

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

CORRECTIONS DEPARTMENT[201]

Rules transferred from Social Services Department[770] to Department of Corrections[291]; see 1983 Iowa Acts, chapter 96. Rules transferred from agency number [291] to [201] to conform with the 1986 reorganization numbering scheme in general, IAC Supp. 3/20/91.

Note: Iowa Code chapter 246 renumbered as chapter 904 and 247 renumbered as chapter 913 in 1993 Iowa Code.

CHAPTERS 13 to 19
Reserved

TITLE II
INSTITUTIONS

CHAPTER 20
INSTITUTIONS ADMINISTRATION

[Prior to 10/1/83, Social Services[770] Ch 16]
[Prior to 3/20/91, Corrections Department[291]]

201—20.1(904) Application of rules. The rules in this chapter apply to all adult correctional institutions unless otherwise stated. Rules related to individual institutions can be found in chapters on the institutions. The institutions covered by these rules are the Iowa state penitentiary, Fort Madison, the Iowa state men's reformatory, Anamosa, the Iowa correctional institution for women, Mitchellville, the Iowa medical and classification center, Oakdale, the correctional release center, Newton, the Mt. Pleasant correctional facility, Mt. Pleasant, the Clarinda correctional facility, Clarinda, and the north central correctional facility, Rockwell City.

201—20.2(904) Title II definitions.

"Class I Disciplinary Report" means the same as a major report and is defined in Department Manual IN-V-36.

"Class II Disciplinary Report" means the same as a minor report and is defined in Department Manual IN-V-36.

"Contraband" means weapons, alcohol, drugs, money, obscene materials, or materials advocating disruption of or injury to inmates, employees, programs, or physical facilities. It shall also include anything which is illegal to possess under the law, against institutional regulations, or materials which are used in the production of drugs or alcohol or used in conjunction with the taking of illicit drugs.

"Furlough" means any temporary release from custody as granted in accordance with Iowa Code section 904.108(2).

"Furlough residence" means any private dwelling, apartment, house, trailer court, hotel, motel or community dwelling place.

"Immediate family" means mother, father, sister, brother, half sister, half brother, spouse, son, daughter, natural grandparents, and natural grandchildren. Legal guardian, foster parents, stepparents, stepchildren, stepsister, and stepbrother will be included provided a positive relationship exists or contact will confer a benefit to the inmate.

For the purpose of visitation, all the above will be included as immediate family provided a positive relationship exists. Immediate family members may be subject to criminal background investigation.

"Law enforcement checks" means prescheduled, in person, check-ins at designated law enforcement agencies such as police departments, sheriff's offices and highway patrol offices.

"Medical practitioner" means medical doctor, osteopathic physician or physician's assistant employed by the department.

"Obscene material" means the same as that described in 20.6(4).

"Performance evaluation" means evaluation of work and program participation as well as other areas of behavior.

"Plan of payment" means the method by which the inmate is to make restitution. The plan may include legal financial obligations. The plan is to reflect the offender's present circumstances, such as income, physical and mental health, education, employment and family circumstances.

"Plan of restitution" means a plan stating the amount of restitution as set by the court.

"Responsible person" means an individual on the inmate's visiting list of legal age and in the judgment of the staff, is a person of accountability, is able to think and act rationally, and is willing to facilitate the inmate's successful completion of furloughs within the furlough rules and facilitate the return of the inmate to the institution. A responsible person shall further mean an individual not now under indictment, sentence or conviction of an indictable public offense. Ex-felons will not be permitted to act as responsible persons for furlough until the demonstration of two years' successful adjustment in the community after release from any supervision.

This rule is intended to implement Iowa Code section 904.108(1)*"k."*

201—20.3(904) Visits to offenders. Visiting is a privilege which allows offenders to maintain and strengthen relationships with family members and friends. Though visits are encouraged, institutions' space, schedule, personnel constraints, treatment considerations, or other safety and security issues of the institutions and their operations may result in limiting the number and length of visits.

20.3(1) *Definitions.*

"Application" means a written application identifying the visitor and the visitor's relationship to the offender.

"Background investigation" means security staff may verify the accuracy of a visitor's application for any reason.

"Immediate family" means an offender's spouse, mother, father, sister, brother, child, grandparent, established legal guardian or other who acted in place of parents, and step- or half-relation if the step- or half-relation and the offender were raised as cohabitating siblings.

"Personal search" means a pat-down search on top of the visitor's clothes or a nonintrusive use of an electronic search process.

"Visiting list" means the screened list of approved visitors with authorized visiting privileges at all department of corrections institutions.

20.3(2) *Authorized visitors.* Each institution will establish an approved visiting list for each offender. This visiting list remains valid when the offender is transferred to another institution. To meet facility design limitations and security considerations, the visiting list shall be limited to immediate family members and two other visitors.

a. Immediate family members. The offender's immediate family members may be included on the list without a background investigation unless one is required for security purposes.

b. Two other visitors. The offender's relatives other than immediate family may be included on the list and allowed to visit if visiting space is available. Relatives of the offender other than immediate family may be subject to a background investigation. Friends of the offender may be included on the list. All friends of the offender will be subject to a background investigation conducted by law enforcement officials.

c. Limitations. An individual on the approved visiting list of one offender shall not be on the approved visiting list of another offender unless approved by the warden/superintendent or designee of each affected institution, jurisdiction, or sovereign. The warden/superintendent or designee may make exceptions only for a visitor who is an immediate family member of more than one offender.

A person working in any institution as a volunteer shall not be on an offender's visiting list, except with the permission of the warden/superintendent or designee.

20.3(3) *Nonauthorized visitors.* The following persons shall not be authorized to visit without prior approval of the warden/superintendent or designee:

a. Individuals discharged from a correctional institution, from parole or from probation within the last 18 months. Noncontact visiting may be authorized for an offender's spouse or child who has been discharged from a correctional institution, from parole or from probation within the last 18 months.

b. Individuals whose behavior represents a control problem or is counterproductive to stable offender behavior. This may be reflected in the background investigation report which shows that the individual has a record of carrying concealed weapons, use of a controlled substance, previous violation of institutional rules, or similar behavior.

c. Individuals under criminal indictment.

d. Individuals on probation, work release, or parole.

e. Individuals found to be involved with or convicted of incidents of aiding an escape or introducing contraband in any detention or supervised correctional setting.

f. Individuals who intentionally give false information on the visitor's application form.

g. Individuals convicted of a felony.

h. Persons who may compromise the order and security of the institution.

i. Current and former employees, volunteers or ex-volunteers, and individuals who currently are providing, or have previously provided, contract services to the department of corrections or a judicial district.

j. Former department of corrections employees of this or other federal, state, or local jurisdiction or volunteers who have left employment voluntarily or been terminated as a result of accusation or investigation for misconduct shall not be allowed to visit at the facility where they were employed or volunteered.

k. Neither a victim of a sex offense, whether registered or not, nor the victim's family members will be approved for the visiting list of the perpetrator in the victim's case.

20.3(4) *Written notification.* Written notification of denial will be given to both the offender and the applicant within 30 days from application to be on a visiting list. Notification of approval will be given only to the offender. The offender is responsible for notifying the approved visitor.

a. When approved, visitors will be subject to the following conditions:

(1) Visitors are subject to a search;

(2) The search may include a pat down, search by an electronic detection device, or visual search.

b. When an application is denied, the applicant and the offender shall be apprised of the reasons for denial.

(1) Applicants may appeal to the warden/superintendent or designee in writing.

(2) The decision of the warden/superintendent or designee may be appealed to the director of the department of corrections or the director's designee. The decision of the director or the director's designee constitutes final agency action.

20.3(5) *Identification.* All visitors shall present proper identification upon entrance to the institution. Photo identification is preferred, but all identification shall identify personal characteristics, such as color of hair and eyes, height, weight, and birth date.

a. Signature cards may be required from visitors.

b. All visitors may be required to be photographed for future identification purposes only.

20.3(6) *Special visitors.* Attorneys, division of criminal investigation agents, Federal Bureau of Investigation agents, law enforcement officials, and ministers shall present proof of identity upon entrance to the institution. The offender must express a desire to visit a minister or attorney before the minister or attorney will be admitted. Attorney and minister visits shall be during normal visiting hours unless a special visit has been requested by the offender and approved by the warden/superintendent or designee prior to the visit.

An attorney or minister testing positive by an electronic detection device may be required to visit without direct contact.

20.3(7) *Termination of visits.* Individuals may have visiting privileges modified or terminated when:

a. The offender or visitor engages in behavior that may in any way be disruptive to order and control of the institution.

b. The visitor or offender fails to follow the established rules and procedures of the institution.

c. The visitor and offender directly exchange or attempt to exchange any object or article. This does not apply to purchases from the canteen or visiting room vending machines that are consumed during the visit.

d. The visitor tests positive for drugs or explosives using an authorized electronic detection device calibrated and operated for testing for the presence of drugs or other contraband.

e. The visit or future visiting is detrimental to the health or welfare of the offender or visitor.

f. The visitor does not supervise the visitor's children to prevent them from interfering with or disrupting other visits.

Offenders may request reconsideration of denied visitors six months after resolution of the reason for denial or when approved by the warden/superintendent or regional deputy director.

20.3(8) *Noncontact visiting.* The warden/superintendent or designee may allow noncontact visits when the order or security of the institution may be threatened or when disciplinary rules or procedures have been violated. Noncontact visiting hours will be provided on a scheduled basis. The hours and days will be posted by the warden/superintendent or designee, and notice will be posted at least one week prior to any change. Visitors on the noncontact list at the time of a schedule change will be notified of the schedule change by regular mail sent to the last-known address.

20.3(9) *Minors.* Minors outside the offender's immediate family shall have written permission from a parent or guardian and be accompanied by an adult on the approved visiting list. All minors shall have adult supervision. Exceptions shall have prior approval of the warden/superintendent or designee.

20.3(10) *Clothing.* Visitors shall be properly attired prior to entering a correctional setting. All visitors shall wear shoes. Visitors wearing miniskirts, shorts, muscle shirts, see-through clothing or halter tops will not be allowed to visit. Visitors wearing clothing with slogans, pictures, or words intended to deprecate race, sex, or cultural values will not be allowed entry. Visitors may be required to remove for the duration of the visit outerwear such as, but not limited to, coats, hats, gloves, or sunglasses. A medical need for sunglasses must be verified by prescription.

20.3(11) *Security procedures.* Visitors may be requested to submit to a personal search (pat down) or an electronic search for weapons or contraband. "Personal search" means a pat-down search on top of the visitor's clothes or a nonintrusive use of an electronic search process. If the initial electronic test confirms the presence of a controlled substance, the visitor will be given a second confirmation test. When the electronic detection device alarm is activated, the visitor shall produce the item that set off the alarm or a personal search may be made to find the item. If the visitor refuses to submit to a search, access to visiting shall be denied and entrance shall be denied. All searches shall be conducted in a courteous manner to respect the visitor's privacy. Minors are subject to personal and electronic searches. When a visitor accompanied by a minor refuses to leave the minor with a staff person and does not want the minor present during the search, the visit will be denied. When a minor is searched, the supervising adult shall be present in the room at all times.

a. The warden/superintendent or designee will maintain records of all searches which produce positive results including the name of each person subjected to a search, the names of the persons conducting and in attendance at the search, and the time, date, and place of the search. The written record shall reflect the reason for the search and the results of the search. The written authorization for the search shall be included in the record. Testing records will be maintained by the institution for one year and then expunged. Records of positive tests will be maintained for five years and then expunged. All testing records are confidential and will be released only when ordered by a court of proper jurisdiction.

b. When a visitor tests positive by an electronic search device, the visitor may appeal to the warden/superintendent or designee in writing. The decision of the warden/superintendent or designee may be appealed to the director of the department of corrections or the director's designee. The decision of the director or the director's designee constitutes final agency action.

c. Staff may request that local law enforcement search visitors if search procedures or an electronic testing device shows that there is a clear, reliable reason to believe a particular visitor is attempting to smuggle contraband into the facility. If the search reveals drugs or illegal contraband, the item shall be confiscated and preserved by local law enforcement. Visitors found in possession of contraband shall be referred by local law enforcement to the county attorney for prosecution.

d. Facilities will establish procedures for personnel selection and training of search personnel. Operators will be trained in accordance with manufacturer's standards, which require 16 hours of initial certification and 4 hours of annual training thereafter. Each facility will have at least two certified trainers of trainers.

20.3(12) *Sanctions.* Visitors testing positive or refusing to be tested by an electronic detection device will be restricted.

a. *Testing positive.* The following restrictions will apply to visitors testing positive:

(1) First occurrence. Visiting privileges will be suspended from the date and time of the test for the next 2 visiting days. Future visits may be restricted to noncontact status.

(2) Second occurrence. Visiting privileges will be suspended from the date and time of the test for the next 7 visiting days. Future visits may be restricted to noncontact status.

(3) Third occurrence. Visiting privileges will be suspended from the date and time of the test for the next 15 visiting days. Future visits may be restricted to noncontact status.

(4) Fourth occurrence. Visiting privileges will be suspended from the date and time of the test for the next 30 visiting days. In addition, the visitor will be placed on noncontact visiting status for 180 days from the date of the first eligible visit. If the visitor tests positive from this date forward, visiting privileges may be permanently restricted to noncontact status.

Upon request by the visitor, the warden/superintendent or designee may allow visits in noncontact status for the first, second, and third occurrence pending the receipt of laboratory reports for any visitor testing positive by an electronic detection device.

b. *Refusing to be tested.* Refusal to submit to a drug test by an electronic testing device will result in suspension of visiting privileges for 15 calendar days from the time of refusal.

Written notice regarding visiting status or facility access will be presented or mailed within 5 working days to any individual (nonoffenders) testing positive or who refuses consent to search. Such notice will include the duration of any restriction and procedures for reconsideration or reinstatement.

20.3(13) *Money orders/cashier's checks.* Money orders/cashier's checks for deposit in the offender's account may be left at the cashier's office during business hours or in accordance with rule 20.5(904) or as designated by the warden/superintendent or designee. Money orders/cashier's checks must be made payable to the warden/superintendent and must include the offender's name and ID number. Suspected abuse of money requests from the public by an offender may be cause for limits or restrictions on the amounts of money which can be received and from whom money can be received.

20.3(14) *Limits.* Each institution, according to its facilities and conditions, shall limit the number of visitors an offender may have at any one time and the length of visits.

20.3(15) *Segregation status.* Offenders in segregation status may have visits modified in regard to place, time, and visitor, depending on the staff and space available.

20.3(16) *Abuse of visiting privileges.* Visiting privileges may be modified, suspended, or terminated when abuses are evidenced or planned.

20.3(17) *Special visits.* The warden/superintendent or designee may permit special visits not otherwise provided for in this rule. These may include, but are not limited to, extended visits for close family members traveling extended distances, immediate visits for close relatives or friends about to leave the area, visits necessary to straighten out critical personal affairs, and other visits for similar reasons. All these visits shall be at the sole discretion of the warden/superintendent or designee. When ruling on such visits, the warden/superintendent or designee shall consider appropriate factors including the uniqueness of the circumstances involved for both the offender and the visitor; security, order, and administrative needs of the institution; and available alternatives to a special visit. The decision of the warden/superintendent or designee in these cases constitutes final agency action.

20.3(18) *Temporary modifications.* Visiting procedures may be temporarily modified or suspended in the following circumstances: riot, disturbance, fire, labor dispute, space restrictions, natural disaster, or other emergency.

This rule is intended to implement Iowa Code section 904.512.

201—20.4(904) Mail. Constructive, unlimited correspondence with family, friends, and community sources will be encouraged and facilitated. Inmates have the responsibility in the use of correspondence to be truthful and honest. Institutions have the responsibility to maintain a safe, secure, and orderly procedure for inmate use of the mail.

20.4(1) *Nonconfidential.*

a. Mail will not be read or censored on a regular basis unless there is justifiable cause. In an effort to maintain proper security measures, mail may be monitored on a random basis.

b. All nonconfidential mail shall be inspected for contraband. Nonconfidential mail shall be read when there is suspected abuse of correspondence or a threat to the good sense of order and security of the institution.

20.4(2) *Confidential.*

a. Confidential mail, as defined in this rule, will not be read or censored.

b. Confidential mail will be opened and inspected for contraband and to ensure that the contents are from the return addressee, only in the presence of the inmate.

Confidential mail may be read only after a finding of probable cause by a court of competent jurisdiction that a threat to the order and security of the institution or abuse of correspondence exists.

c. Confidential letters may be written to: (the sender's name and address must be appropriately identified on the envelope)

(1) Officers of federal, state, or municipal courts (judges, judges' law clerks, prosecuting attorneys, court administrators).

(2) Federal agencies chief administrative officer, elected or appointed officials.

(3) State agencies chief administrative officer, elected or appointed officials.

(4) Clerk of court.

(5) The sentencing state department of corrections chief executive officer, deputy directors.

(6) Sentencing state board of parole.

(7) Attorney.

(8) The citizens' aide office.

(9) Any additional exception by law or policy.

(10) Civil rights commission.

d. Envelopes containing confidential correspondence shall be marked as "confidential" by the sender.

20.4(3) *General.*

a. Pursuant to Iowa Code chapter 2C, mail received from the office of citizens' aide shall be delivered unopened.

b. When sending confidential mail, inmates may be requested to seal the envelope in the presence of staff after the envelope and letters have been inspected for contraband.

c. No mail lists will be maintained restricting persons from writing to inmates or inmates writing to persons in the public. All letters mailed by inmates will be left unsealed for inspection of the contents only. Envelopes shall contain letters to the addressee only.

d. All other nonconfidential correspondence and packages, both incoming and outgoing, shall be opened for inspection to remove items of contraband.

To facilitate institutional inspection of first-class mail, writers should avoid enclosures other than the written correspondence. Traditional items such as snapshots of appropriately clothed individuals and clippings from published material may be permitted. Each institution shall have guidelines for the amount and type allowed.

e. With the exception of weekends and holidays, incoming and outgoing mail will not be retained for more than 24 hours prior to delivery unless unusual circumstances exist such as staff shortage, suspected correspondence violations, disturbance, or similar constraints.

f. Persons under the age of 18 must provide written permission to the warden/superintendent from parents or guardian before correspondence with inmates will be allowed.

g. Inmates/offenders under correctional supervision or detention will not be allowed to correspond with other inmates/offenders unless the individuals are immediate family and approved by the authority of the institution or both authorities in the case of correspondence between facilities.

"Immediate family" means mother, father, sister, brother, half sister, half brother, spouse, son, daughter, natural grandparents, and natural grandchildren. Legal guardian, foster parents, stepparents, stepchildren, stepsister, and stepbrother will be included provided a positive relationship exists or contact will confer a benefit to the inmate.

h. Inmates will be denied mail privileges with persons that might present a risk to the order and security of the institution.

i. All outgoing mail must be sent directly to the individual that the correspondence is written to, and all incoming mail must be sent directly from the individual that wrote the correspondence.

j. No limit will be placed on the number of letters mailed for inmates able to pay the mailing costs. Inmates that are unable to pay mailing costs will receive limited assistance which may be recoverable.

k. Stamped, return-addressed envelopes will be sold through canteen services for all outgoing letters and will be purchased by the inmate.

l. Special equipment may be used to review envelopes for items in the envelopes other than the letter. When the contents of the correspondence is inappropriate or contraband items which are not illegal to possess under the law are found in the mail, the mail will be rejected and the inmate shall be notified with the option to return to sender or destroy.

h. Rule 20.8(904)—Guests of institution. This rule is not applicable since this rule has no impact on the violator program.

i. Rule 20.9(904)—Donations. This rule is not applicable since this rule has no impact on the violator program.

j. Rule 20.11(904,910)—Restitution. This rule will be temporarily suspended while offenders are in the program. Restitution plans will be maintained, and the plan of payment will be reinstated upon release from the program.

k. Rule 20.12(904)—Furloughs. This rule will only apply in family emergency situations in accordance with 20.12(5)*"a"* and 20.12(6)*"a,"* although the criteria for eligibility are waived, and these furloughs will only be granted at the discretion of the warden/superintendent or designee with approval of the regional deputy director.

l. Rule 20.13(904)—Board of parole interviews. This rule is not applicable since this rule has no impact on the violator program.

m. Rule 20.15(910A)—Victim notification. This rule will not apply to the violator program.

n. Rule 20.17(904)—Institutional community placement. This rule will not apply to the violator program.

20.18(9) Good conduct time.

a. Iowa Code chapter 903A will not apply to probationers and parolees.

b. Iowa Code chapter 903A will apply to work releasees in accordance with work release policies and procedures.

20.18(10) Clothing, transportation, and release moneys. The provisions of Iowa Code section 906.9 will not apply to violator programs.

20.18(11) Any exceptions to these rules must be specifically approved by the warden/superintendent or designee.

This rule is intended to implement Iowa Code section 904.207.

201—20.19 Reserved.

201—20.20(904) Inmate telephone commissions.

20.20(1) All commissions received from the vendor will be deposited in a special account established by the institution.

20.20(2) All expenditures from this account will be used for the benefit of inmates. Expenditures shall include the enhancement of existing educational, vocational, recreational, work or treatment programs, services or projects, or to initiate new programs, services, or projects. Institutions are encouraged to give spending priority to programs, services, and projects that promote the health and welfare of inmates.

20.20(3) Each institution is authorized to expend or encumber up to 75 percent of available commission funds. No institution will be allowed to overspend its account or borrow from the account.

20.20(4) Twenty-five percent of each commission will be held in reserve to assist other institutional programs, services, or projects.

20.20(5) Requests requiring expenditures or encumbrances from the 25 percent reserve will be reviewed by a committee comprised of the director, deputy director of institutions, and a warden(s) to be selected by the deputy director of institutions. These requests will be reviewed at six-month intervals or upon special need as determined by the director.

a. These requests will be in writing to the deputy director of institutions and shall describe the product or service to be purchased, the expected benefit to inmates, and the actual cost.

b. The committee will approve, deny, or modify the request in writing.

20.20(6) The director may expend and encumber a portion of the 25 percent reserve fund to support or subsidize a service or project at an institution not having sufficient funds to complete a project or service.

This rule is intended to implement Iowa Code section 904.508A.

[Filed 9/25/81, Notice 10/29/80—published 10/14/81, effective 11/18/81]
[Filed emergency 10/23/81—published 11/11/81, effective 10/23/81]
[Filed 10/23/81, Notice 9/2/81—published 11/11/81, effective 12/16/81]
[Filed 4/5/82, Notice 1/20/82—published 4/28/82, effective 6/2/82]
[Filed 4/29/82, Notice 3/17/82—published 5/26/82, effective 6/30/82]
[Filed emergency 6/15/82—published 7/7/82, effective 7/1/82]
[Filed emergency 10/29/82—published 11/24/82, effective 10/29/82]
[Filed 1/14/83, Notice 11/10/82—published 2/2/83, effective 3/9/83]
[Filed emergency 6/17/83—published 7/6/83, effective 7/1/83]
[Filed emergency 8/29/83—published 9/14/83, effective 10/1/83]
[Filed emergency 9/9/83—published 9/28/83, effective 10/1/83]
[Filed 11/18/83, Notice 9/28/83—published 12/7/83, effective 1/11/84]
[Filed 2/24/84, Notice 1/4/84—published 3/14/84, effective 4/18/84]
[Filed 5/4/84, Notice 2/15/84—published 5/23/84, effective 6/27/84]
[Filed emergency 6/8/84—published 7/4/84, effective 6/8/84]
[Filed 7/24/84, Notice 4/25/84—published 8/15/84, effective 9/19/84]
[Filed 9/21/84, Notice 7/4/84—published 10/10/84, effective 11/14/84]
[Filed emergency 11/16/84—published 12/5/84, effective 11/16/84]
[Filed 4/4/85, Notice 10/24/84—published 4/24/85, effective 5/29/85]
[Filed 4/19/85, Notice 2/13/85—published 5/8/85, effective 6/12/85]
[Filed emergency 6/28/85—published 7/17/85, effective 7/1/85]
[Filed 9/20/85, Notice 7/31/85—published 10/9/85, effective 11/13/85]
[Filed emergency 7/11/86—published 7/30/86, effective 7/11/86]
[Filed 2/6/87, Notice 12/31/86—published 2/25/87, effective 4/1/87]
[Filed emergency 9/30/88—published 10/19/88, effective 9/30/88]
[Filed emergency 12/9/88—published 12/28/88, effective 12/9/88]
[Filed 3/31/89, Notice 12/28/88—published 4/19/89, effective 5/24/89]
[Filed emergency 7/21/89—published 8/9/89, effective 7/21/89]
[Filed 8/3/90, Notice 2/21/90—published 8/22/90, effective 9/26/90]
[Filed emergency 9/14/90—published 10/3/90, effective 9/26/90]
[Filed emergency 9/28/90—published 10/17/90, effective 9/28/90]
[Filed emergency 2/20/91—published 3/20/91, effective 2/20/91]
[Filed 1/31/92, Notice 10/2/91—published 2/19/92, effective 3/27/92]
[Filed 7/17/92, Notice 2/19/92—published 8/5/92, effective 9/9/92]
[Filed 10/23/92, Notice 5/27/92—published 11/11/92, effective 12/16/92]
[Filed 2/26/93, Notice 9/16/92—published 3/17/93, effective 4/21/93]
[Filed 2/26/93, Notice 12/23/92—published 3/17/93, effective 4/21/93]
[Filed 6/21/93, Notice 2/17/93—published 7/7/93, effective 8/11/93]
[Filed 10/21/94, Notice 8/17/94—published 11/9/94, effective 12/14/94]
[Filed emergency 7/14/95—published 8/2/95, effective 7/14/95]
[Filed 3/7/97, Notice 1/29/97—published 3/26/97, effective 4/30/97]
[Filed emergency 5/22/97—published 6/18/97, effective 5/22/97]
[Filed emergency 6/30/97—published 7/30/97, effective 6/30/97]
[Filed emergency 7/25/97—published 8/13/97, effective 7/25/97]
[Filed 12/12/97, Notice 8/13/97—published 12/31/97, effective 2/4/98]◊
[Filed 10/16/98, Notice 7/29/98—published 11/4/98, effective 12/9/98]
[Filed emergency 11/4/99—published 12/1/99, effective 11/4/99]
[Filed 7/21/00, Notice 5/3/00—published 8/9/00, effective 9/13/00]

◊ Two ARCs

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

PART I
DEPARTMENT STRUCTURE AND PROCEDURES

CHAPTER 20
ACCELERATED CAREER EDUCATION (ACE) PROGRAM

PART I - GENERAL PROVISIONS

261—20.1(260G) Purpose. The ACE program has three parts: the capital costs component, the program job credits component, and the accelerated career education grants program. The Iowa department of economic development administers the first two components. The college student aid commission administers the career education grants portion of the ACE program as described in the commission's administrative rules. The goal of the ACE program is to provide an enhanced skilled workforce in Iowa.

261—20.2(260G) Definitions.

"Accelerated career education program" or *"ACE"* means the program established pursuant to Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439.

"Agreement" means a program agreement referred to in Iowa Code Supplement section 260G.3 between an employer and a community college.

"Community college" means a community college established under Iowa Code chapter 260C or a consortium of two or more community colleges.

"Employee" means a person employed in a program job.

"Employer" means a business or consortium of businesses engaged in interstate or intrastate commerce for the purposes of manufacturing, processing or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce, but excluding retail services.

"Highly skilled job" means a job with a broadly based, high-performance skill profile including advanced computation and communication skills, technology skills and workplace behavior skills, and for which an applied technical education is required.

"IDED" or *"department"* means the Iowa department of economic development.

"IDED board" means the Iowa economic development board authorized under Iowa Code section 15.103.

"Participant" means an individual who is enrolled in an accelerated career education program at a community college.

"Participant position" means the individual student enrollment position available in an accelerated career education program.

"Program capital cost" means classroom and laboratory renovation, new classroom and laboratory construction, site acquisition or preparation.

"Program job" means a highly skilled job available from an employer pursuant to a program agreement.

"Program job credit" means a credit that an employer may claim against all withholding taxes due in an amount up to 10 percent of the gross program job wage of a program job position as authorized in an agreement between a community college and an employer.

"Program job position" means a job position which is planned or available for an employee by the employer pursuant to a program agreement.

"Program operating costs" means all necessary and incidental costs of providing program services.

"Program services" means services that include all of the following provided they are pursuant to a program agreement: program needs assessment and development, job task analysis, curriculum development and revision, instruction, instructional materials and supplies, computer software and upgrades, instructional support, administrative and student services, related school to career training programs, skill or career interest assessment services and testing and contracted services.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development and recreation trails. Vertical infrastructure does not include equipment; routine, recurring maintenance or operational expenses; or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

261—20.3(260G) ACE program eligibility and designation.

20.3(1) In order to receive financial assistance under the capital projects program, tax credits from withholding under the program job credits component or financial assistance through the college student aid commission's accelerated career education grants program, a program must be designated by a community college as an eligible ACE program. All programs must demonstrate increased capacity to enroll additional students. To be eligible, a program must be either:

a. A credit career, vocational, or technical education program resulting in the conferring of a certificate, diploma, associate of science degree, or associate of applied science degree; or

b. A credit-equivalent career, vocational, or technical education program consisting of not less than 540 contact hours of classroom and laboratory instruction and resulting in the conferring of a certificate or other recognized, competency-based credential.

20.3(2) By resolution of a community college board of directors, an eligible program may be approved and designated as an ACE program.

20.3(3) A copy of the designated ACE program shall be submitted to the department. The department will review the ACE program designation to ensure compliance with Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439. The department will maintain a record of all approved ACE programs.

261—20.4(260G) Funding allocation.

20.4(1) *Base allocation.*

a. Funds for ACE program job credits and capital costs projects shall be allocated equally among the community colleges in the state for the fiscal years and in the amounts specified in 2000 Iowa Acts, Senate Files 2439 and 2453.

b. Community colleges shall submit an application, with an accompanying program agreement, to access the allocated funds. The application and program agreement shall document that all ACE eligibility requirements have been met.

20.4(2) *Competitive awards.* If a community college fails to obligate or encumber any of its base allocation by April 1 of the fiscal year, the funds for that community college will revert back to the state to be awarded to other community colleges on a competitive basis as described in these rules.

261—20.5(260G) Eligible and ineligible business.

20.5(1) *Eligible business.* An eligible business is a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce.

20.5(2) *Ineligible business.* A business engaged in retail services is ineligible to receive ACE program assistance.

261—20.6(260G) Program agreements.

20.6(1) Program agreements will be developed by an employer, a community college and any employee of an employer representing a program job. The development of the agreements may be facilitated by an entity representing a group of employers. Any community college that has an employer from its merged area involved in an ACE project must enter into the agreement. If a bargaining unit is in place with the employer pledging the jobs, a representative of the bargaining unit shall take part in the development of the program agreement. All participating parties must sign the program agreement. The agreement must include employer certification of contributions that are made toward the program costs.

20.6(2) A program agreement shall include, at a minimum, the following terms: match provided by the employer; tuition, student fees, or special charges fixed by the community college board of directors; guarantee of employer payments; type and amount of funding sources that will be used to pay for program costs; description of program services and implementation schedule; the term of the agreement, not to exceed five years; the employer's agreement to interview graduates for full-time positions and provide hiring preference; for employers with more than four sponsored participants, certification that a job offer will be made to at least 25 percent of those participants that complete the program; an agreement by the employer to provide a wage level of no less than 200 percent of the federal poverty guideline for a family of two; a provision that the employer does not have to fulfill the job offer requirement if the employer experiences an economic downturn; a provision that the participants will agree to interview with the employer following completion of the program; and default procedures.

261—20.7(260G) Monitoring. IDED will monitor ACE projects to ensure compliance with all program requirements.

261—20.8(260G) Customer tracking system. Participants in the ACE program shall be included in the customer tracking system implemented by Iowa Workforce Development. In order to achieve this, social security numbers of all ACE program trainees will be required.

261—20.9(260G) Program costs recalculation. Program costs shall be calculated or recalculated on an annual basis based on the required program services for a specific number of participants. Agreement updates reflecting this recalculation must be submitted to IDED annually to review compliance with program parameters.

PART II - CAPITAL COSTS COMPONENT

261—20.10(260G) Threshold requirements. To be considered for funding, an applicant shall meet the following threshold requirements:

1. There must be documentation of pledged program positions paying at least 200 percent of the poverty level for a family of two. If the wage designated is after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.
2. Documentation must be provided to demonstrate that the program meets the definition of an eligible ACE program.
3. An applicant must demonstrate that the project builds the capacity of the community college to train additional students for available jobs.
4. Documentation must be supplied to establish a 20 percent employer cash or in-kind match for program operating funds.
5. An applicant shall describe how the project enhances geographic diversity of project offerings across the state.
6. The community college must document that other private or public sources of funds are maximized prior to ACE program capital cost funding.
7. ACE program capital cost projects must enhance the geographic diversity of state investment in Iowa. The IDED board will continuously review projects to ensure that there is statewide impact. The IDED board will prioritize projects to ensure geographic diversity.
8. Funds shall only be used for ACE program capital costs for projects that meet the definition of vertical infrastructure. Building repair, renovation and construction for purposes of ACE program equipment installation shall be allowed.

261—20.11(260G) Application procedures.

20.11(1) *Final application.* Applicants shall submit a final application to IDED to request capital funds.

20.11(2) *Staff review and recommendation.* A committee of IDED staff will review and rate applications based upon the rating criteria stated in 261—20.12(260G). Based upon this review, a decision will be made regarding submittal of the application to the IDED board for action.

20.11(3) *IDED board action.* The IDED board will review ACE program capital cost projects meeting the requirements prescribed in these rules. A program agreement, which is approved by the community college board of directors, must be attached to the final application. Approval or denial of submitted applications that are complete and in final form shall be made no later than 60 days following receipt of the application by the department. Subsequent to board approval, an award letter will be sent. The award letter will be followed by a contract. After a signed contract is in place, funding for a project may be requested.

261—20.12(260G) Evaluation criteria for competitive awards—capital costs projects. Applications and accompanying program agreements meeting all ACE eligibility requirements will be prioritized and rated using the following point criteria:

1. The degree to which the applicant adequately demonstrates a lack of existing public or private infrastructure for development of the partnership. There must be a demonstration that the project will build capacity in order for the project to be considered. Capacity will be measured in terms of jobs that are pledged, students that are interested in the program area and the capacity that is built at the community college to undertake the programming. Up to 33 points will be awarded.

2. Demonstration that the jobs that would result from the partnership would include wages, benefits and other attributes that would improve the quality of employment within the region. Projects where the average wage for the pledged jobs exceeds the regional or county average wage, whichever is lower for the location where the training is to be provided, will be awarded points based upon the percentage that the average wage of the pledged jobs exceeds the applicable average wage. Up to 33 points will be awarded.

3. Evidence of local, public or private contributions that meet the requirements of Iowa Code Supplement chapter 260G. Projects will be rated based upon the percentage of match that is pledged to the ACE program capital cost for the project. Up to 34 points will be awarded.

Applications that do not receive at least 66 out of 100 points will not be forwarded to the IDED board for review. Projects will be competing against each other for IDED board approval and the number of points that a project receives will be considered in the award process.

PART III - PROGRAM JOB CREDITS

261—20.13(260G) Threshold requirements—program job credits. To be eligible to receive program job credits, an applicant shall meet the following threshold requirements:

1. There must be documentation of pledged program positions paying at least 200 percent of the poverty level for a family of two. If the wage designated is after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.

2. Documentation must be provided to demonstrate that the program meets the definition of an eligible ACE program.

3. Documentation must be supplied to establish a 20 percent employer cash or in-kind match for program operating funds.

4. An applicant shall describe how the project enhances geographic diversity of project offerings across the state.

261—20.14(260G) Job credits allocation.

20.14(1) In FY 2001, the department shall allocate $80,000 of the first $1,200,000 of program job credits authorized and available for that fiscal year to each community college. If a community college does not commit its allocation by April 1, 2001, its allocation will be lost and will revert back to the state to be awarded to other community colleges on a competitive basis as described in these rules. If a community college commits its allocation, it is committed for the length of the project.

20.14(2) In FY 2002, the department shall allocate $80,000 of the first $1,200,000 of program job credits authorized and available for that fiscal year to each community college. If a community college does not commit its allocation by April 1, 2002, its allocation will be lost and will revert back to the state to be awarded to other community colleges on a competitive basis as described in these rules. If a community college has a program to which its FY 2001 allocation has been committed, the FY 2002 allocation will be used to cover that commitment; this FY 2002 allocation is not in addition to the allocation from FY 2001.

20.14(3) In FY 2003, and for every fiscal year thereafter, the department of economic development shall divide equally among the community colleges 30 percent, or $120,000, of the program job credits available for that fiscal year to each community college to be used to provide funding for approved programs. If a community college does not commit its allocation by April 1, 2003, its allocation will be lost and will revert back to the state to be awarded to other community colleges on a competitive basis as described in these rules. If a community college has a program(s) to which its previous fiscal year's allocation is committed, the FY 2003 allocation will be used to cover that (those) commitment(s); the fiscal year's allocation is not in addition to the allocations from previous fiscal years.

20.14(4) Examples.

FY 2001: Allocation - $80,000
Contract #1 - first year — $100,000
Funded by - $80,000 from allocation
$20,000 from competitive dollars

FY 2002: Allocation - $80,000
Contract #1 - second year — $100,000
Funded by - $80,000 from allocation
$20,000 from competitive dollars
Contract #2 - first year — $120,000
Funded by - $120,000 from competitive dollars

FY 2003: Allocation - $120,000
Contract #1 - third year — $100,000
Funded by - $100,000 from allocation
Contract #2 - second year — $120,000
Funded by - $20,000 from allocation
$100,000 from competitive dollars

261—20.15(260G) Determination of job credits, notice and certification.

20.15(1) *Determination of job credit amounts.* If a program provides that part of the program costs are to be met by receipt of program job credits, the method to be used shall be as follows:

a. Program job credits shall be based upon the program job positions identified and agreed to in the agreement.

b. Eligibility for program job credits shall be based on certification of program job positions and program job wages by the employer at the time established in the agreement.

c. An amount up to 10 percent of the gross program job wages as certified by the employer in the agreement shall be credited from the total payment made by an employer pursuant to Iowa Code section 422.16.

d. The employer shall remit the amount of the credit quarterly, in the same manner as withholding payments are reported to the department of revenue and finance, to the community college to be allocated to and, when collected, paid into a special fund of the community college to pay, in part, the program costs.

e. When the program costs have been paid, the employer credits shall cease and any moneys received after the program costs have been paid shall be remitted to the treasurer of state to be deposited in the general fund of the state.

20.15(2) *Notice to revenue and finance department.* The employer shall certify to the department of revenue and finance that the program job credit is in accordance with the agreement and shall provide other information the department may require.

20.15(3) *Certification of amount of job credits.* A community college shall certify to the department of revenue and finance that the amount of the program job credit is in accordance with an agreement and shall provide other information the department may require.

261—20.16(260G) Application procedures.

20.16(1) Initial applications for program job credits shall be accompanied by a program agreement documenting that all ACE eligibility requirements have been met. For subsequent years' funding of approved programs, agreement updates shall be submitted annually reflecting any recalculation of program costs and substantiation of continued compliance with program parameters.

20.16(2) Applications for projects that cross community college boundaries, or for projects that involve employers from multiple community college areas, must have sign off from all college areas involved.

20.16(3) Application deadlines. Applications for the fall semester 2000 will be taken at any time through the term of the fall semester. Applications for the winter semester 2001 must be submitted by October 15, 2000, for approval. Subsequent application deadlines will be:

Fall semester - applications must be submitted by May 15.

Winter semester - applications must be submitted by October 15.

20.16(4) Applications submitted for an amount less than or equal to a community college's yearly allocation will be considered noncompetitive and will be reviewed for eligibility and completeness by the department. The department reserves the right to require additional information from the community college.

261—20.17(260G) Evaluation criteria for competitive awards—program job credits. Applications submitted for funding greater than a community college's yearly allocation will be reviewed on a competitive basis and rated on the following criteria:

1. The quality of the program ..... up to 17 points.
2. The number of program participant placements ..... up to 17 points.
3. The wages and benefits in program jobs ..... up to 17 points.
4. The level of employer contributions ..... up to 17 points.
5. The industrial cluster into which the program falls ..... up to 17 points.
6. The geographic location of the employers ..... up to 15 points.

Applicants must receive at least 65 points out of 100 to be funded. An award letter will be issued followed by a contract.

261—20.18(260G) Committed funds. The department shall maintain an annual record of the proposed program job credits under each agreement for each fiscal year. When the total available program job credits have been allocated for a fiscal year, the department shall inform all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. If any committed credits become uncommitted after the above-mentioned notice has been issued, the department will inform all community colleges that some job credits are again available and applications will be accepted for those job credits until they are again committed.

These rules are intended to implement Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439, and 2000 Iowa Acts, Senate File 2453.

[Filed emergency 6/18/99—published 7/14/99, effective 6/18/99]
[Filed 8/20/99, Notice 7/14/99—published 9/8/99, effective 10/13/99]
[Filed emergency 7/20/00—published 8/9/00, effective 7/21/00]

c. IDED reserves the right to establish rehabilitation standards for projects. All rehabilitation must be done in compliance with all state and local codes, rehabilitation standards and ordinances and shall, at a minimum, meet HUD Section 8 Housing Quality Standards, 24 CFR 882 (April 1, 1997). New units must be constructed pursuant to standards specified at 24 CFR 92.251(a)(1) (April 1, 1997).

25.4(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans or other forms of assistance as may be approved by IDED.

261—25.5(15) Application procedure. All potential housing fund applicants are encouraged, but not required, to complete and submit a HART form describing the proposed housing activity. If the proposal is determined to be appropriate for housing fund assistance, IDED shall inform the applicant of the appropriate application procedure by mail. The HART process, if undertaken, should be completed as early as possible in the application process.

25.5(1) HART forms shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4825.

25.5(2) HART forms are accepted year-round.

25.5(3) Applicants may request technical assistance from staff contacts in the preparation of housing fund applications.

a. If an applicant does not submit an application by the next application deadline, IDED will determine the proposal inactive and remove it from the HART files.

b. Upon the submission of a housing fund application, no additional staff assistance shall be provided during the review period.

25.5(4) Housing fund applications shall be reviewed through an annual competition. Once funds have been allocated, IDED will not accept applications seeking funding for review until the next established deadline.

25.5(5) For applicants requesting funding from both the housing fund and low-income housing tax credit (LIHTC) programs, the applicant may request application forms and related material from the Iowa finance authority (IFA). IFA shall forward an application package to a potential applicant and make the application package available in electronic form either by diskette or on the Internet at http://www.ifahome.com. The applicant must submit the completed application, with required housing fund attachments, to IFA by the deadline established in the application package.

a. IDED and IFA shall appoint a joint review team to discuss and review applications for housing fund and LIHTC funds. Staff for each agency may communicate frequently regarding common projects. Information contained in each application may be shared with each agency.

b. The joint review team shall meet at least twice to compare and discuss each common project. The first meeting will be convened after IDED and IFA have completed the threshold review. The second meeting shall be convened after IDED and IFA have completed the next phase of each agency's review process. No additional points will be awarded to an applicant seeking both types of funding. Staff from each agency will make recommendations for funding to their respective decision makers after the second meeting. A decision by one agency does not bind the other agency to fund a project.

c. All applicants for the housing fund must meet the threshold requirements outlined in rules 25.4(15) and 25.6(15) and subrule 25.7(3) in order to be considered for award under this subrule.

25.5(6) Rescinded IAB 8/9/00, effective 7/20/00.

261—25.6(15) Minimum application requirements. To be considered for housing fund assistance, an application shall meet the following threshold criteria:

25.6(1) The application shall propose a housing activity consistent with the housing fund purpose and eligibility requirements, the state consolidated plan and any local housing plans.

25.6(2) The application shall document the applicant's capacity to administer the proposed activity. Such documentation may include evidence of the successful administration of prior activities or a statement that the applicant intends to contract with another entity for administrative services. IDED reserves the right to deny funding to an applicant that has failed to comply with federal and state requirements in the administration of a previous project funded by IDED.

25.6(3) The application shall provide evidence of the need for the proposed activity, the potential impact of the proposed activity and the feasibility of the proposed activity.

25.6(4) The application shall demonstrate local support for the proposed activity.

25.6(5) The application shall show that a need for housing fund assistance exists after all other financial resources have been identified for the proposed activity.

25.6(6) The application shall include a certification that the applicant will comply with all applicable state and federal laws and regulations.

25.6(7) An application for a project located in a locally designated participating jurisdiction (PJ) must show evidence of a financial commitment from the local PJ equal to 25 percent of the total HOME funds requested.

261—25.7(15) Application review criteria. IDED shall evaluate applications and make funding decisions based on general project criteria, need, impact, feasibility, and project administration based upon the specific type of project. The project criteria shall be a part of the application. A workshop will be held at least 60 days prior to the application deadline to provide information, materials, and technical assistance to potential applicants.

25.7(1) As applicable, the review criteria for homeownership assistance applications shall include the following:

a. General criteria.

1. Project objectives.
2. Total number of units and number of assisted units.
3. Project activities and cost estimates.
4. If new construction, availability of necessary infrastructure and utilities.
5. Form(s) of assistance (grants, loans, amounts).
6. Type(s) of assistance (e.g., mortgage buy-down, down payment, closing costs, and rehabilitation).
7. Median purchase price for single-family housing in the community.
8. Initial purchase price or after rehabilitation value per assisted unit.
9. Mortgage lender participation documentation and underwriting standards.
10. Methodology to determine maximum amount of conventional financing affordable to buyer.
11. Selection criteria for participants.
12. Methodology to ensure that the property will be the buyer's principal residence.
13. Rehabilitation standards to be used.
14. Project time line.

b. Need, impact and feasibility criteria.

1. Number and percentage of low- and moderate-income persons in the applicant community.
2. Evidence and documentation of need for the project.
3. Percentage of need to be met through the project.
4. Reasons mortgage applications have been denied by local lenders.
5. Housing costs, housing supply, condition of available housing, and vacancy rates.
6. If acquisition for new construction, documentation of need for new units.
7. Recent or current housing improvement activities.
8. Description of current and ongoing comprehensive community development efforts.
9. Publicity promoting the proposed project.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

c. Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. Awards shall be conditioned upon IDED receipt and approval of an administrative plan for the funded activity.

25.9(3) Requests for funds. Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in whole dollar amounts equal to or greater than $500 per request, except for the final draw of funds.

25.9(4) Record keeping and retention. The recipient shall retain all financial records, supporting documents and all other records pertinent to the housing fund activity for five years after contract expiration. Representatives of IDED, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a housing fund award.

25.9(5) Performance reports and reviews. Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform reviews or field inspections necessary to ensure recipient performance.

25.9(6) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alterations of the funded activities affecting the scope, location, objectives or scale of the approved activity. Amendments shall be requested in writing by the recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between the recipient and IDED.

25.9(7) Contract closeout. Upon the contract expiration date or work completion date, as applicable, IDED shall initiate contract closeout procedures. Recipients shall comply with applicable audit requirements described in the housing fund application and management guide.

25.9(8) Compliance with federal, state and local laws and regulations. Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable federal, state and local regulations.

25.9(9) Remedies for noncompliance. At any time, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activities in a timely manner.

25.9(10) Appeals process for findings of noncompliance. Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director will make the final decision on all appeals.

261—25.10(15) Requirements for the contingency fund. The contingency fund is reserved for (1) communities experiencing a threat to public health, safety, or welfare that necessitates immediate corrective action sooner than could be accomplished though normal housing fund procedures; or (2) communities and other entities responding to an immediate development opportunity that necessitates action sooner than can be accomplished through normal housing fund procedures. Up to 5 percent of the HOME funds may be used for this purpose.

25.10(1) Application procedure. Those applying for contingency funds shall submit a written request to IDED, Division of Community and Rural Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the situation, the project budget including the amount requested from IDED, projected use of funds and an explanation of the reasons that the situation cannot be remedied though normal housing fund procedures. If the project meets threshold criteria, a full application may be requested by the department.

25.10(2) Application review. Upon receipt of a request for contingency funding, IDED shall make a determination of whether the project is eligible for funding and notify the applicant of its determination. A project shall be considered eligible if it meets the following criteria:

a. Projects to address a threat to health and safety.

(1) An immediate threat to health, safety or community welfare that requires immediate action must exist.

(2) The threat must be the result of unforeseeable and unavoidable circumstances or events.

(3) No known alternative project or action would be more feasible than the proposed project.

(4) Sufficient other local, state or federal funds either are not available or cannot be obtained in the time frame required.

b. Projects to address an exceptional opportunity.

(1) A significant opportunity exists for the state that otherwise would be forgone if not addressed immediately.

(2) The opportunity is such that it is not possible to apply to the housing fund in a normal application time frame.

(3) The project would have merit, with respect to review criteria, comparable to funded projects in the most recent competition.

25.10(3) IDED reserves the right to request additional information on forms prescribed by IDED prior to making a final funding decision. IDED reserves the right to negotiate final project award and design components.

These rules are intended to implement Iowa Code section 15.108(1)*"a."*

[Filed emergency 5/22/92 after Notice 3/18/92—published 6/10/92, effective 5/22/92]
[Filed 12/18/92, Notice 10/14/92—published 1/6/93, effective 2/10/93]
[Filed emergency 2/26/93—published 3/17/93, effective 2/26/93]
[Filed emergency 8/20/93—published 9/15/93, effective 8/20/93]
[Filed emergency 10/22/93 after Notice 8/18/93—published 11/10/93, effective 10/22/93]
[Filed emergency 10/20/95 after Notice 8/16/95—published 11/8/95, effective 10/20/95]
[Filed emergency 10/18/96 after Notice 9/11/96—published 11/6/96, effective 10/18/96]
[Filed 1/23/98, Notice 12/17/97—published 2/11/98, effective 3/18/98]
[Filed 9/17/98, Notice 8/12/98—published 10/7/98, effective 11/11/98]
[Filed 9/16/99, Notice 7/14/99—published 10/6/99, effective 11/10/99]
[Filed 4/21/00, Notice 2/9/00—published 5/17/00, effective 6/21/00]
[Filed emergency 7/20/00 after Notice 5/17/00—published 8/9/00, effective 7/20/00]

IOWA FINANCE AUTHORITY[265]

[Prior to 7/26/85, Housing Finance Authority[495]]
[Prior to 4/3/91, Iowa Finance Authority[524]]

CHAPTER 13
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
(Uniform Rules)

CHAPTER 14
HOMELESS SHELTER ASSISTANCE PROGRAM

CHAPTER 15
HOUSING ASSISTANCE FUND PROGRAM

CHAPTER 16
DECLARATORY ORDERS

CHAPTER 17
PROCEDURE FOR RULE MAKING

c. Rescinded IAB 4/3/91, effective 5/8/91.

d. Notwithstanding anything in these rules to the contrary, "low or moderate income family" includes families purchasing or renting qualified residential housing as defined in Iowa Code chapter 16.

1.8(12) *Lower income family.* A family whose adjusted income does not exceed 80 percent of the median income for the area.

1.8(13) *Median income.* An estimate, acceptable to the authority, of the annual family income which occupies a level between the highest and lowest incomes for an area.

1.8(14) *Multifamily housing.* A residential structure which is designed to include greater than four single-family dwelling units.

1.8(15) *Newly built housing.* A dwelling unit which is under construction or has been occupied or available for occupancy for 18 months or less, from date of completion of construction.

1.8(16) *Single-family housing.* A residential structure which is designed to include one to four single-family dwelling units.

1.8(17) *Temporary loan.* A short-term financial obligation secured by collateral acceptable to the authority.

1.8(18) *Very low income family.* A family whose adjusted income does not exceed 50 percent of the median income for the area.

This rule is intended to implement Iowa Code sections 16.1, 16.5, 16.14 and 16.17.

265—1.9(16) Local contributing effort. The authority shall consider the contribution of any of the following items in determining whether the local contributing effort has been fulfilled:

1. Payment of funds by a political subdivision, governmental entity or by a private agency. Private agency means any entity from the location that contributes something of value and intends that the contribution qualify as the local contributing effort. Evidence of payment and the authority to provide the funds shall be furnished upon request of the authority.

2. Real property which may be vacant or improved property, suitable, in the judgment of the authority, to the proposed housing project. Liens and encumbrances, if any, shall be disclosed to satisfaction of the authority.

3. Personal property which may include appliances, furnishings, property maintenance tools, remodeling material to be purchased subsequent to project approval, and any other personal property which, in the judgment of the authority, is of relevance to the proposed housing project.

The authority may consider any type of proposed local contributing effort, in addition to or other than the above. Proposals which, in the judgment of the authority, are truly innovative will receive priority.

Local contributing efforts may be combined by type or source.

For the purpose of the rent supplement program provided in Iowa Code chapter 16, the local contributing effort shall be as described in paragraph "1," and shall be provided on a one-to-one matching basis.

In the case where all or part of the costs of a housing project is to be funded from proceeds of the sale of authority notes or bonds, moneys paid to the authority by participating mortgage lenders may, to the extent such payments exceed the payments due from the authority to its note and bond holders, be considered satisfactory fulfillment of the local contributing effort.

This rule is intended to implement Iowa Code section 16.4(3).

265—1.10(16) Forms. The executive director shall prepare and, as needed, revise and amend, with approval of the authority, such forms as necessary for administration of authority programs. The number and type of forms shall be sufficient to safeguard the interests of the authority.

The authority shall annually assess the effectiveness of its administrative procedures, including all forms, and make any modifications which, in the judgment of the authority, are necessary or would facilitate efficient authority operations.

This rule is intended to implement Iowa Code sections 17A.3(1)*"b"* and 16.7(2).

265—1.11(16) Waiver. The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with any housing development or housing unit with respect to which federal assistance, insurance or guaranty is sought, provided such waiver does not conflict with the Act.

This rule is intended to implement Iowa Code sections 16.4(4); 16.5(15); 16.12(1); 16.15(2)*"a,"* (2)*"c."*

265—1.12(16) Public record. Any result, finding, conclusion, report, publication, document, program or housing project that is prepared with financial assistance under the innovative housing grant or loan program shall be a matter of public record.

This rule is intended to implement Iowa Code section 16.5(15).

265—1.13(16) Tandem of programs. Prospective sponsors and applicants may request authority assistance in form of specific combinations or programs authorized under the Act. To the extent of available staff resources, the executive director may provide staff assistance to sponsors and applicants to determine workable combinations of programs appropriate to the purposes identified.

Authority processing of a tandem of programs shall follow a composite of the statutory and administrative requirements for all programs in the proposed tandem. The composite shall be developed by the sponsor or developer to provide for development and administration of a tandem program appropriate to the purposes identified, and free of duplication or conflict with these rules or the Act.

This rule is intended to implement Iowa Code section 16.11.

265—1.14(16) Severability. If any word, phrase, sentence, paragraph, section or part of these rules is finally adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of these rules.

This rule is intended to implement Iowa Code section 4.12.

265—1.15 Name change. Rescinded IAB 4/3/91, effective 5/8/91.

265—1.16(16) Quorum. Five members of the board constitute a quorum. A majority of a quorum is necessary for any substantive action taken by the authority. A quorum may include any member who has a conflict of interest and a statement of a conflict of interest shall be conclusive for this purpose. Any member who has a conflict of interest shall not defeat the quorum and shall not be eligible to vote on the matter in conflict. Any vote by a member with a conflict shall be excluded.

This rule is intended to implement Iowa Code section 16.2.

[Filed 5/11/77, Notice 4/6/77—published 6/1/77, effective 7/6/77]
[Filed emergency 6/11/82—published 7/7/82, effective 6/11/82]
[Filed 12/17/82, Notice 7/7/82—published 1/5/83, effective 2/9/83]
[Filed emergency 12/23/83—published 1/18/84, effective 12/23/83]
[Filed emergency 6/28/84—published 7/18/84, effective 7/1/84]
[Filed emergency 7/26/85—published 8/14/85, effective 7/26/85]
[Filed 3/19/91, Notice 10/17/90—published 4/3/91, effective 5/8/91]
[Filed emergency 9/3/99 after Notice 4/21/99—published 9/22/99, effective 9/3/99]
[Filed emergency 7/14/00 after Notice 5/3/00—published 8/9/00, effective 7/14/00]

9.20(11) *Authority to sign certificate.* The board of directors of the division may, by resolution, authorize such personnel within the division as the board should determine to execute and record the certificates pursuant to 1999 Iowa Acts, chapter 54, and this rule.

9.20(12) *Records—return to the division.* The certificate of release shall contain instructions to the filing officer(s) to return the document to the division, once file-stamped and entered in the real estate records of the county.

9.20(13) *Photocopy.* The division shall transmit a copy of the recorded certificate to the real estate lender or closer that requested the certificate.

9.20(14) *Effect of filing of the certificate of release.* For purposes of a release or partial release of a mortgage, a certificate of release executed under this rule that contains the information and statements required under 1999 Iowa Acts, chapter 54, and this rule is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

9.20(15) *Effect of wrongful or erroneous recording of a certificate of release.* A wrongful or erroneous recording of a certificate of release by the division or the authority shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

9.20(16) *Liability of the division.* In addition to any other remedy provided by law, if the division or the authority wrongfully or erroneously records a certificate of release pursuant to this rule, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release. A claim for damages is a tort claim as described in Iowa Code chapter 669 since the claim is for money damages caused by the wrongful or erroneous actions of the staff of the division or the authority. The procedures of Iowa Code chapter 669 shall apply to any claim for damages arising out of 1999 Iowa Acts, chapter 54.

Prior to any such satisfaction or resolution of a claim for wrongful or erroneous filing of a certificate of release, the division will inform the real estate lender or closer that requested the certificate about the proposed terms and allow it a reasonable opportunity to resolve or satisfy the claim on other terms.

9.20(17) *Subrogation.* Upon payment of a claim relating to the recording of a certificate, the division is subrogated to the rights of the claimant against all persons relating to the claim including, but not limited to, the real estate lender or closer that requested the certificate.

9.20(18) *Additional remedies.* In addition to any other remedy provided by law, the division may recover from the real estate lender or closer who requested the certificate all expenses incurred, and all damages including punitive or exemplary damages paid to the mortgagee or mortgage service provider, in satisfaction or resolution of a claim for wrongful or erroneous filing of a certificate of release.

9.20(19) *Record keeping.* The original certificate of release document shall remain in the records of the division or the authority for the minimum period of one year after execution. After this time, records may be stored by electronic or other means. Requests and other documents generated or received under this system shall be indexed in such a manner as to allow their retrieval at a future date.

This rule is intended to implement 1999 Iowa Acts, chapter 54.

265—9.21(16) Seal. The division shall have a corporate seal that may be altered from time to time. The seal shall impress the words "Title Guaranty Division Iowa Finance Authority" and may be used to authenticate acts and legal instruments of the division.

Rules 9.8(16) through 9.21(16) are intended to implement Iowa Code sections 17A.3, 17A.9, 17A.10, 16.1, 16.2, 16.3, 16.5, 16.40, 16.91, 535.8(10), and 535A.12.

265—9.22(17A,16) Contested case proceedings presiding officer. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.23(17A,16) Right to contested case proceedings. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.24(17A,16) Time limit for request. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.25(17A,16) Notice of contested case. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.26(17A,16) Form of request. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.27(17A,16) Subpoena power. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.28(17A,16) Conduct of contested case. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.29(17A,16) Decisions. Rescinded IAB 8/9/00, effective 7/14/00.

265—9.30(17A,16) Petition for receipt of additional evidence. Rescinded IAB 8/9/00, effective 7/14/00.

[Filed 2/28/86, Notice 1/15/86—published 3/26/86, effective 4/30/86]
[Filed 12/12/86, Notice 10/22/86—published 12/31/86, effective 2/4/87]
[Filed 7/10/87, Notice 6/3/87—published 7/29/87, effective 9/2/87]
[Filed 4/13/90, Notice 12/13/89—published 5/2/90, effective 6/6/90]
[Filed 3/19/91, Notice 10/17/90—published 4/3/91, effective 5/8/91]
[Filed emergency 9/3/99 after Notice 4/21/99—published 9/22/99, effective 9/3/99]
[Filed emergency 11/12/99 after Notice 9/22/99—published 12/1/99, effective 11/12/99]
[Filed emergency 7/14/00 after Notice 5/3/00—published 8/9/00, effective 7/14/00]

CHAPTER 12
LOW-INCOME HOUSING TAX CREDITS

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Qualified Allocation Plan effective July 14, 2000, shall be the qualified allocation plan for the distribution of low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

265—12.2(16) Location of copies of the plan. the qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at http://ifahome.com. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library. The plan incorporates by reference IRC Section 42 and the regulations in effect as of July 14, 2000. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library and links to these statutes, regulations and rules are on the authority's Web site. Copies are available upon request at no charge from the authority.

These rules are intended to implement Iowa Code section 16.52.

[Filed 6/23/88, Notice 12/30/87—published 7/13/88, effective 8/17/88]
[Filed 3/19/91, Notice 10/17/90—published 4/3/91, effective 5/8/91]
[Filed emergency 10/6/99 after Notice 8/11/99—published 11/3/99, effective 10/6/99]
[Filed emergency 7/14/00 after Notice 5/3/00—published 8/9/00, effective 7/14/00]

EDUCATIONAL EXAMINERS BOARD[282]

[Prior to 6/15/88, see Professional Teaching Practices Commission[640]]
[Prior to 5/16/90, see Professional Teaching Practices Commission[287]]

CHAPTER 14
ISSUANCE OF PRACTITIONER'S LICENSES AND ENDORSEMENTS

[Prior to 9/7/88, see Public Instruction Department[670] Ch 70]
[Prior to 10/3/90, see Education Department[281] Ch 73]
[282—14.25 to 14.29 transferred from 281—84.18 to 84.22, IAB 1/9/91, effective 12/21/90]

RULES IN EFFECT PRIOR TO AUGUST 31, 2001

282—14.1(272) Applicants desiring Iowa licensure. Licenses are issued upon application filed on a form provided by the board of educational examiners.

14.1(1) Effective October 1, 2000, an initial applicant will be required to submit a completed fingerprint packet that accompanies the application to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet will be assessed to the applicant.

14.1(2) Effective October 1, 2000, an Iowa department of criminal investigation background check will be conducted on initial applicants. The fee for the evaluation of the DCI background check will be assessed to the applicant.

282—14.2(272) Applicants from recognized Iowa institutions. An applicant for initial licensure who completes the teacher or administrative preparation program from a recognized Iowa institution shall have the recommendation for the specific endorsement(s) from the designated recommending official at the recognized education institution where the preparation was completed. A recognized Iowa institution is one which has its program of preparation approved by the state board of education according to standards established by the board.

282—14.3(272) Applicants from recognized non-Iowa institutions. An applicant for initial licensure who completes the teacher or administrative preparation program from a recognized non-Iowa institution shall have the recommendation for the specific endorsement from the designated recommending official at the recognized institution where the preparation was completed, provided all requirements for Iowa licensure have been met.

Applicants whose preparation was completed through a nontraditional program or through an accumulation of credits from several institutions shall file all transcripts with the board of educational examiners for a determination of eligibility for licensure.

A recognized non-Iowa institution is one which is accredited by the regional accrediting agency for the territory in which the institution is located.

282—14.4(272) Applicants from foreign institutions. An applicant for initial licensure whose preparation was completed in a foreign institution will be required to have all records translated into English and then file these records with the board of educational examiners for a determination of eligibility for licensure.

282—14.5(272) Issue date on original license. A license is valid only from and after the date of issuance.

282—14.6(272) Adding endorsements to licenses. After the issuance of a teaching or administrative license, an individual may add other endorsements to that license upon proper application provided current requirements for that endorsement have been met. An updated license with expiration date unchanged from the original or renewed license will be prepared.

To add an endorsement, the applicant must follow one of these options:

Option 1. Identify with a recognized Iowa teacher preparing institution and meet that institution's current requirements for the endorsement desired and receive that institution's recommendation.

Option 2. Identify with a recognized Iowa teacher education institution and receive a statement that the applicant has completed the equivalent of the institution's approved program for the endorsement sought.

Option 3. Identify with a recognized teacher education institution and receive a statement that based on the institution's evaluation of the individual's preparation the applicant has completed all of the Iowa requirements for the endorsement sought.

Appeal: If an applicant cannot obtain an equivalent statement from an institution and if the applicant believes the Iowa requirements have been met, the applicant may file the transcripts for review. The rejection from the institution must be in writing. In this situation, the staff in the board of educational examiners will review the preparation in terms of the Iowa requirements.

282—14.7(272) Correcting licenses. If at the time of the original issuance or renewal of a certificate, a person does not receive an endorsement for which eligible, a corrected license will be issued. Also, if a person receives an endorsement for which not eligible, a corrected license will be issued.

282—14.8(272) Duplicate licenses. Upon application and fee, duplicate licenses will be issued. The fee for the duplicate license is set out in subrule 14.32(3).

282—14.9(272) Fraud in procurement or renewal of licenses. Fraud in procurement or renewal of a license or falsifying records for licensure purposes will constitute grounds for filing a complaint with the board of educational examiners.

282—14.10(272) Licenses. The following licenses are issued by the board.

Provisional
Educational
Professional Teacher
Professional Administrator
Conditional
Substitute
Area Education Agency Administrator
Alternative Preparation

282—14.11(272) Requirements for a provisional license.

1. Baccalaureate degree from a regionally accredited institution.
2. Completion of an approved teacher education program.
3. Completion of an approved human relations component.
4. Completion of requirements for one of the teaching endorsements listed under 282—14.18(272), the special education teaching endorsements in 282—Chapter 15, or the secondary level occupational endorsements listed in rule 282—16.1(272).
5. Meet the recency requirement of 14.15"3."

The provisional license is valid for two years and may be renewed under certain prescribed conditions listed in 282—17.8(272).

282—14.12(272) Requirements for an educational license.

1. Completion of items 1, 2, 3, 4 listed under 14.11(272).
2. Evidence of two years' successful teaching experience based on a local evaluation process.
3. Meet the recency requirement of 14.15"3."

The educational license is valid for five years and may be renewed by meeting requirements listed in 282—17.5(272).

282—14.13(272) Requirements for a professional teacher's license.

1. Holder of or eligible for an educational license.
2. Five years of teaching experience.
3. Master's degree in an instructional endorsement area, or in an area of educational or instructional improvement or school curriculum; the master's degree must be related to school-based programming.

The professional teacher's license is valid for five years and may be renewed by meeting requirements listed in 282—17.6(272).

282—14.33(272) Requirements for an alternative preparation license.

14.33(1) Following are the requirements for the issuance of a teaching license based on an alternative preparation program for persons prepared in Iowa.

a. Baccalaureate degree with a cumulative grade point average of 2.5 or better from a regionally accredited institution. This degree must have been conferred at least three years prior to application to an alternative preparation program.

b. Completion of an alternative preparation program approved by the state board of education.

c. Completion of an approved human relations component.

d. Completion of the exceptional learner program, which must include preparation that contributes to the education of individuals with disabilities and the gifted and talented.

e. Professional education core. Completed coursework or evidence of competency in:

(1) Student learning. The practitioner understands how students learn and develop and provides learning opportunities that support intellectual, career, social, and personal development.

(2) Diverse learners. The practitioner understands how students differ in their approaches to learning and creates instructional opportunities that are equitable and are adaptable to diverse learners.

(3) Instructional planning. The practitioner plans instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.

(4) Instructional strategies. The practitioner understands and uses a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills.

(5) Learning environment/classroom management. The practitioner uses an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

(6) Communication. The practitioner uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry and collaboration and to support interaction in the classroom.

(7) Assessment. The practitioner understands and uses formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the learner.

(8) Foundations, reflection, and professional development. The practitioner continually evaluates the effects of the practitioner's choices and actions on students, parents, and other professionals in the learning community and actively seeks out opportunities to grow professionally.

(9) Collaboration, ethics, and relationships. The practitioner fosters relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development.

f. Computer technology related to instruction.

g. Completion of pre-student teaching field-based experiences.

h. Methods of teaching with an emphasis on the subject and grade level endorsement desired.

i. Content/subject matter specialization. The practitioner understands the central concepts, tools of inquiry, and structure of the discipline(s) the practitioner teaches and creates learning experiences that make these aspects of subject matter meaningful for students.

This is evidenced by completion of a 30-semester-hour teaching major which must minimally include the requirements for at least one of the basic endorsement areas or special education teaching endorsements listed in 282—14.20(272) or 282—15.2(272).

j. A minimum of 12 weeks of student teaching in the subject area and at the grade level in which the endorsement is desired.

14.33(2) Following are the basic requirements for the issuance of a teaching license based on an alternative preparation program with an endorsement for persons prepared in states other than Iowa.

a. Hold a baccalaureate degree from a regionally accredited institution.

b. Provide a valid out-of-state teaching license based on a state-approved alternative preparation program.

c. Provide a recommendation from a regionally accredited institution, Department of Education, or a state's standards board indicating the completion of an approved alternative teacher preparation program.

d. Provide official institutional transcript(s) to be analyzed for the coursework necessary for full Iowa licensure based on 14.33(1)*"c"* to *"i"* above.

e. Verify three years of teaching experience which will waive the student teaching requirement.

The alternative preparation license is valid for two years and may be renewed under certain prescribed conditions for a provisional license listed in 282—17.8(272).

282—14.34(272) NCATE accredited programs. The requirements of the professional education core at 282—subrule 14.19(3), notwithstanding, an applicant from an out-of-state institution who has completed a program accredited by the National Council for the Accreditation of Teacher Education on and after October 1, 1988, shall be recognized as having completed the professional education core set out in 14.19(3), with the exception of paragraphs *"h"* and *"n."*

These rules are intended to implement Iowa Code chapter 272.

282—14.35 to **14.100** Reserved.

RULES EFFECTIVE AUGUST 31, 2001

282—14.101(272) Applicants desiring Iowa licensure. Licenses are issued upon application filed on a form provided by the board of educational examiners.

282—14.102(272) Applicants from recognized Iowa institutions. An applicant for initial licensure who completes the teacher, administrator, or school service personnel preparation program from a recognized Iowa institution shall have the recommendation for the specific license and endorsement(s) or the specific endorsement(s) from the designated recommending official at the recognized education institution where the preparation was completed. A recognized Iowa institution is one which has its program of preparation approved by the state board of education according to standards established by said board, or an alternative program recognized by the state board of educational examiners.

282—14.103(272) Applicants from recognized non-Iowa institutions. An applicant for initial licensure who completes the teacher, administrator, or school service personnel preparation program from a recognized non-Iowa institution shall have the recommendation for the specific license and endorsement(s) or the specific endorsement(s) from the designated recommending official at the recognized institution where the preparation was completed, provided all requirements for Iowa licensure have been met.

Applicants who hold a valid license from another state and whose preparation was completed through a nontraditional program, through an accumulation of credits from several institutions, shall file all transcripts with the practitioner preparation and licensure bureau for a determination of eligibility for licensure.

A recognized non-Iowa institution is one which is accredited by the regional accrediting agency for the territory in which the institution is located.

282—14.104(272) Applicants from foreign institutions. An applicant for initial licensure whose preparation was completed in a foreign institution will be required to have all records translated into English and then file these records with the board of educational examiners for a determination of eligibility for licensure.

282—14.105(272) Issue date on original license. A license is valid only from and after the date of issuance.

282—14.106(272) Adding endorsements to licenses. After the issuance of a teaching, administrative, or school service personnel license, an individual may add other endorsements to that license upon proper application, provided current requirements for that endorsement have been met. An updated license with expiration date unchanged from the original or renewed license will be prepared.

14.106(1) To add an endorsement, the applicant shall comply with one of the following options:

Option 1. Identify with a recognized Iowa teacher preparing institution, meet that institution's current requirements for the endorsement desired, and receive that institution's recommendation.

Option 2. Identify with a recognized Iowa teacher education institution and receive a statement that the applicant has completed the equivalent of the institution's approved program for the endorsement sought.

Option 3. Identify with a recognized teacher education institution and receive a statement that based on the institution's evaluation of the individual's preparation the applicant has completed all of the Iowa requirements for the endorsement sought.

14.106(2) Appeal. If an applicant believes the Iowa requirements have been met but cannot obtain an equivalent statement from an institution, the applicant may file the transcripts for review. The rejection from the institution must be in writing. In this situation, the staff of the board of educational examiners shall review the preparation in terms of the Iowa requirements.

282—14.107(272) Correcting licenses. If, at the time of the original issuance or renewal of a license, a person does not receive an endorsement for which the individual is eligible, a corrected license shall be issued. Also, a corrected license shall be issued if a person receives an endorsement for which the person is not eligible.

282—14.108(272) Duplicate licenses. Upon application and payment of the fee set out in subrule 14.121(3), duplicate licenses shall be issued.

282—14.109(272) Fraud in procurement or renewal of licenses. Fraud in procurement or renewal of a license or falsifying records for licensure purposes will constitute grounds for filing a complaint with the board of educational examiners.

282—14.110(272) Licenses. The following licenses will be issued effective August 31, 2001:

1. Initial.
2. Continuing.
3. Advanced.
4. Professional administrator.
5. Conditional.
6. Substitute.
7. Area education agency administrator.

282—14.111(272) Requirements for an initial license. An initial license valid for two years may be issued to an applicant who:

1. Has a baccalaureate degree from a regionally accredited institution.
2. Has completed a state-approved teacher education program which meets the requirements of the professional education core.
3. Has completed an approved human relations component.
4. Has completed the exceptional learner component.
5. Has completed the requirements for one of the basic teaching endorsements, the special education teaching endorsements, or the secondary level occupational endorsements.
6. Meets the recency requirement of 14.115"3."

Renewal requirements for this license will be developed.

282—14.112(272) Requirements for a continuing license. A continuing license valid for five years may be issued to an applicant who:

1. Completes items "1" to "5" listed under 282—14.111(272).
2. Shows evidence of successful completion of a state-approved induction program or an approved alternative option or two years' successful teaching experience based on a local evaluation process.
3. Meets the recency requirement of 14.115"3."

Renewal requirements for this license will be developed.

282—14.113(272) Requirements for an advanced teacher's license. An advanced teacher's license valid for eight years may be issued to an applicant who:

1. Is the holder of or eligible for a continuing license.
2. Verifies seven years of successful teaching experience, or six years if the applicant has completed an approved induction program.
3. Completes one of the following options:

- Master's degree in a recognized endorsement area, or
- Master's degree in curriculum, effective teaching, or a similar degree program which has a focus on school curriculum or instruction, or
- A planned 32-semester-hour graduate level program in an endorsement area or in instructional improvement, or
- A planned sequence of graduate level coursework tied to an endorsement earned through the National Board for Professional Teaching Standards.

Renewal requirements for this license will be developed.

282—14.114(272) Requirements for a professional administrator's license. A professional administrator's license valid for five years may be issued to an applicant who:

1. Is the holder of or eligible for a continuing license.
2. Has five years of teaching experience.
3. Has completed the requirements for an administrative endorsement.

Renewal requirements for this license will be developed.

282—14.115(272) Requirements for a one-year conditional license. A nonrenewable conditional license valid for one year may be issued to an individual under any one of the following conditions:

1. *Professional core requirements.* The individual has not completed all of the required courses in the professional core, 14.123(4)*"a"* to *"j."*
2. *Human relations component.* The individual has not completed an approved human relations component.

3. *Recency.* The individual meets requirement(s) for a valid license, but has had fewer than 160 days of teaching experience during the five-year period immediately preceding the date of application or has not completed six semester hours of college credit from a recognized institution within the five-year period. To obtain the desired license, the applicant must complete recent credit and, where recent credits are required, these credits shall be taken in professional education or in the applicant's endorsement area(s).

4. *Degree not granted until next regular commencement.* An applicant who meets the requirements for a license with the exception of the degree, but whose degree will not be granted until the next regular commencement, may be issued a one-year conditional license.

5. *Based on an expired Iowa certificate or license, exclusive of a conditional license.* The holder of an expired license, exclusive of a conditional license or a temporary certificate, shall be eligible to receive a conditional license upon application. This license shall be endorsed for the type of service authorized by the expired license on which it is based.

6. *Based on an administrative decision.* The bureau of practitioner preparation and licensure is authorized to issue a conditional license to applicants whose services are needed to fill positions in unique need circumstances.

282—14.116(272) Requirements for a two-year conditional license. A nonrenewable conditional license valid for two years may be issued to an individual under the following conditions: If a person is the holder of a valid license and is the holder of one or more endorsements, but is seeking to obtain some other endorsement, a two-year conditional license may be issued if requested by an employer and the individual seeking this endorsement has completed at least two-thirds of the requirements leading to completion of all requirements for that endorsement.

282—14.117(272) Conditional special education license. Based on the amount of preparation needed to complete the requirements for the endorsement, a conditional special education license may be issued to an individual for a term of up to three years under the following conditions:

1. The individual is the holder of a valid license.
2. The individual has completed at least one-half of the credits necessary for a special education endorsement.
3. The employing school official makes written request supported by the respective area education agency special education officials.
4. The college/university outlines the coursework to be completed for the endorsement.

282—14.118(272) Conditional occupational and postsecondary licenses.

14.118(1) *Conditional occupational license.* A two-year conditional occupational license may be issued to an applicant who has not met all of the experience requirements for the provisional occupational license.

14.118(2) *Conditional postsecondary license.* A two-year conditional postsecondary license may be issued to an applicant who has not met all of the initial requirements for a provisional postsecondary license or holds the provisional or regular postsecondary license with an endorsement and is seeking an endorsement in another teaching field.

282—14.119(272) Requirements for a substitute teacher's license.

14.119(1) A substitute teacher's license may be issued to an individual who:

a. Has been the holder of, or presently holds, a license in Iowa; or holds or held a regular teacher's license or certificate in another state, exclusive of temporary, emergency, substitute certificate or license, or a certificate based on an alternative certification program.

b. Has successfully completed all requirements of an approved teacher education program and is eligible for the provisional license, but has not applied for and been issued this license, or who meets all requirements for the provisional license with the exception of the degree but whose degree will be granted at the next regular commencement.

14.119(2) A substitute license is valid for five years and for not more than 90 days of teaching during any one school year.

14.119(3) The holder of a substitute license is authorized to teach in any school system in any position in which a regularly licensed teacher was employed to begin the school year.

14.119(4) Renewal requirements for this license will be developed.

282—14.120(272) Two-year exchange license.

14.120(1) A two-year nonrenewable exchange license may be issued to an individual under the following conditions:

a. The individual has completed a state-approved teacher education program in a college or university approved by the state board of education or the state board of educational examiners in the home state which is party to the exchange certification agreement.

b. The individual holds a valid regular certificate or license in the home state party to the exchange certification agreement.

c. The individual is not subject to any pending disciplinary proceedings in the home state.

d. The applicant for the exchange license complies with all requirements with regard to application processes and payments of licensure fees.

14.120(2) Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application, the transcripts and the license or certificate held in the state in which the basic preparation for licensure was completed.

14.120(3) Each individual receiving the two-year exchange license will have to complete any identified licensure deficiencies in order to be eligible for an initial regular license in Iowa.

282—14.121(272) Licensure and authorization fee.

14.121(1) *Issuance and renewal of licenses, authorizations, and statements of professional recognition.* The fee for the issuance of each initial practitioner's license, evaluator license, statement of professional recognition, and coaching authorization and the renewal of each license, evaluator approval license, statement of professional recognition, and coaching authorization shall be $25.

14.121(2) *Adding endorsements.* The fee for the addition of each endorsement to a license, following the issuance of the initial license and endorsement(s), shall be $25.

14.121(3) *Duplicate licenses, authorizations, and statements of professional recognition.* The fee for the issuance of a duplicate practitioner's license, evaluator license, statement of professional recognition, or coaching authorization shall be $5.

14.121(4) *Evaluation fee.* Each application from an out-of-state institution for initial licensure shall include, in addition to the basic fee for the issuance of a license, a one-time nonrefundable $25 evaluation fee.

Each application or request for a statement of professional recognition shall include a one-time nonrefundable $25 evaluation fee.

14.121(5) *One-year emergency license.* The fee for the issuance of a one-year emergency license based on an expired conditional license or an expired administrative decision license shall be $50.

14.121(6) *Late renewal fee.* An additional fee of $25 per calendar month, not to exceed $100, shall be imposed if a renewal application is submitted after the date of expiration of a practitioner's license. The board may waive a late renewal fee upon application for waiver of the fee by a practitioner. Waiver of the late fee will be granted only upon a showing of extraordinary circumstances rendering imposition of the fee unreasonable.

282—14.122(272) NCATE accredited programs. The requirements of the professional education core at subrule 14.123(4) notwithstanding, an applicant from an out-of-state institution who has completed a program accredited by the National Council for the Accreditation of Teacher Education on or after October 1, 1988, shall be recognized as having completed the professional education core set out in 14.123(4), with the exception of paragraph *"m."*

282—14.123(272) Requirements for an original teaching subject area endorsement. Following are the basic requirements for the issuance of a license with an endorsement.

14.123(1) Baccalaureate degree from a regionally accredited institution.

14.123(2) Completion of an approved human relations component.

14.123(3) Completion of the exceptional learner program, which must include preparation that contributes to the education of the handicapped and the gifted and talented.

14.123(4) Professional education core. Completed coursework or evidence of competency in:

a. Student learning. The practitioner understands how students learn and develop, and provides learning opportunities that support intellectual, career, social and personal development.

b. Diverse learners. The practitioner understands how students differ in their approaches to learning and creates instructional opportunities that are equitable and are adaptable to diverse learners.

c. Instructional planning. The practitioner plans instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.

d. Instructional strategies. The practitioner understands and uses a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills.

e. Learning environment/classroom management. The practitioner uses an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

f. Communication. The practitioner uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry, collaboration, and support interaction in the classroom.

g. Assessment. The practitioner understands and uses formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the learner.

h. Foundations, reflection and professional development. The practitioner continually evaluates the effects of the practitioner's choices and actions on students, parents, and other professionals in the learning community, and actively seeks out opportunities to grow professionally.

i. Collaboration, ethics and relationships. The practitioner fosters relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development.

j. Computer technology related to instruction.

k. Completion of prestudent teaching field-based experiences.

l. Methods of teaching with an emphasis on the subject and grade level endorsement desired.

m. Student teaching in the subject area and grade level endorsement desired.

14.123(5) Content/subject matter specialization. The practitioner understands the central concepts, tools of inquiry, and structure of the discipline(s) the practitioner teaches and creates learning experiences that make these aspects of subject matter meaningful for students.

This is evidenced by completion of a 30-semester-hour teaching major which must minimally include the requirements for at least one of the basic endorsement areas, special education teaching endorsements, or secondary level occupational endorsements.

282—14.124(272) Human relations requirements for practitioner licensure. Preparation in human relations shall be included in programs leading to teacher licensure. Human relations study shall include interpersonal and intergroup relations and shall contribute to the development of sensitivity to and understanding of the values, beliefs, life styles and attitudes of individuals and the diverse groups found in a pluralistic society.

14.124(1) Beginning on or after August 31, 1980, each applicant for an initial practitioner's license shall have completed the human relations requirement.

14.124(2) On or after August 31, 1980, each applicant for the renewal of a practitioner's license shall have completed an approved human relations requirement.

14.124(3) Credit for the human relations requirement shall be given for licensed persons who can give evidence that they have completed a human relations program which meets board of educational examiners criteria (see 282—14.127(272)).

282—14.125(272) Development of human relations components. Human relations components shall be developed by teacher preparation institutions. In-service human relations components may also be developed by educational agencies other than teacher preparation institutions, as approved by the board of educational examiners.

282—14.126(272) Advisory committee. Education agencies developing human relations components shall give evidence that in the development of their programs they were assisted by an advisory committee. The advisory committee shall consist of equal representation of various minority and majority groups.

282—14.127(272) Standards for approved components. Human relations components will be approved by the board of educational examiners upon submission of evidence that they are designed to develop the ability of participants to:

14.127(1) Be aware of and understand the values, life styles, history, and contributions of various identifiable subgroups in our society.

14.127(2) Recognize and deal with dehumanizing biases such as sexism, racism, prejudice, and discrimination and become aware of the impact that such biases have on interpersonal relations.

14.127(3) Translate knowledge of human relations into attitudes, skills, and techniques which will result in favorable learning experiences for students.

14.127(4) Recognize the ways in which dehumanizing biases may be reflected in instructional materials.

14.127(5) Respect human diversity and the rights of each individual.

14.127(6) Relate effectively to other individuals and various subgroups other than one's own.

282—14.128(272) Evaluation. Educational agencies providing the human relations components shall indicate the means to be utilized for evaluation.

These rules are intended to implement Iowa Code chapter 272.

[Filed 1/29/76, Notice 10/6/75—published 2/23/76, effective 3/29/76]
[Filed 7/20/79, Notice 2/21/79—published 8/8/79, effective 9/12/79]
[Filed 10/10/80, Notice 6/25/80—published 10/29/80, effective 12/5/80 to 9/30/81]
[Filed 3/7/86, Notice 11/6/85—published 3/26/86, effective 10/1/88]
[Filed 6/13/86, Notice 2/12/86—published 7/2/86, effective 10/1/88]
[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]
[Filed emergency 9/16/88—published 10/5/88, effective 10/1/88]

[Filed emergency 9/14/90—published 10/3/90, effective 9/14/90]◊
[Filed emergency 11/14/90—published 12/12/90, effective 11/14/90]
[Filed emergency 12/21/90—published 1/9/91, effective 12/21/90]
[Filed 1/29/91, Notice 10/3/90—published 2/20/91, effective 3/27/91]
[Filed 1/21/92, Notice 11/13/91—published 2/19/92, effective 3/25/92]
[Filed 7/31/92, Notice 2/19/92—published 8/19/92, effective 10/1/92]*
[Filed emergency 6/17/93 after Notice 3/31/93—published 7/7/93, effective 7/23/93]
[Filed 9/22/93, Notice 3/31/93—published 10/13/93, effective 1/1/94]
[Filed 1/13/94, Notice 9/15/93—published 2/2/94, effective 3/9/94]
[Filed 4/28/94, Notice 2/2/94—published 5/25/94, effective 7/1/94]
[Filed 1/12/96, Notice 11/8/95—published 1/31/96, effective 3/6/96]
[Filed 5/16/96, Notice 3/13/96—published 6/5/96, effective 7/10/96]
[Filed 12/13/96, Notice 1/6/96—published 1/1/97, effective 2/5/97]
[Filed 6/27/97, Notice 4/23/97—published 7/16/97, effective 8/31/97]
[Filed 5/15/98, Notice 2/11/98—published 6/3/98, effective 7/8/98]
[Filed 7/24/98, Notice 6/3/98—published 8/12/98, effective 9/16/98]
[Filed 11/13/98, Notice 9/9/98—published 12/2/98, effective 1/6/99]
[Filed 11/30/98, Notice 9/9/98—published 12/16/98, effective 7/1/99]
[Filed 3/19/99, Notice 1/27/99—published 4/7/99, effective 7/1/00]
[Filed 4/16/99, Notice 2/10/99—published 5/5/99, effective 8/31/99]◊
[Filed 4/16/99, Notice 12/16/98—published 5/5/99, effective 7/1/00]
[Filed 6/25/99, Notice 5/5/99—published 7/14/99, effective 8/18/99]
[Filed 7/23/99, Notice 5/5/99—published 8/11/99, effective 9/15/99]
[Filed 4/14/00, Notice 2/9/00—published 5/3/00, effective 6/7/00]◊
[Filed 4/14/00, Notice 2/9/00—published 5/3/00, effective 10/1/00]
[Rules editorially renumbered IAC Supplement 8/9/00]
[Filed 5/15/98, Notice 2/11/98—published 6/3/98, effective 8/31/01]
[Filed 7/23/99, Notice 5/5/99—published 8/11/99, effective 8/31/01]

◊Two ARCs
*Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held September 9, 1992; delay lifted by the Committee October 14, 1992, effective October 15, 1992.

CHAPTER 28
IOWA SENIOR LIVING PROGRAM—HOME- AND COMMUNITY-BASED SERVICES FOR SENIORS

PREAMBLE

These rules implement provisions of 2000 Iowa Acts, Senate File 2193, which establish an overall goal of moving toward a balanced, comprehensive, affordable, high quality long-term care system.

Funds are available to area agencies on aging and subcontracting long-term care providers for designing and expanding home- and community-based services to low- and moderate-income seniors to promote independence and delay the use of institutional care.

321—28.1(78GA,SF2193) Purpose.

28.1(1) The purpose of the Iowa senior living program, home- and community-based services for seniors, is to create a comprehensive long-term care system that is consumer-directed, provides a balance between institutional and noninstitutional services, and contributes to the quality of the lives of Iowans.

28.1(2) Funds appropriated from the senior living trust fund for home- and community-based services for seniors shall be used for activities related to the design, maintenance, or expansion of home- and community-based services for seniors including, but not limited to, adult day care, personal care, respite, homemaker, chore, and transportation services, which promote the independence of seniors and delay the use of institutional care by seniors with low and moderate incomes.

321—28.2(78GA,SF2193) Definitions. For the purposes of these rules, the following definitions apply unless the context otherwise requires:

"AAA" or *"area agency on aging"* means the grantee agency in a planning and service area designated by the commission for the Iowa department of elder affairs to develop and administer the multiyear area plan for a comprehensive and coordinated system of services for elders and to carry out the duties specified in Iowa Code chapter 231.

"Administration cost" means the direct and indirect costs incurred by the grantee in managing the grant.

"Client participation" means a payment system with an established fee or cost that allows:

1. A senior with low income to receive services for a voluntary contribution toward the cost of the service;
2. A senior with moderate income to receive services at less than the full service delivery cost; and
3. A senior with above moderate income to purchase services at full cost.

"Community-based adult services committee" or *"CBAS"* means the group consisting of representatives appointed by the departments of elder affairs, human services, inspections and appeals, and public health; Iowa Foundation for Medical Care; Iowa association of area agencies on aging; and Iowa state association of counties.

"Contract" means the purchase of units of services on behalf of an aggregate clientele.

"Department" means the department of elder affairs, the state agency responsible for administration of the Older Americans Act, and Iowa Code chapter 231.

"Direct service" means a service to a client that is administered by the area agency on aging and provided by employees of the area agency on aging.

"Grant" means the use of funds to underwrite an operation in support of the existence of a specific service provider.

"Income" means wages, salaries, business income, social security benefits, veterans administration benefits, disability payments (government or private), retirement or pension plan income, annuity income, interest income, supplemental security income, welfare payments, and other cash income.

"Long-term care services" means those services specified under the medical assistance home- and community-based services waiver for the elderly or the National Aging Program Information System (NAPIS) and designed to directly promote the independence of seniors and to delay the use of institutional care by seniors with low and moderate income.

"Low income":

1. For purposes of determining client eligibility for financial assistance under 2000 Iowa Acts, Senate File 2193, section 7, means income of less than 300 percent of SSI;

2. For purposes of funding distribution means income at or below the official poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

"Medical assistance program" means the financial assistance programs established in cooperation between the state of Iowa and the Health Care Financing Administration (HCFA) under the Medicaid state plan for lower income Iowans with health and social needs.

"Moderate income" means income that is equal to or greater than 300 percent of SSI and less than 300 percent of the federal poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

"National Aging Program Information System" or *"NAPIS"* means the reporting system in which the Older Americans Act requires participation by providers receiving funding from the provisions of the Act.

"Older Americans Act" means the Older Americans Act of 1965, as amended through December 31, 1992 (Public Law 89-73).

"Provider" means individuals, agencies, public and private for-profit and not-for-profit organizations and other entities delivering long-term care services funded under these rules.

"Rural" means incorporated areas with a population of less than 20,000 and unincorporated areas.

"Senior" means an individual who is 60 years of age or older as provided in Iowa Code section 231.4 and 42 U.S.C.§ 1396(u)(4).

"Senior living coordinating unit" or *"SLCU"* means the senior living coordinating unit created within the department of elder affairs, pursuant to Iowa Code section 231.58, or its designee.

"Senior living program" means the senior living program created in 2000 Iowa Acts, Senate File 2193, to provide for long-term care services, long-term care service development, and nursing facility conversion.

"Senior living trust" means the funding mechanism established in 2000 Iowa Acts, Senate File 2193.

"Subcontractor of the area agencies on aging" means a provider receiving funds by contract or similar arrangement with an area agency on aging.

"Supplemental security income (SSI)" means the income level defined each year by the Social Security Administration (SSA) for the nationwide federal assistance program administered by SSA, which guarantees the defined minimum level of income for needy aged, blind, or disabled individuals by providing a basic cash support.

"Underserved" means:

1. An area underserved for long-term care service; and

2. For service funding purposes, also means individuals aged 60 and over who are unable to access needed services or areas where the service identified as needed is not available either because there is no provider for that service or because existing providers of that service are regularly unable to deliver the amount of service identified as needed by individuals aged 60 and over.

"Voucher" means the mechanism used to purchase a specific service from a vendor on behalf of an individual client or clients.

321—28.3(78GA,SF2193) Disbursement of funds.

28.3(1) *Administration.* The department may use up to 7 percent of the service dollars appropriated to the department from the senior living trust fund for purposes of implementing and administering the functions delegated to the department by the Iowa senior living program Act.

28.3(2) *Identification of service needs.*

a. The department in collaboration with the area agencies on aging shall conduct on a four-year cycle a statewide needs assessment designed to identify individuals aged 60 and over and areas underserved for long-term care services.

b. The department may withhold up to $100,000 for each four-year cycle from the service dollars appropriated to the department from the senior living trust fund to carry out this function.

c. The department shall seek partners and other funding sources to share the cost of implementing the survey.

28.3(3) *Funding formula.* The department shall allocate senior living trust funds to the area agencies on aging as established in 2000 Iowa Acts, Senate File 2193, section 7, utilizing, at a minimum, a formula that:

a. Shall triple weight all of the following:

(1) Individuals 75 years of age and older.

(2) Individuals aged 60 and older who are members of a racial minority.

(3) Individuals 60 years of age and older who reside in rural areas.

(4) Individuals who are 60 years of age and older who have incomes at or below the official poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

b. Shall single weight for individuals 60 years of age and older.

The department shall use the best available population data, including but not limited to U.S. census reports, to calculate allotments under this subrule.

28.3(4) *Process for disbursement of funds to the AAAs for state fiscal year 2001.*

a. Area agencies on aging shall submit area plan addenda by August 1, 2000.

b. Plans for disbursement of senior living trust funds shall be submitted to the CBAS and SLCU for review and advice prior to final approval by the commission for the department of elder affairs.

c. First and second quarter funds shall be transferred to the AAAs following commission approval and receipt of funds, but no later than October 1, 2000. Funds shall be transferred on the first day of the quarter thereafter.

28.3(5) *Process for disbursement of funds to the AAAs for subsequent state fiscal years.*

a. The process shall be incorporated into the area plan process outlined in the Older Americans Act of 1965, 42 U.S.C. Sec. 306 and 321—Chapter 4.

b. Plans for disbursement of senior living trust funds shall be submitted to the CBAS and SLCU for review and advice prior to final approval by the commission for the department of elder affairs.

321—28.4(78GA,SF2193) Use of funds by AAAs.

28.4(1) *Eligible use of funds.*

a. The area agency on aging may use up to 7 percent of the service dollars for purposes of developing, implementing and administering local long-term care services, and for collecting and reporting required data.

b. For state fiscal year 2001 only, the AAA may use up to 10 percent of the service dollars for area costs associated with creating and implementing, in cooperation with the department, the required reporting mechanism for tracking met and unmet needs as well as the statewide computerized data base of information on services available to older Iowans.

c. The remaining funds contracted to the AAAs by the department from the senior living trust fund will be used to:

(1) Provide long-term care services to enhance the ability of the client to appropriately avoid or delay institutionalization;

(2) Provide services through:

1. Enhancement and expansion of existing providers to serve new clients, provide new units of service to existing clients, and serve new areas;

2. Identification and development of new providers; and

3. Addition of a new funding source to maintain current service levels when service levels would otherwise decline due to a loss of purchasing power; and

(3) Provide services to low- and moderate-income Iowans aged 60 and over.

d. The area agencies on aging may use client participation for services funded under 2000 Iowa Acts, Senate File 2193, section 7. When client participation is used:

(1) The area agency on aging shall not use Older Americans Act funding for the same service category when providing direct service.

(2) The area agency on aging shall not contract Older Americans Act funds and senior living trust funds to a provider for the same service category.

(3) Eligibility shall be based on self-declaration by the client or on declaration on the client's behalf by the client's authorized representative. If the provider or AAA has reason to believe that the declaration is inaccurate or misrepresents the client's financial status, the provider or AAA may require documentation of income and resources, and subsequently may discontinue further financial assistance from the senior living trust fund if the individual is found ineligible.

(4) Funds generated through client participation must be used to purchase the respective service for which the funds were received.

e. Senior living trust fund dollars shall not be used to purchase a service when the client is eligible for third-party purchase of that service by sources such as Medicare, Medicaid, Medicaid home- and community-based services (HCBS) waiver and private long-term care insurance.

f. The AAA shall not use senior living trust funds to replace existing funding for a long-term care service. The department may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the AAA to another long-term care service for the elderly and results in an increase in total AAA funding for long-term care services to seniors equal to the senior living trust fund dollars used for replacement.

28.4(2) *Reallotment of unobligated funds.*

a. If the department determines prior to the end of the fiscal year that an AAA will have unused funds, the department may reallot the unused funds to one or more AAAs in accordance with demonstrated utilization. The AAAs receiving these reallotted funds shall obligate them by the end of the fiscal year in which they are reallotted.

b. Any unobligated funds remaining at the end of the state fiscal year shall be returned to the department and deposited in the Iowa senior living trust fund.

321—28.5(78GA,SF2193) Disbursement of funds to AAA subcontractors.

28.5(1) *Criteria to receive senior living trust funds as a subcontractor of an AAA.*

a. The applicant for senior living trust funds must demonstrate that the proposed long-term care alternative service or services:

(1) Are responsive to the service priorities identified by the AAA; or

(2) Will address other significant unmet service needs of eligible seniors as documented by the applicant.

b. The applicant must document the ability to provide the proposed services and the related administration, financial tracking and reporting required by a subcontractor under these rules.

c. The subcontractor must agree to meet the criteria set out in this subrule in addition to criteria established by the AAA in its request for proposal and contract.

d. The subcontractor shall ensure that all employees providing in-home care to clients have had a criminal background check and have been cleared for said functions in accordance with Iowa Code section 135C.33.

e. No senior living trust funds shall be contracted to a provider that has been prohibited from participating in the Medicare or medical assistance programs.

f. The subcontractor shall commit to seeking third-party reimbursement when available.

28.5(2) *Disbursement of funds to the AAA subcontractors.*

a. Method. Area agencies on aging may use the method or methods of disbursing funds determined to best ensure effective provision of services that address identified and documented unmet needs including contracts, grants, vouchers and direct services.

b. Process for disbursement for state fiscal year 2001.

(1) Each AAA shall issue a request for proposals and application packets no later than June 10, 2000.

(2) The application packet shall contain at a minimum the standard application format and accompanying forms; an explanation of required documentation including, but not limited to, community support, provider capacity to deliver the proposed service, and provider commitment to deliver cost-effective long-term care services to low- and moderate-income elders; a list of priority services for the area; and a time line for and explanation of the AAA's process.

(3) Provider applications shall be due at the respective AAA office by July 1, 2000, for review by AAA staff and advisory boards.

(4) Funds shall be disbursed by the AAAs following the receipt of funds.

c. For subsequent state fiscal years, senior living trust fund service dollars appropriated under 2000 Iowa Acts, Senate File 2193, section 7, shall be disbursed to subcontractors through the area plan process as described in 321—4.20(231) and 321—4.21(231).

28.5(3) *Prioritization of service contracts.* The AAA may prioritize service contracts and funding levels for reasons that include, but are not limited to, the following:

a. Local prioritization to fulfill unmet needs.

b. Provider commitment matching funds.

c. Provider commitment to use client participation.

d. Cost.

e. History of providing quality service.

28.5(4) *Eligible uses of senior living trust funds by subcontractors.*

a. Funds contracted by an AAA from the senior living trust fund shall be used to provide long-term care services to enhance the ability of Iowans aged 60 and over with low or moderate income to appropriately avoid or delay institutionalization.

b. An AAA subcontractor may use client participation for services funded under 2000 Iowa Acts, Senate File 2193, section 7, for persons with moderate income or above if the subcontractor does not receive Older Americans Act funding for the same service category.

c. The AAA subcontractor shall not use senior living trust funds to replace existing funding for a long-term care service. The AAA may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the subcontractor to another long-term care service for the elderly and results in an increase in total funding for long-term care services by the subcontractor to seniors equal to the senior living trust fund dollars used for replacement.

321—28.6(78GA,SF2193) Reporting requirements.

28.6(1) *Area agency on aging subcontractors.*

a. Area agency on aging subcontractors shall submit monthly reports to the area agency on aging.

b. Subcontractor monthly reports, excepting those submitted by legal services providers, shall provide data by month and year to date for:

(1) Total number of clients served;

(2) Number of clients receiving financial assistance from medical assistance programs; and

(3) By service category, for each client receiving financial assistance from senior living trust funds, the number of units of service provided, the number of units of service not provided, and the reasons services were not provided, and expenditures.

c. Subcontractors shall provide other information as requested by the contracting AAA.

d. Subcontractors, excepting legal services providers, shall participate in the NAPIS client registration process.

e. Reporting forms are available from the contracting AAA.

f. Subcontractors providing legal services shall report in aggregate, unduplicated count of clients served, the number of units of service provided, the number of units of service not provided and the reasons services were not provided, and expenditures.

28.6(2) *Area agencies on aging.*

a. Area agencies on aging shall at a minimum submit monthly reports to the department.

b. Each AAA shall use the NAPIS client registration process for clients receiving assistance, with the exception of legal assistance, from the senior living trust fund.

c. Each AAA shall report by month and year to date:

(1) Total number of clients served;

(2) By service category, the number of clients receiving financial assistance from senior living trust funds, the number of units of service provided, the number of units of service not provided and the reasons services were not provided, and expenditures;

(3) Utilization of funds; and

(4) Performance outcomes from funded services.

d. Original report forms for duplication are available from the department.

28.6(3) *Department.*

a. The department shall submit bimonthly reports to the senior living coordinating unit that include the following information by month and year to date:

(1) Total number of clients served;

(2) Number of clients receiving financial assistance from medical assistance programs;

(3) By service category, an aggregate for clients receiving financial assistance from senior living trust funds, the number of units of service provided, the number of units of service not provided and the reasons services were not provided, and expenditures; and

(4) Comparative data for services not provided.

b. The department, in cooperation with the department of human services, shall submit an annual report to the governor and the general assembly concerning the impact of moneys disbursed under 2000 Iowa Acts, Senate File 2193, on the availability of long-term care services in Iowa. The report shall include, but not be limited to, year-end totals for and analysis of the information reported bi-monthly by the departments to the SLCU.

These rules are intended to implement 2000 Iowa Acts, Senate File 2193, sections 7, 9 and 10.

[Filed emergency 5/19/00—published 6/14/00, effective 5/19/00]

[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

*1.6(6) Consumption of alcoholic beverages is not permitted on the capitol complex except for special events in the new State Historical Building located between East 6th Street and Pennsylvania Avenue and Locust Street and Grand Avenue with the prior written approval of the director of the department of general services and the director of the department of cultural affairs.

1.6(7) The director may refuse to allow use of the facilities which, in the director's judgment, would be disruptive of official state business or of the public health and welfare. The director may consider recommendations of capitol security, previous experience with the requesting group or events such as that requested.

1.6(8) The director may require, when reasonable, that a damage deposit or bond be posted by any group requesting use of the capitol grounds.

1.6(9) Rescinded IAB 11/15/89, effective 12/20/89.

1.6(10) Permission to distribute literature on the capitol complex grounds or in state-owned or occupied buildings in metropolitan Des Moines must be obtained from the director or the director's designee. The director may designate specific locations from which literature may be distributed in order to ensure control of litter, unobstructed access to public buildings and reasonable conduct of public business.

1.6(11) No state-owned equipment or state personnel shall be used for private parties, weddings, demonstrations, rallies, etc., without the written consent of the director or the director's designee.

1.6(12) The director may cause the temporary or permanent placement of barricades, ropes, signs, or other barriers to access to certain parts of state buildings or grounds. Unauthorized persons beyond the barriers may be removed or prosecuted as provided by law.

1.6(13) Public use of state buildings is restricted to normal office hours.

For all buildings except the Capitol Building and the Historical Building, normal office hours are 6 a.m. to 5:30 p.m. Monday through Friday. Buildings are closed to the public on weekends and holidays.

For the Capitol Building, normal office hours are 6 a.m. to 5:30 p.m. Monday through Friday, except that if a legislative session lasts past 5 p.m., the closing hour is extended until one-half hour beyond the session's end. On weekends and holidays, the building is open from 8 a.m. to 4 p.m.

For the Historical Building, normal office hours are 8 a.m. to 4 p.m. every day, including weekends and holidays.

Hours listed above are subject to change. Changes in hours shall be posted on the main entrance doors to each affected building.

1.6(14) Public use of the capitol complex grounds is restricted to the hours of 6 a.m. to 11 p.m. on a daily basis.

1.6(15) Special events.

a. The director may grant a variance from the requirements of these rules and grant a special events permit for events sponsored by the state or other governmental entities or events where a city or county government agrees to provide appropriate security and supervision if the director determines that granting the permit is consistent with the underlying purpose of these rules and that the public interest so demands.

b. As a condition of the issuance of a special event permit the director may require:

(1) The filing of a bond payable to the director, in an amount adequate to cover costs such as restoration, rehabilitation and cleanup of the area used and other costs resulting from this special event. In lieu of a bond, a permittee may elect to deposit cash equal to the amount of the required bond.

*See 1992 Iowa Acts, SJR 2009, for exception within the Capitol December 3, 1992, to December 5, 1992.
See 2000 Iowa Acts, HJR 2014, for exception within Capitol.

(2) In addition to the requirements of 1.6(15)"*b*"(1), the director may require the acquisition of liability insurance in which the state of Iowa is named as an additional insured to protect the state.

(3) The permit may contain such conditions as are consistent with protection and use of the capitol complex for the purposes for which it is intended. It may also contain limitations on the equipment used and the time and area within which the event is allowed.

This rule is intended to implement Iowa Code section 18.10.

401—1.7(18) Solicitation and sales in state-owned and occupied buildings in metropolitan Des Moines.

1.7(1) Canteens, cafeterias and vending machines under the control of the department for the blind and gift shops under the control of the department of cultural affairs and a shoe shine stand established pursuant to subrule 1.7(4) are the only authorized methods of direct sales to employees and visitors in state-owned and occupied buildings in metropolitan Des Moines.

1.7(2) Solicitation of state employees for direct sales, within state-owned and occupied buildings is expressly forbidden. Solicitation of state employees for political contributions shall be governed by Iowa Code section 721.3.

1.7(3) Vendors seeking to sell supplies, equipment and services to state agencies shall comply with 450—2.2(18) Approved vendors, and shall contact the purchasing division to schedule sales calls. This provision is not applicable to agencies otherwise excepted by law or rule.

1.7(4) A shoe shine stand may be established in the basement of the State Capitol Building. Vendors interested in contracting for the operation of the stand shall comply with the provisions of 401—Chapter 9.

This rule is intended to implement Iowa Code sections 18.10, 303.9(2), 601C.2(2) and 601C.3.

401—1.8(18) State vehicle dispatcher vehicle assignments.

1.8(1) Pursuant to Iowa Code section 18.115(4)"*a,*" the agencies listed below shall assign all vehicles within their possession, control, or use in accordance with the standards set forth in this rule. The following agencies are subject to this rule:

a. State vehicle dispatcher;

b. State department of transportation;

c. Institutions under the control of the state board of regents;

d. The department for the blind; and

e. Any other state agency exempted from obtaining vehicles for use through the state vehicle dispatcher.

1.8(2) Definitions.

"*Cargo payload*" means the net cargo weight transported. The weight of the driver, passengers, and fuel shall not be considered in determining cargo payload.

"*Cargo volume*" means the space calculated in cubic feet behind the vehicle driver and passenger seating area. In station wagons, the cargo volume is measured to the front seating area with the second seat laid flat behind the driver.

"*Passengers*" means the total number of vehicle occupants transported on a trip, including the driver.

"*Primary use*" means the utilized application exceeds 50 percent of the miles driven annually for EPA-designated light duty trucks and vans and exceeds 75 percent of the miles driven annually for EPA-designated passenger sedans and wagons.

1.8(3) In order to maximize the average passenger miles per gallon of motor vehicle fuel consumed, vehicles shall be assigned on the following basis:

a. EPA-rated compact sedans shall carry one or two passengers and their personal effects.

b. EPA-rated compact wagons shall carry one or two passengers and a minimum cargo volume of 50 cubic feet or a minimum cargo payload of 350 pounds.

c. Independence:

Allamakee	Butler	Fayette	Jones
Benton	Chickasaw	Floyd	Linn
Black Hawk	Clayton	Grundy	Mitchell
Bremer	Delaware	Howard	Tama
Buchanan	Dubuque	Jackson	Winneshiek

d. Mt. Pleasant:

Appanoose	Iowa	Louisa	Poweshiek
Cedar	Jasper	Lucas	Scott
Clinton	Jefferson	Mahaska	Van Buren
Davis	Johnson	Marion	Wapello
Des Moines	Keokuk	Monroe	Washington
Henry	Lee	Muscatine	

28.11(2) The catchment areas for the two state hospital-schools shall be made up of the following counties:

a. Glenwood:

Adair	Decatur	Lee	Pottawattamie
Adams	Des Moines	Linn	Ringgold
Appanoose	Fremont	Louisa	Sac
Audubon	Greene	Lucas	Scott
Benton	Guthrie	Lyon	Shelby
Carroll	Harrison	Mahaska	Sioux
Cass	Henry	Mills	Taylor
Cedar	Ida	Monona	Union
Cherokee	Iowa	Monroe	Van Buren
Clarke	Jefferson	Montgomery	Wapello
Clinton	Johnson	Muscatine	Washington
Crawford	Jones	Page	Wayne
Davis	Keokuk	Plymouth	Woodbury

b. Woodward:

Allamakee	Dallas	Howard	Pocahontas
Black Hawk	Delaware	Humboldt	Polk
Boone	Dickinson	Jackson	Poweshiek
Bremer	Dubuque	Jasper	Story
Buchanan	Emmet	Kossuth	Tama
Buena Vista	Fayette	Madison	Warren
Butler	Floyd	Marion	Webster
Calhoun	Franklin	Marshall	Winnebago
Cerro Gordo	Grundy	Mitchell	Winneshiek
Chickasaw	Hamilton	O'Brien	Worth
Clay	Hancock	Osceola	Wright
Clayton	Hardin	Palo Alto	

28.11(3) Application for voluntary admission to an institution shall be made to the institution in the catchment area within which the person for whom admission is sought is residing.

28.11(4) Court commitment of a person shall be made to the institution within the catchment area within which the court is located.

28.11(5) The administrator shall give consideration to granting exceptions to the established catchment areas when requested by the person seeking a voluntary admission or the committing court. The administrator's decision shall be made within 48 hours of receipt of the request. The decision shall be based on the clinical needs of the patient, the availability of appropriate program services, available bed space within the program at the requested institution and the consent of the superintendents of both institutions involved.

28.11(6) For the purpose of treating a minor from the Clarinda catchment area who requires admission or commitment to a mental health institute adolescent or children's treatment program, the Clarinda catchment area is deemed to be a part of the Cherokee catchment area. For a minor in the Mt. Pleasant catchment area, the Mt. Pleasant catchment area is deemed to be a part of the Independence catchment area.

This rule is intended to implement Iowa Code section 218.4.

441—28.12(217) Release of confidential information.

28.12(1) Information defined by statute as confidential concerning current or former patients or residents of the mental health institutes or hospital-schools shall not be released to a person, agency or organization, who is not authorized by law to have access to the information, unless the patient or resident authorizes the release. Authorization shall be given by using Form MH-2201-0.

28.12(2) Persons admitted or committed to a mental health institute or a hospital-school and who are not able to pay their own way in full shall authorize the department to obtain information necessary to establish whether they have legal settlement in Iowa or in another state. Authorization shall be given using Form MH-2203-0, Authorization to Release Information for Settlement.

This rule is intended to implement Iowa Code section 217.30.

441—28.13(218) Applying county institutional credit balances.

28.13(1) *Definition of credit balance.* A county institutional credit balance occurs when a county has paid a debt from a state institution or an institutional program and it is later determined that all or part of the debt was not the county's responsibility. Only when an institutional debit balance has been paid by a county and all or part of the paid debit has been determined not to be the responsibility of the county can the resulting county credit be used to reduce existing or future institutional debit balances.

28.13(2) *Order of application.* County institutional credits shall be applied in the following order until all credits are exhausted or refunded:

a. A credit shall first be applied to the patient's or resident's account at the same institution that generated the credit.

b. If any credit remains after application to the patient's or resident's account, the remaining credit shall be applied to any outstanding charges at the same institution that generated the credit.

c. Any remaining credit, after application to the patient's or resident's account and to the same institution that generated the credit, shall be applied to an outstanding balance at another state institution. If a credit generated by an institution or institutional program under net budgeting is to be applied to an institution or institutional program not under net budgeting, then a transfer of funds shall be made from the applicable institutional fund or institutional program under net budgeting to the state general fund. If a credit generated by an institution that is not under net budgeting is to be applied to an institution or institutional program under net budgeting, then a transfer will be made from the state general fund to the applicable net budgeting institutional fund. If a credit generated by an institution or institutional program under net budgeting is to be applied to another institution or institutional program under net budgeting, then the transfer of funds between the applicable net budgeting funds or programs shall be made through an accounting journal entry.

d. If any credit remains after applying credits as stated in paragraphs "*a*" to "*c*," the county with the remaining credit may seek a refund by filing a claim to the state appeal board pursuant to 543—Chapter 3, or the county may allow the credit to remain outstanding until such time as the county has an additional state institution or an institutional program debt.

This rule is intended to implement Iowa Code section 218.78.

[Filed 2/19/76, Notice 1/12/76—published 3/8/76, effective 4/12/76]
[Filed 4/30/76, Notice 3/22/76—published 5/17/76, effective 6/21/76]
[Filed 11/21/80, Notice 9/17/80—published 12/10/80, effective 1/14/81]
[Filed 10/23/81, Notice 8/19/81—published 11/11/81, effective 12/16/81]
[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 2/14/91, Notice 11/28/90—published 3/6/91, effective 5/1/91]
[Filed 3/11/93, Notice 2/3/93—published 3/31/93, effective 6/1/93]
[Filed 7/13/00, Notice 5/17/00—published 8/9/00, effective 10/1/00]

CHAPTER 52
PAYMENT

[Prior to 7/1/83, Social Services[770] Ch 52]
[Prior to 2/11/87, Human Services[498]]

441—52.1(249) Assistance standards. Assistance standards are the amounts of money allowed on a monthly basis to recipients of state supplementary assistance in determining financial need and the amount of assistance granted.

52.1(1) *Protective living arrangement.* The following assistance standards have been established for state supplementary assistance for persons living in a protective living arrangement:

Family life home certified under rules in 441—Chapter 111.

$521.20	care allowance
73.00	personal allowance
$594.20	Total

52.1(2) *Dependent relative.* The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

a. Aged or disabled client and a dependent relative $769
b. Aged or disabled client, eligible spouse, and a dependent relative $1026
c. Blind client and a dependent relative $791
d. Blind client, aged or disabled spouse, and a dependent relative $1048
e. Blind client, blind spouse, and a dependent relative $1070

52.1(3) *Residential care.* Payment to a recipient in a residential care facility shall be made on a flat per diem rate of $17.50 or on a cost-related reimbursement system with a maximum reimbursement per diem rate of $24.50. A cost-related per diem rate shall be established for each facility choosing this method of payment according to rule 441—54.3(249).

The facility shall accept the per diem rate established by the department for state supplementary assistance recipients as payment in full from the recipient and make no additional charges to the recipient.

a. All income of a recipient as described in this subrule after the disregards described in this subrule shall be applied to meet the cost of care before payment is made through the state supplementary assistance program.

Income applied to meet the cost of care shall be the income considered available to the resident pursuant to supplemental security income (SSI) policy plus the SSI benefit less the following monthly disregards applied in the order specified:

(1) When income is earned, impairment related work expenses, as defined by SSI plus $65 plus one-half of any remaining earned income.

(2) Effective January 1, 2000, a $73 allowance to meet personal expenses and Medicaid copayment expenses.

(3) When there is a spouse at home, the amount of the SSI benefit for an individual minus the spouse's countable income according to SSI policies. When the spouse at home has been determined eligible for SSI benefits, no income disregard shall be made.

(4) When there is a dependent child living with the spouse at home who meets the definition of a dependent according to the SSI program, the amount of the SSI allowance for a dependent minus the dependent's countable income and the amount of income from the parent at home that exceeds the SSI benefit for one according to SSI policies.

(5) Established unmet medical needs of the resident, excluding private health insurance premiums and Medicaid copayment expenses. Unmet medical needs of the spouse at home, exclusive of health insurance premiums and Medicaid copayment expenses, shall be an additional deduction when the countable income of the spouse at home is not sufficient to cover those expenses. Unmet medical needs of the dependent living with the spouse at home, exclusive of health insurance premiums and Medicaid copayment expenses, shall also be deducted when the countable income of the dependent and the income of the parent at home that exceeds the SSI benefit for one is not sufficient to cover the expenses.

(6) The income of recipients of state supplementary assistance or Medicaid needed to pay the cost of care in another residential care facility, a family life home, an in-home health-related care provider, a home- and community-based waiver setting, or a medical institution is not available to apply to the cost of care. The income of a resident who lived at home in the month of entry shall not be applied to the cost of care except to the extent the income exceeds the SSI benefit for one person or for a married couple if the resident also had a spouse living in the home in the month of entry.

b. Payment is made for only the days the recipient is a resident of the facility. Payment shall be made for the date of entry into the facility, but not the date of death or discharge.

c. Payment shall be made in the form of a grant to the recipient on a post payment basis.

d. Payment shall not be made when income is sufficient to pay the cost of care in a month with less than 31 days, but the recipient shall remain eligible for all other benefits of the program.

e. Payment will be made for periods the resident is absent overnight for the purpose of visitation or vacation. The facility will be paid to hold the bed for a period not to exceed 30 days during any calendar year, unless a family member or legal guardian of the resident, the resident's physician, case manager, or department service worker provides signed documentation that additional visitation days are desired by the resident and are for the benefit of the resident. This documentation shall be obtained by the facility for each period of paid absence which exceeds the 30-day annual limit. This information shall be retained in the resident's personal file. If documentation is not available to justify periods of absence in excess of the 30-day annual limit, the facility shall submit a Case Activity Report, Form AA-4166-0, to the county office of the department to terminate the state supplementary assistance payment.

A family member may contribute to the cost of care for a resident subject to supplementation provisions at rule 441—51.2(249) and any contributions shall be reported to the county office of the department by the facility.

f. Payment will be made for a period not to exceed 20 days in any calendar month when the resident is absent due to hospitalization. A resident may not start state supplementary assistance on reserve bed days.

g. The per diem rate established for recipients of state supplementary assistance shall not exceed the average rate established by the facility for private pay residents.

(1) Residents placed in a facility by another governmental agency are not considered private paying individuals. Payments received by the facility from such an agency shall not be included in determining the average rate for private paying residents.

(2) To compute the facilitywide average rate for private paying residents, the facility shall accumulate total monthly charges for those individuals over a six-month period and divide by the total patient days care provided to this group during the same period of time.

52.1(4) *Blind.* The standard for a blind recipient not receiving another type of state supplementary assistance is $22 per month.

52.1(5) *In-home, health-related care.* Payment to a person receiving in-home, health-related care shall be made in accordance with rules in 441—Chapter 177.

52.1(6) *Minimum income level cases.* The income level of those persons receiving old age assistance, aid to the blind, and aid to the disabled in December 1973 shall be maintained at the December 1973 level as long as the recipient's circumstances remain unchanged and that income level is above current standards. In determining the continuing eligibility for the minimum income level, the income limits, resource limits, and exclusions which were in effect in October 1972 shall be utilized.

This rule is intended to implement Iowa Code sections 234.6, 234.38, 249.2, 249.3, 249.4, and 249A.4.

[Filed 2/19/76, Notice 1/12/76—published 3/8/76, effective 4/12/76]
[Filed emergency 6/9/76—published 6/28/76, effective 7/1/76]
[Filed emergency 7/29/76—published 8/23/76, effective 9/1/76]
[Filed 9/29/76, Notice 8/23/76—published 10/20/76, effective 11/24/76]
[Filed 12/17/76, Notice 11/3/76—published 1/12/77, effective 3/1/77]
[Filed emergency 5/24/77—published 6/15/77, effective 7/1/77]
[Filed 3/27/78, Notice 2/8/78—published 4/19/78, effective 5/24/78]
[Filed emergency 5/8/78—published 5/31/78, effective 5/24/78]
[Filed emergency 6/28/78—published 7/26/78, effective 7/1/78]
[Filed 7/17/78, Notice 5/31/78—published 8/9/78, effective 9/13/78]
[Filed 11/7/78, Notice 4/19/78—published 11/29/78, effective 1/3/79]
[Filed emergency 6/26/79—published 7/25/79, effective 7/1/79]
[Filed emergency 6/30/80—published 7/23/80, effective 7/1/80]
[Filed emergency 6/30/81 —published 7/22/81, effective 7/1/81]
[Filed 2/26/82, Notice 10/28/81—published 3/17/82, effective 5/1/82]
[Filed emergency 5/21/82—published 6/9/82, effective 7/1/82]
[Filed emergency 7/1/82—published 7/21/82, effective 7/1/82]
[Filed 2/25/83, Notice 1/5/83—published 3/16/83, effective 5/1/83]
[Filed emergency 6/17/83—published 7/6/83, effective 7/1/83]
[Filed emergency 10/7/83—published 10/26/83, effective 11/1/83]
[Filed without Notice 10/7/83—published 10/26/83, effective 12/1/83]
[Filed emergency 11/18/83, after Notice 10/12/83—published 12/7/83, effective 1/1/84]
[Filed 11/18/83, Notice 10/12/83—published 12/7/83, effective 2/1/84]
[Filed emergency 6/15/84—published 7/4/84, effective 7/1/84]
[Filed emergency 12/11/84—published 1/2/85, effective 1/1/85]
[Filed emergency 6/14/85—published 7/3/85, effective 7/1/85]
[Filed emergency after Notice 6/14/85, Notice 5/8/85—published 7/3/85, effective 8/1/85]
[Filed emergency 10/1/85—published 10/23/85, effective 11/1/85]
[Filed without Notice 10/1/85—published 10/23/85, effective 12/1/85]
[Filed emergency 12/2/85—published 12/18/85, effective 1/1/86]
[Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 2/1/86]
[Filed emergency 6/26/86—published 7/16/86, effective 7/1/86]
[Filed emergency 12/22/86—published 1/14/87, effective 1/1/87]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed emergency 12/10/87—published 12/30/87, effective 1/1/88]
[Filed emergency 6/9/88—published 6/29/88, effective 7/1/88]
[Filed emergency 12/8/88—published 12/28/88, effective 1/1/89]
[Filed emergency 6/9/89—published 6/28/89, effective 7/1/89]
[Filed 8/17/89, Notice 6/28/89—published 9/6/89, effective 11/1/89]
[Filed emergency 11/16/89—published 12/13/89, effective 1/1/90]

[Filed 2/16/90, Notice 12/13/89—published 3/7/90, effective 5/1/90]
[Filed emergency 6/20/90—published 7/11/90, effective 7/1/90]
[Filed 8/16/90, Notice 7/11/90—published 9/5/90, effective 11/1/90]
[Filed emergency 12/13/90—published 1/9/91, effective 1/1/91]
[Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
[Filed 2/14/91, Notice 1/9/91—published 3/6/91, effective 5/1/91]
[Filed 4/11/91, Notice 3/6/91—published 5/1/91, effective 7/1/91]
[Filed 9/18/91, Notice 7/24/91—published 10/16/91, effective 12/1/91]
[Filed emergency 12/11/91—published 1/8/92, effective 1/1/92]
[Filed 12/11/91, Notice 10/16/91—published 1/8/92, effective 3/1/92]*
[Filed 2/13/92, Notice 1/8/92—published 3/4/92, effective 5/1/92]
[Filed emergency 4/15/92—published 5/13/92, effective 4/16/92]
[Filed 4/16/92, Notice 1/8/92—published 5/13/92, effective 7/1/92]
[Filed emergency 12/1/92—published 12/23/92, effective 1/1/93]
[Filed 2/10/93, Notice 12/23/92—published 3/3/93, effective 5/1/93]
[Filed emergency 6/11/93—published 7/7/93, effective 7/1/93]
[Filed 8/12/93, Notice 7/7/93—published 9/1/93, effective 11/1/93]
[Filed emergency 12/16/93—published 1/5/94, effective 1/1/94]
[Filed 12/16/93, Notice 10/27/93—published 1/5/94, effective 3/1/94]
[Filed 2/10/94, Notice 1/5/94—published 3/2/94, effective 5/1/94]
[Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
[Filed 8/12/94, Notice 7/6/94—published 8/31/94, effective 11/1/94]
[Filed emergency 10/12/94—published 11/9/94, effective 11/1/94]
[Filed emergency 12/15/94—published 1/4/95, effective 1/1/95]
[Filed 12/15/94, Notice 11/9/94—published 1/4/95, effective 3/1/95]
[Filed 2/16/95, Notice 1/4/95—published 3/15/95, effective 5/1/95]
[Filed emergency 6/7/95—published 7/5/95, effective 7/1/95]
[Filed 8/10/95, Notice 7/5/95—published 8/30/95, effective 11/1/95]
[Filed emergency 10/31/95—published 11/22/95, effective 11/1/95]
[Filed emergency 12/12/95—published 1/3/96, effective 1/1/96]
[Filed 1/10/96, Notice 11/22/95—published 1/31/96, effective 4/1/96]
[Filed 2/14/96, Notice 1/3/96—published 3/13/96, effective 5/1/96]
[Filed emergency 6/13/96—published 7/3/96, effective 7/1/96]
[Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]
[Filed emergency 12/12/96—published 1/1/97, effective 1/1/97]
[Filed 2/12/97, Notice 1/1/97—published 3/12/97, effective 5/1/97]
[Filed emergency 3/12/97—published 4/9/97, effective 4/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed 5/14/97, Notice 4/9/97—published 6/4/97, effective 8/1/97]
[Filed emergency 12/10/97—published 12/31/97, effective 1/1/98]
[Filed 2/11/98, Notice 12/31/97—published 3/11/98, effective 5/1/98]
[Filed emergency 12/9/98—published 12/30/98, effective 1/1/99]
[Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/15/99]
[Filed emergency 12/8/99—published 12/29/99, effective 1/1/00]
[Filed 2/9/00, Notice 12/29/99—published 3/8/00, effective 5/1/00]
[Filed emergency 7/13/00—published 8/9/00, effective 8/1/00]

*Effective date of 3/1/92 delayed until adjournment of the 1992 General Assembly by the Administrative Rules Review Committee at its meeting held February 3, 1992.

c. Net profits from self-employment may be determined through a review of self-employment bookkeeping records, sales and expenditure records, quarterly reports filed with the IRS, previous year's federal or state income tax returns, or other documentation. The parent shall provide records of bookkeeping, sales, and expenditures for the most recent 12-month period or, if the self-employment is less than 12 months old, for the period since the self-employment began.

99.1(6) *Fluctuating income.* A person has a fluctuating income when the calculated gross income or the adjusted gross income, as defined in subrule 99.1(5), for the current year varies from the gross or adjusted gross income of the previous year by more than 20 percent.

a. If requested, the child support recovery unit shall average the income of a person whose income fluctuated because the nature of the person's occupation is of a type that normally experiences fluctuations in income.

b. In determining a person's average income, the following procedures shall be used:

(1) For non-self-employed persons, the child support recovery unit shall estimate the gross income for the current year and add the amount to the gross income from relevant years that would accurately depict fluctuations in the person's income. The unit shall divide this sum by the number of years added, prior and current, to arrive at an average gross annual income. The unit shall divide the average gross annual income by 12 to arrive at the person's average gross monthly income.

(2) For income from self-employment, the child support recovery unit shall compute the adjusted gross annual income as defined in subrule 99.1(5), for the relevant years that would accurately depict fluctuations in the person's income. The unit shall use the adjusted gross annual income to compute the average adjusted gross monthly income in the same manner as the computation of average gross monthly income in 99.2(6)*"b"*(1).

441—99.2(234,252B) Allowable deductions. The deductions specified in the supreme court child support guidelines shall be allowed when determining the amount of income subject to application of the guidelines. The parent claiming the deduction shall provide the documentation necessary for computing allowable deductions. Allowable deductions are:

99.2(1) Federal and state income tax.

a. The amount of the deduction for federal and state income taxes may be the amount reported on the parent's financial statement or the amount verified through check stubs or other means. If the amount provided by the parent appears to be inaccurate, the child support recovery unit may calculate the appropriate allowable amount.

b. The amount of the federal and state income tax deduction for self-employed persons with fluctuating incomes, as defined in subrule 99.1(6), shall be computed by applying the person's averaged income to the federal and state tax tables based on the filing status and dependent exemptions previously identified on previously submitted tax forms.

99.2(2) Social security, mandatory pensions, and union dues.

99.2(3) Full cost of health insurance premiums either deducted from wages or paid by a parent or a stepparent, provided the health insurance coverage includes the dependents for whom support is being sought. The parent claiming the deduction shall verify the health insurance premium before the deduction is allowed. Any expected health insurance premiums shall be allowed as a deduction if the parent provides verification of this anticipated expense.

99.2(4) Actual payments of child and spousal support pursuant to a prior court or administrative order. The date of the original court or administrative order, rather than the date of any modifications, shall establish a prior order under this subrule. Support paid under an order established subsequent to the order being modified shall not be deducted. All support payments shall be verified before being allowed as a deduction. The child support recovery unit shall calculate deductions for support as follows:

a. In establishing prior support payments, the child support recovery unit shall verify payments made for the 12 months preceding the month in which the amount of support for the new order is determined. If the support obligation is less than one year old, the child support recovery unit shall verify each monthly payment since the beginning of the obligation.

b. If the obligation is one year old or older, the child support recovery unit shall add together all verified amounts paid during the past 12 months up to the total of the current support obligation that accrued during this 12-month period, and divide by 12. All amounts collected shall be included, regardless of the source.

c. If the support obligation is less than one year old, the child support recovery unit shall add together the verified amounts paid since the obligation began up to the total of the current support obligation that accrued during this period, and divide by the number of months that the obligation has existed.

d. When a parent has more than one prior support order, the child support recovery unit shall calculate the allowable deduction for each obligation separately, and then add the amounts together to determine the parent's total allowable deduction.

99.2(5) Actual payments of medical support pursuant to a court or administrative order. All medical support payments shall be verified before being allowed as a deduction and shall be calculated in the same manner as the deductions for support in subrule 99.2(4).

99.2(6) Parent's unreimbursed medical expenses, not to exceed $25 per month.

99.2(7) Actual child care expenses during the custodial parent's employment, less the applicable federal income tax credit. The child support recovery unit shall determine the amount of the child care deduction as follows:

a. Actual child care expenses related to the custodial parent's employment shall be verified by a copy of the custodial parent's federal or state income tax return or by a signed statement from the person or agency providing the child care.

b. Only the amount of reported child care expenses in excess of the amount allowed as "credit for child and dependent care expenses" for federal income tax purposes shall be allowed as a deduction in determining the custodial parent's net income.

c. In determining the deduction allowed to the custodial parent for child care expenses due to employment, the following procedures shall be used:

(1) If the custodial parent provides a copy of a federal income tax return for the current tax processing year and the amount is consistent with the current financial circumstances of the parent, the child support recovery unit shall use the amount reported as "credit for child and dependent care expenses."

(2) If income tax information is not available, or if the parent indicates or there is reason to believe that the amount stated in the return is no longer representative of the parent's financial conditions or child care expenses, the child support recovery unit shall determine the allowable deduction for child care expenses for federal income tax purposes using the custodial parent's income only.

2. When the order does not include ongoing support, the monthly repayment amount shall be the same as the amount for ongoing support which would have been due if such an obligation had been established. However, when all of the children for whom accrued support debt is sought are residing with the noncustodial parent, the monthly repayment amount shall be set at 10 percent of this amount.

(2) In foster care cases, CSRU shall establish the repayment amount in the same manner as subparagraph (1), but may establish weekly amounts and if the order does not include ongoing support, the repayment amount shall be set at 10 percent of the amount for ongoing support which would have been due if such an obligation had been established.

99.4(4) *Children in nonparental homes or foster care.* The parents of a child in a nonparental home or in foster care are severally liable for the support of the child. A support obligation shall be established separately for each parent.

a. Parents' location known. When the location is known for both parents having a legal obligation to provide support for their children, the income of both parents shall be used to determine the amount of ongoing support in accordance with the child support guidelines.

(1) Calculating support amount. There shall be a separate calculation of each parent's child support amount, regardless of whether the parents are married and living together, or living separately. Each calculation shall assume that the parent for whom support is being calculated is the noncustodial parent and the other parent is the custodial parent.

(2) Prior orders. If only one parent is paying support under a prior order for the children for whom support is being calculated, the amount of support paid shall not be deducted from that parent's net monthly income in computing the support amount for the other parent.

b. One parent's location unknown. When the location of one parent is not known, procedures shall be initiated to establish a support order against the parent whose location is known in accordance with the mandatory support guidelines as follows:

(1) The parent whose location is known shall be considered the noncustodial parent and that parent's income shall be used to calculate child support.

(2) The income of the parent whose location is unknown shall be determined by using the estimated median income for parents on the CSRU caseload and that parent shall be considered the custodial parent in calculating child support.

c. When one parent is deceased or has had parental rights terminated, the method used to calculate support when one parent's location is not known shall be used. The parent who is deceased or has had parental rights terminated shall be considered the custodial parent with zero income.

99.4(5) *Extraordinary visitation adjustment.* The extraordinary visitation adjustment is a credit to the guideline amount of child support as specified in the supreme court guidelines. The credit shall not reduce the child support amount below the minimum support amount required by the supreme court guidelines.

The extraordinary visitation adjustment credit shall be given if all of the following apply:

a. There is an existing order for the noncustodial parent that meets the criteria for extraordinary visitation in excess of 127 overnights per year on an annual basis for the child for whom support is sought. The order granting visitation can be a different order than the child support order. If a controlling order is determined pursuant to Iowa Code chapter 252K and that controlling support order does not meet the criteria for extraordinary visitation, there is another order that meets the criteria.

b. The noncustodial parent has provided CSRU with a file-stamped or certified copy of the order.

441—99.5(234,252B) Deviation from guidelines.

99.5(1) *Criteria for deviation.* Variation from the child support guidelines shall not be considered without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate under the following criteria:

a. Substantial injustice would result to the obligor, the obligee, or the child.

b. Adjustments are necessary to provide for the needs of the child and to do justice between the parties under the special circumstances of the case.

c. In certain foster care cases, adjustments are necessary due to expenses related to the goals and objectives of the case permanency plan or other circumstances contemplated in Iowa Code section 234.39.

99.5(2) *Supporting financial and legal documentation.*

a. The party requesting a deviation from the guidelines shall provide supporting documentation. The supporting documentation shall include an itemized list identifying the amount and nature of each adjustment requested. Failure to provide supporting documentation for a request for deviation shall result in a denial of the request.

b. Legal documents prepared for the court's approval, such as stipulations and orders for support, shall include language to identify the following:

(1) The amount of support calculated under the guidelines without allowance for deviations.

(2) The reasons for deviating from the guidelines.

(3) The amount of support calculated after allowing for the deviation.

99.5(3) *Depreciation.* A parent may request a deduction for depreciation of machinery, equipment, or other property used to earn income. Straight-line depreciation shall be the only type of depreciation that shall be allowed as a deduction. The child support recovery unit shall allow the straight-line depreciation amount as a deduction if the parent provides documentation from a tax preparer verifying the amount of straight-line depreciation being claimed. Straight-line depreciation is computed by deducting the property's estimated salvage value from the cost of the property, and deducting that figure in equal yearly amounts over the period of the property's remaining estimated useful life.

99.5(4) *Foster care case.* In a foster care case, the child support recovery unit may deviate from the guidelines by applying a 30 percent flat rate deduction for parents who provide financial documentation. The flat rate deduction represents expenses under the case permanency plan and financial hardship allowances.

a. and *b.* Rescinded IAB 5/5/99, effective 7/1/99.

c. CSRU shall calculate the support obligation of the parents of children in foster care when the parents have a legal obligation for additional dependents in the home, as follows: The support obligation of each parent shall be calculated by allowing all deductions the parent is eligible for under the child support guidelines as provided in rule 441—99.2(234,252B) and by using the guidelines chart corresponding to the sum of the children in the home for whom the parent has a legal obligation and the children in foster care. The calculated support amount shall be divided by the total number of children in foster care and in the home to compute the support obligation of the parent for each child in foster care.

441—99.108(252B) Reinstatement. The child support recovery unit shall follow the procedures in Iowa Code section 252B.20, in seeking to have the court reinstate a support order.

99.108(1) The unit shall request that the court reinstate all support provisions previously suspended, including spousal support if included in the suspension in accordance with subrule 99.105(1).

99.108(2) The unit shall not seek to have a suspended order partially reinstated under this division when it is determined that the basis for suspension as provided in subrules 99.103(2) and 99.103(3) continues to apply to some, but not all, of the persons entitled to support under the terms of the suspended order. This provision shall not prohibit any party, including the child support recovery unit, from taking other action to establish support as provided for by law.

441—99.109(252B) Reinstatement of enforcement of current support. If a suspended support order is reinstated, the unit shall also reinstate all appropriate enforcement measures to enforce the reinstated ongoing support provisions of the support order.

441—99.110(252B) Temporary suspension becomes final. The temporary suspension of a support order under this division shall become final if not reinstated in accordance with Iowa Code section 252B.20.

These rules are intended to implement Iowa Code section 252B.20.

[Filed 8/12/93, Notice 6/23/93—published 9/1/93, effective 11/1/93]
[Filed 7/12/95, Notice 5/24/95—published 8/2/95, effective 10/1/95]
[Filed 2/14/96, Notice 12/20/95—published 3/13/96, effective 5/1/96]
[Filed 7/10/96, Notice 6/5/96—published 7/31/96, effective 10/1/96]
[Filed 10/9/96, Notice 8/28/96—published 11/6/96, effective 11/1/97]
[Filed 10/15/97, Notice 8/13/97—published 11/5/97, effective 1/1/98]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 6/1/98]
[Filed 4/15/99, Notice 2/10/99—published 5/5/99, effective 7/1/99]
[Filed 7/13/00, Notice 5/17/00—published 8/9/00, effective 10/1/00]

CHAPTER 100
CHILD SUPPORT PARENTAL OBLIGATION PILOT PROJECTS

PREAMBLE

This chapter describes the parental obligation pilot projects participated in or developed by the department of human services child support recovery unit (CSRU). The purpose of these pilot projects is to develop new ways to assist parents in overcoming the barriers which interfere with their fulfilling their obligations to their children. For the purpose of these rules, parental obligations include emotional and personal involvement of the parents, beyond simply meeting their financial obligations. In order to encourage participation by parents, CSRU may offer various incentives for participation. These incentives may be offered through projects whose plans have been approved by the bureau chief or through projects in which CSRU participates and for which the bureau chief approves of CSRU's offering any or all of the incentives.

441—100.1(78GA,SF2435) Definitions.

"Assigned support arrearages" means support arrearages for which all rights have been and shall remain assigned to the state of Iowa.

"Bureau chief" means the chief of the bureau of collections of the department of human services or the bureau chief's designee.

"Child support recovery unit (CSRU)" means any person, unit, or other agency which is charged with responsibility for providing or assisting in the provision of child support enforcement services pursuant to Title IV-D of the Social Security Act.

"Director" means the director of the department of human services or designee.

"Funded pilot project" means any of the pilot projects funded in whole or in part by CSRU and approved by the bureau chief to assist parents in overcoming the barriers which interfere with their fulfilling obligations to their children. Each funded pilot project shall have a project plan approved by the bureau chief.

"Guidelines" means the mandatory child support guidelines established by the Iowa Supreme Court pursuant to Iowa Code section 598.21(4).

"Incentives" means, but is not limited to, establishment or modification of support obligations that deviate from guidelines and other encouragements to participate in pilot projects.

"Obligor" means a noncustodial parent or other natural person legally responsible for the support of a dependent.

"Participant" means a person who receives services or incentives through a pilot project.

"Periodic support payment" means the total support payment due in each time period in accordance with the established support obligation. If no current support is due, the periodic support payment is equivalent to the last current support amount as would be ordered under 441—Chapter 98, Division II.

"Project plan" means the written policies, procedures, eligibility criteria and other components, as described at subrule 100.3(2).

"Services" means, but is not limited to, mediation services, job skills training, neutral drop-off and pick-up sites, except as "services" is used in subparagraph 100.2(1)"a"(3), and does not include incentives.

"Unfunded pilot project" means any project in which CSRU participates which is funded totally by an entity or entities other than CSRU. The bureau chief may approve CSRU's participation in an unfunded pilot project in order to use the incentives offered through this chapter. Unfunded pilot projects are not required to submit a project plan, as described in subrule 100.3(2), for approval of the bureau chief.

441—100.2(78GA,SF2435) Incentives. CSRU may offer incentives to participants in funded and unfunded pilot projects to encourage their involvement in the projects. No obligation established or modified under this rule may be less than the minimum amount allowed under guidelines. The available incentives include, but are not limited to, the following:

100.2(1) *Deviation from guidelines.*

a. CSRU may establish or modify a child support order which deviates from the guidelines amount when all of the following conditions exist:

(1) Both parents consent to the deviation.

(2) The child resides with either parent.

(3) Either parent is a participant receiving services from CSRU under Iowa Code chapter 252B and Title IV-D of the Social Security Act.

(4) The percentage of the deviation from the guideline amount of support does not change from any percentage of deviation that is currently ordered.

(5) Neither parent has previously withdrawn consent to a deviated order entered under this subrule.

b. The child support order may not deviate from the guidelines amount by more than 25 percent. This order is not effective until approved by and filed with the court.

100.2(2) *Modification of support obligations.* CSRU may modify a support obligation of a participant through the procedures described in 441—Chapter 99, Division IV, without regard to the two-year criteria as specified in 441—subrule 99.62(2).

a. Initial modifications. CSRU shall perform an initial, informal calculation of the support obligation for each participant. If the initial, informal calculation indicates that the present child support obligation is at least 10 percent higher than the Iowa Supreme Court mandatory child support guidelines, CSRU may proceed to modify the support order, upon application of the participant, through proceedings established by 441—Chapter 99, Division IV, or through any other procedure allowed by law, notwithstanding the provisions of 441—subrule 99.62(3). If beginning new employment, the obligor may waive the application of the rule requiring that the obligor's income has lasted for three months and will be expected to last an additional three months.

b. Subsequent modifications.

(1) Subsequent modifications may be initiated only by CSRU without regard to the requirement that the variance from the guidelines amount be more than 20 percent when any of the following occurs:

1. Both parents give consent to deviate from the guidelines as provided in subrule 100.2(1).
2. Either parent withdraws consent to deviate from guidelines in setting an obligation.
3. Participant involvement in the pilot project terminates.

(2) Subsequent modifications may also be initiated by CSRU when the participant's income changes.

c. This subrule does not limit the ability or right of a parent or caretaker or CSRU to file or request a modification under any other statute or available proceeding.

100.2(3) *Income withholding orders.* CSRU may direct an employer or other income provider to withhold no more than 25 percent of the nonexempt disposable income of the participant for a period of time not to exceed 12 consecutive months from the date of the direction to the first employer under this subrule.

100.2(4) *Satisfaction of the assigned support.*

a. A participant shall be granted a partial satisfaction of the support arrearages which are and which will remain owed by that participant to the state when that participant pays the entire amount of all that participant's periodic support payments. Satisfactions granted under this subrule shall apply only to those cases for which the entire periodic support payment is credited.

b. Each satisfaction shall be an amount equal to a percentage of that participant's support arrearages, which are and which will remain owed to the state, according to the following schedule:

(1) A one-time satisfaction of 15 percent of the amount when a participant pays the entire periodic support payment due in each of 6 consecutive calendar months.

(2) A one-time satisfaction of 35 percent of the amount when a participant pays the entire periodic support payment due in each of 12 consecutive calendar months.

(3) A one-time satisfaction of 80 percent of the amount when a participant pays the entire periodic support payment due in each of 24 consecutive calendar months.

c. A participant subject to an income withholding order shall be eligible for the satisfaction in this subrule if the sole reason for ineligibility is a disparity between the schedules of the participant's pay date and the scheduled date the payment is due.

d. A participant shall be eligible for a satisfaction under this subrule if the participant is no longer a participant, but has continued to pay the entire amount of that participant's periodic support payment without interruption.

441—100.3(78GA,SF2435) Application to be a funded pilot project. CSRU shall publish a request for project plans when it decides to initiate a pilot project and requests for grants exceed available funding. All applicants must be empowerment or decategorization groups.

100.3(1) *Contents of request for project plans.* The request for project plans shall contain the requirements for contents of the project plan, the stated goals of the project, the number of projects for which funding exists and any other parameter for the specific pilot project being advertised. The request shall also contain a deadline by which project plans must be submitted to the bureau chief.

100.3(2) *Contents of project plans.* Each funded pilot project shall have and maintain a project plan. At a minimum, the project plan shall contain or address the following:

a. Applicant's experience and success at establishing collaborations that include partners essential to the project.

b. The geographic area to be served and community need for projected services.

c. The population targeted to participate and the criteria to be used for the selection and termination of participants.

d. The means by which potential participants will be notified about project information including, but not limited to, the project services and incentives.

e. The types of services or incentives to be provided and the strategies directed to securing the emotional and financial support of children.

f. A clear statement of outcomes expected for project participants, benchmarks to indicate these outcomes are being attained and performance measures and reporting requirements.

g. The cost of the proposal, the significant level of community resources directed to the pilot, plans for continued funding after the end of the grant period and costs, if any, for project participants.

h. Strategies to increase public awareness of fatherhood issues.

i. Project duration, not to exceed three years from October 1, 2000.

100.3(3) *Amendments to project plan.* Projects may submit proposed amendments to their project plan in writing to the bureau chief. The bureau chief shall have the option, after review, of approving or disapproving all proposed amendments to the project plan.

441—100.4(78GA,SF2435) Selection of projects.

100.4(1) *Funded pilot projects.* The bureau chief shall have sole authority to select funded pilot projects. The bureau chief shall also have sole authority to grant exceptions to allow participation by individuals outside the geographical area specified in the contents of project plan.

When funds are not available for all interested parties, the bureau chief shall select which of the project plans received on or before the deadline date shall be granted the status of funded pilot project. This selection of pilot projects shall be based upon the following criteria:

a. Demonstrated experience with establishing effective collaborations.

b. Geographic area selected and community need for the project.

c. Population to be targeted and criteria to be used to select and terminate participants.

d. Types of services and incentives to be offered and participant requirements to receive them.

e. Statement of project goals, outcomes for participants, benchmarks and performance measures.

f. Project monitoring and evaluation plan.

g. Public awareness campaign directed to community and potential participants.

h. Project budget and community financial participation.

100.4(2) *Unfunded pilot projects.* The bureau chief shall have sole authority to determine the extent of CSRU involvement in unfunded pilot projects based upon current needs and resources of CSRU. Unfunded pilot projects shall submit periodic reports for the purpose of monitoring and evaluating the project.

441—100.5(78GA,SF2435) Termination of pilot projects. The bureau chief may immediately terminate CSRU's participation in a funded pilot project or an unfunded pilot project if:

1. The funded pilot project is not fulfilling the terms of its project plan or the unfunded pilot project is not fulfilling the terms for CSRU's participation in the pilot project; or
2. Funding is reduced, exhausted, eliminated or otherwise made unavailable.

441—100.6(78GA,SF2435) Reports and records.

100.6(1) *Reports.*

a. Funded pilot projects established under these rules shall report to CSRU at least quarterly, unless otherwise required by the project plan. The first report shall be due in the office of CSRU 30 days after the end of the first complete calendar quarter after the plan is approved. These reports shall include, but not be limited to, the following:

(1) Number of participants served.

(2) Services provided.

(3) Funds expended.

(4) Progress toward meeting individual participant outcomes.

(5) Progress toward meeting project outcomes.

(6) Progress toward meeting funding goals.

(7) Other information as specified in the project plan.

b. Unfunded pilot projects may vary from the requirements in paragraph *"a"* in their reporting and shall report as agreed upon by the project managers and the bureau chief.

100.6(2) *Records retention.* Funded and unfunded pilot projects established under these rules shall retain all records as necessary to meet the audit requirements of the sources of the project's funding.

441—100.7(78GA,SF2435) Appeals. Applicants dissatisfied with the grant selection decision of the bureau chief may file an appeal with the director. The letter of appeal must be received within ten working days of the date of the notice of decision and must include a request for the director to review the decision and the reasons for dissatisfaction. Within ten working days of the receipt of the appeal, the director shall review the appeal request and issue a final decision.

No disbursements shall be made to any applicant for a period of ten calendar days following the notice of decision. If an appeal is filed within the ten days, all disbursements shall be held pending a final decision on the appeal. All applicants involved shall be notified if an appeal is filed.

441—100.8(78GA,SF2435) Continued application of rules and sunset provisions. Except as provided in subrule 100.8(2), these rules shall terminate the earlier of October 1, 2003, or when legislative authority is discontinued.

100.8(1) *CSRU's participation in pilot projects.* If CSRU's participation has not terminated earlier, CSRU's participation in funded and unfunded pilot projects terminates at the same time as the termination of these rules.

100.8(2) *Receipt of incentives.* Participants receiving incentives under these rules may continue to receive the incentives after the termination of these rules or after they are no longer participants only as follows:

a. For subrule 100.2(1), deviation from guidelines. If service of process has been accomplished upon all parties before the earlier of termination of these rules or termination of participation, but an order disposing of the establishment or modification action has not been entered before that date, then the process may continue until entry of an order or other disposition.

b. For subrule 100.2(2), modification of support obligations. If service of process has been accomplished upon all parties before the earlier of termination of these rules or termination of participation, but an order disposing of the modification action has not been entered before that date, then the process may continue until entry of an order or other disposition.

c. For subrule 100.2(2)"b"(1)"2," either parent withdraws consent to deviate from the guidelines. If a parent withdraws consent to deviate from the guidelines in setting an obligation, CSRU may initiate a subsequent modification as provided in 100.2(2)"*b*"(1)"2."

d. For subrule 100.2(2)"b"(1)"3," modification of support obligations. Any obligations set at an amount which deviates from the guidelines under this chapter shall continue only until the obligation is modified or reviewed under existing rules, at which time consent of the parents is not a sufficient basis for continuing the deviation.

e. For subrule 100.2(3), income withholding orders. This subrule shall apply to a participant or former participant for the full time period allowed in the subrule.

f. For subrule 100.2(4), satisfaction of the assigned support. This subrule shall apply to a participant or former participant for the full time period allowed in the subrule.

These rules are intended to implement 2000 Iowa Acts, Senate File 2435, section 4, subsection 4d(3).

[Filed 7/13/00, Notice 5/17/00—published 8/9/00, effective 10/1/00]

TITLE XI
CHILDREN'S INSTITUTIONS

CHAPTER 101
IOWA STATE JUVENILE HOME

[Prior to 7/1/83, Social Services [770] Ch 101]
[Prior to 2/11/87, Human Services[498]]

441—101.1(218) Definitions.

"Contraband" shall mean weapons, alcohol, drugs, obscene materials as defined in Iowa Code section 728.1, paragraph (5), or materials advocating disruption of or injury to residents, employees, programs, or physical facilities. It shall also include anything which is illegal to possess under the law, materials which are used in the production of drugs or alcohol or used in conjunction with the taking of illicit drugs.

"Immediate family" shall mean spouse, child, parent, brother, sister, or grandparent.

"Resident" shall mean a child committed to the state director and admitted to the state juvenile home.

441—101.2(218) Visiting.

101.2(1) Visiting hours are from 10 a.m. to 4:30 p.m. Saturday and Sunday. The superintendent may designate certain weekdays or holidays for visiting. The resident shall be responsible for informing the visitor of the days. Visitation by the family will be encouraged and necessary flexibility in these hours and days will be allowed.

101.2(2) All visiting during times other than described in 101.2(1) shall have approval from the superintendent or designee prior to the day of visit.

101.2(3) Visitors shall check in with security staff upon arrival. The counselor on duty may request identification of the visitor. Failure to produce identification may result in denial of the visit.

101.2(4) Residents are permitted to visit with their parents or members of the immediate family. Family members under 12 years of age may visit only with adult supervision. Friends may visit when approved by the administrative officer. Friends under 18 years of age may visit only with adult supervision.

101.2(5) Any visitor arriving on the grounds who is under the influence of or has been partaking of drugs or alcoholic beverages shall not be permitted a visit.

101.2(6) Residents shall have written authorization of the administrative officer in charge before accompanying parents of another student out on a visit.

101.2(7) Persons other than immediate family or legal counsel who wish to visit a resident must obtain prior approval from the superintendent or designee before visiting.

101.2(8) The superintendent reserves the right to limit or terminate visiting in all cases where doing so is in the best interests of the resident's personal and therapeutic needs. When limitations or termination of visiting rights occur, the superintendent or administrator in charge shall immediately notify persons involved why the action was taken, and a written report will be placed in the resident's file.

This rule is intended to implement Iowa Code section 218.4.

441—101.3(218) Interviews and statements.

101.3(1) All residents will be informed of their right to remain silent.

101.3(2) When the resident agrees, interviews will be granted at the discretion of the superintendent. Whenever an interview is granted, at least one staff person shall be present for the entirety of the interview and shall have the authority to terminate the interview anytime the staff person feels the best interests of the resident are not being served.

101.3(3) The resident shall be represented by legal counsel during any interview being conducted to obtain information that will be or may be used in court against the resident.

101.3(4) Exceptions to 101.3(2) will be made only for the resident's own attorney or state officials acting in their official capacity.

101.3(5) The superintendent may deny an interview in situations deemed detrimental to the resident. The person requesting the interview shall be referred to the director, division of community programs, Iowa department of human services for approval.

101.3(6) Permission for written deposition may be granted by the superintendent following the aforementioned rules for granting interviews. One copy of the depositions shall be submitted to the superintendent. Voice recording of the interviews will not be permitted. This rule shall in no way restrict depositions ordered by the court.

This rule is intended to implement Iowa Code section 218.4.

441—101.4(218) Mail and packages.

101.4(1) Outgoing or incoming letters or packages shall not be opened, read, censored, or tampered with in any manner, except that institutional staff, in order to search for and seize contraband, may open, but not read, incoming mail or packages in the presence of the resident to whom the mail is directed or require that the resident open the letter or package in the staff's presence and disclose the contents.

101.4(2) Letters or packages found to contain contraband may be withheld, but both the sender and the intended receiver of the withheld mail shall be notified and given reasons for the action in writing within 48 hours of the action.

101.4(3) When correspondence between a resident and another person is not considered to be in the best interest of and detrimental to the treatment plan of the resident, the superintendent or designee may terminate that correspondence. Just cause shall be shown and written notice provided to both correspondents.

101.4(4) When correspondence has been terminated as described in 101.4(3), either of the correspondents may request a review of the termination at any time.

101.4(5) Terminations under 101.4(3) shall be based on individual cases and not on groups or agencies.

This rule is intended to implement Iowa Code section 218.4.

441—101.5(218) Use of buildings and grounds.

101.5(1) When the residents are not using space or a facility, the space or facility may be available for public use at the discretion of the superintendent.

101.5(2) A deposit of $15 may be required 24 hours in advance of reserving the canteen. The full deposit shall be refunded when the canteen is left in satisfactory condition.

101.5(3) Requests for use of the staff conference room, lounge, and chapel building shall be directed to the superintendent's secretary.

101.5(4) A $25 deposit may be required for use of the recreation center facilities. The full deposit shall be refunded when the facilities are left in satisfactory condition.

a. An employee of the state juvenile home shall be present to supervise the group.

b. The group supervisor shall sign a release form and a form accepting responsibility for the group's supervision prior to the use of the facility.

c. Only facilities specifically requested and approved shall be used by the group.

101.5(5) The state juvenile home reserves the right to cancel an agreement to use facilities in the event of emergency or schedule changes where resident use takes priority.

This rule is intended to implement Iowa Code section 218.4.

441—101.6(218) Incoming telephone calls. All incoming telephone calls for residents shall have approval of the superintendent or designee prior to the conversation. The identity of the caller shall be verified before approval is given. Telephone calls shall not be monitored.

This rule is intended to implement Iowa Code section 218.4.

441—101.7(218) Resident employment.

101.7(1) Employers, individuals, or organizations wishing to hire a resident of the institution shall receive approval from the superintendent or designee.

101.7(2) Child labor laws shall be adhered to.

101.7(3) The employer's legal and institutional responsibilities shall be documented by the superintendent or designee and communicated, including salary, supervision, transportation, and hours, to the residents' employer so as to clarify and document the resident-employer employment agreement.

101.7(4) The employer or superintendent or designee or resident has the right to terminate the employment at any time.

101.7(5) Residents shall be paid in accordance with minimum wage laws in effect for off-campus employment. Work of a more skilled nature shall be compensated accordingly.

101.7(6) All checks or money shall be turned into the business office for deposit in the resident's account, not given directly to the resident.

101.7(7) Behavior unacceptable to the employer shall be reported to the institution. Behavior unacceptable to an employer shall not subject the resident to any sanctions, punishment or punitive restriction of privileges, unless it constitutes a public offense or violates institutional rules and, in that case, it shall follow the normal discipline procedure or referral to court for prosecution. Runaway residents shall be reported to the institution immediately.

This rule is intended to implement Iowa Code section 218.4.

441—101.8(218) Tours. Tours of the facilities may be scheduled on weekdays from 8 a.m. to 4 p.m. by appointment through the superintendent or designee.

This rule is intended to implement Iowa Code section 218.4.

441—101.9(218) Acceptance.

101.9(1) Children shall be accepted for evaluation as diagnostic beds are available on a first-come-first-served basis.

101.9(2) Children shall be accepted into the regular program as treatment beds are available on a first-come-first-served basis.

101.9(3) No children adjudicated to have committed a delinquent act shall be admitted to the state juvenile home.

101.9(4) A certified copy of the court order which complies with Iowa Code chapter 232 and the relevant petitions must accompany the child to the institution.

This rule is intended to implement Iowa Code section 218.4.

441—101.10(218) Admission procedures. When a youth is to be admitted to the state juvenile home, arrangements shall be made for the actual admission between 8 a.m. and 4:30 p.m., Monday through Friday. The youth being admitted shall be accompanied by such youth's parents, when available. Whenever possible, a preadmission visit by the youth to the institution shall be arranged by the local office service worker.

This rule is intended to implement Iowa Code section 218.4.

441—101.11(218) Program assignment. Residents will be assigned to specific cottage programs, educational and vocational programs and special services, such as drug counseling, family therapy, or similar services, to meet the needs of each individual resident, taking into consideration the limitation of the availability of space and specific programs. It is the responsibility of the superintendent to notify the court when appropriate space or program is not available and to deny admission until these needs can be met.

This rule is intended to implement Iowa Code section 218.4.

441—101.12(218) Individual care plan.

101.12(1) Whenever a resident is placed in a treatment program in the institution, an individual care plan shall be developed within 30 days.

101.12(2) The institution shall notify the resident, the resident's parents, the child's legal counsel, the court and the assigned service worker in writing of the time, date and nature of the individual care plan staffing at least ten working days prior to the staffing.

101.12(3) The institution counselor shall ensure that the institution has completed an assessment of the resident prior to the individual care plan staffing.

This rule is intended to implement Iowa Code section 218.4.

441—101.13(218) Special staffing. Whenever special concerns and needs arise in the program of a resident, a meeting of institutional staff, assigned service worker and other relevant parties shall convene to evaluate and formulate appropriate changes in the care plan.

This rule is intended to implement Iowa Code section 218.4.

441—101.14 Rescinded IAB 5/18/88, effective 7/1/88.

441—101.15(218) Grievance procedure.

101.15(1) A resident shall have the right to file a grievance against a policy, program, or procedure.

101.15(2) The institution shall have a clearly written grievance procedure with at least one appeal level.

101.15(3) All grievances filed shall be heard.

This rule is intended to implement Iowa Code section 218.4.

441—101.16(218) Alleged child abuse. The department shall arrange for the investigation of any reported case of child abuse in which the alleged perpetrator is an employee of the institution or some other department of human services employee to be conducted by an agency other than the department of human services.

This rule is intended to implement Iowa Code section 218.4.

441—101.17(218) Temporary home visits.

101.17(1) Residents may be granted a temporary home visit for up to five days for such reasons as to attend funerals, weddings, holiday functions, or job seeking; or for the primary purpose of exploring and improving family and community relations; or for the purpose of preplacement visits to foster or group homes to test the appropriateness of such a placement.

101.17(2) The court, the child's legal counsel, the resident's parents, the temporary placement, if different than the parents' home, and the assigned service worker shall be notified in writing five working days in advance of a visit except in cases of emergency when telephone calls to the previously discussed people followed by a written notice explaining the special circumstance shall be sufficient.

101.17(3) In all cases, the institutional superintendent or designee and the assigned service worker shall approve all temporary home visits in advance.

101.17(4) All temporary visit placements shall be investigated and approved as appropriate by the assigned service worker or probation officer in writing and in advance of any visit being scheduled.

101.17(5) In special cases which involve the treatment needs of the child, a temporary home visit may be extended when both the institutional superintendent or designee and the assigned service worker's supervisor agree that the proposed extension is appropriate and the bureau of children's services approves the special extension request. Approval of exceptions shall be made on the basis of the treatment needs of the child.

This rule is intended to implement Iowa Code section 218.4.

441—101.18(218) Prerelease staffing.

101.18(1) Thirty days prior to any anticipated release from the regular program, a release staffing shall be held.

101.18(2) The institution shall supply written notice of the time, date, and intent of the release staffing at least five working days prior to the staffing to the resident, the resident's parents, the court, the child's legal counsel, and the assigned service worker.

This rule is intended to implement Iowa Code section 218.4.

441—101.19(218) Attorney contacts. The resident shall have the right to contact the resident's attorney during normal business hours and at other times with prior approval of the attorney. The cost of the contacts shall be arranged prior to the contact being made. Children who do not have an attorney should be referred to the appropriate legal aide.

This rule is intended to implement Iowa Code section 218.4.

441—101.20(244) Standards. The state juvenile home shall comply with standards required for comprehensive residential facilities for children in 441—Chapter 115. In addition, the state juvenile home shall comply with standards related to mandatory reporting of child abuse found in 441—Chapter 112 and all of 441—Chapter 114 except for rules 441—114.6(237), 441—114.9(237), and the following waivers:

101.20(1) *Sleeping rooms.* Sleeping rooms currently in use are acceptable; but any new building or renovations after January 1, 1988, must meet the requirements found in 441—paragraph 114.3(2)*"b."*

101.20(2) *Job descriptions.* Staff job descriptions will be identified by the department of personnel.

101.20(3) *Staff ratios.* The requirements for staff ratios contained in 441—subrule 115.4(1), paragraph *"a,"* apply at any time the authorized funds are adequate to maintain a 1 to 5 staff ratio during prime programming time. This requirement is waived when there is inadequate funding.

This rule is intended to implement Iowa Code section 244.15.

[Filed 11/3/75, Notice 8/11/75—published 11/17/75, effective 12/22/75]
[Filed 4/30/76, Notice 3/22/76—published 5/17/76, effective 6/21/76]
[Filed 9/6/79, Notice 6/27/79—published 10/3/79, effective 11/7/79]
[Filed 4/4/80, Notice 1/23/80—published 4/30/80, effective 6/4/80]
[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 4/22/88, Notice 3/9/88—published 5/18/88, effective 7/1/88*]

CHAPTER 102
Reserved

*Effective date of 101.20(1) delayed by the Administrative Rules Review Committee at its June 1988 meeting.

CHAPTER 177
IN-HOME HEALTH RELATED CARE

[Prior to 7/1/83, Social Services[770] Ch 148]
[Previously appeared as Ch 148—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services [498]]

441—177.1(249) In-home health related care. In-home health related care is a program of nursing care in an individual's own home to provide personal services to an individual because such individual's state of physical or mental health prevents independent self-care.

441—177.2(249) Own home. Own home means an individual's house, apartment, or other living arrangement intended for single or family residential use.

441—177.3(249) Service criteria. The client shall require health care services that would require the supervision of a professional registered nurse working under the certification of a physician.

177.3(1) Skilled services may include but not be limited to:

a. Gavage feedings of individuals unable to eat solid foods.

b. Intravenous therapy administered only by a registered nurse.

c. Intramuscular injections required more than once or twice a week, excluding diabetes.

d. Catheterizations, continuing care of indwelling catheters with supervision of irrigations and changing of Foley catheter when required.

e. Inhalation therapy.

f. Care of decubiti and other ulcerated areas, noting and reporting to physician.

g. Rehabilitation services including, but not limited to: bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activity of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation and behavior modification.

h. Tracheotomy care.

i. Colostomy care until the individual is capable of maintaining the colostomy personally.

j. Care of medical conditions out of control which includes brittle diabetes and terminal conditions.

k. Postsurgical nursing care, but only for short time periods, and primarily for individuals with complications following surgery, or with the need for frequent dressing changes.

l. Monitoring medications needed for close supervision of medications because of fluctuating physical or psychological conditions, i.e., hypertensives, digitalis preparations, narcotics.

m. Diets which are therapeutic and require evaluation at frequent intervals.

n. Vital signs which is the recording and reporting of change in vital signs to the attending physician.

177.3(2) Personal care services may include but not be limited to:

a. Supervision on a 24-hour basis for physical or emotional needs.

b. Helping client with bath, shampoo, oral hygiene.

c. Helping client with toileting.

d. Helping client in and out of bed and with ambulation.

e. Helping client to reestablish activities of daily living.

f. Assisting with oral medications ordinarily self-administered and ordered by the physician.

g. Performing incidental household services which are essential to the client's health care at home and are necessary to prevent or postpone institutionalization.

441—177.4(249) Eligibility.

177.4(1) *Eligible individual.*

a. The individual shall be eligible for supplemental security income in every respect except for income.

b. The physician's certification shall include a statement of the specific health care services and that the services can be provided in the individual's own home. The certification shall be given on Form SS-1719-0, Assessment of Functional Capacity of Client and Recommendation for Services, or on a similar plan of care form presently used by public health agencies.

c. The individual shall live in the individual's own home.

d. The client shall require and be receiving qualified health care services. Qualified health care services are health care services supervised by a registered nurse and approved by a physician.

177.4(2) *Relationship to other programs.* In-home health related care shall be provided only when other existing programs cannot meet the client's need.

177.4(3) *Maximum costs.* The maximum cost of service shall be $471.06. The provider shall accept the payment made and shall make no additional charges to the recipient or others.

177.4(4) *Service plan.* A complete service plan shall be prepared which includes the services needed, the plan for providing these services, and the health care plan defined in rule 177.6(249).

177.4(5) *Certification procedure.* The approval by the area office of the department of human services of the case plan shall constitute certification and approval for payment.

177.4(6) *Temporary absence from home.* The client will remain eligible and payment will be made for services for a period not to exceed 15 days in any calendar month when the client is absent from the home for a temporary period. Payment will not be authorized for over 15 days for any continuous absence whether or not the absence extends into a succeeding month or months.

177.4(7) *Income for adults.* The gross income of the individual and spouse, living in the home, shall be limited to $471.06 per month if one needs care or $942.12 if both need care, with the following disregards:

a. The amount of the basic supplemental security income standard for an individual or a couple, as applicable.

b. When income is earned, $65.00 plus one-half of any remaining income.

c. The amount of the supplemental security income standard for a dependent plus any established unmet medical needs, for each dependent living in the home. Any income of the dependent shall be applied to the dependent's needs before making this disregard.

d. The amount of the established medical needs of the ineligible spouse which are not otherwise met.

e. The amount of the established medical needs of the applicant or recipient which are not otherwise met and would not be met if the individual were eligible for the medical assistance program.

f. Rescinded, effective 7/1/84.

177.4(8) *Income for children.*

a. All income received by the parents in the home shall be deemed to the child with the following disregards:

(1) The amount of the basic supplemental security income standard for an individual when there is one parent in the home or for a couple when there are two parents in the home.

(2) The amount of the basic supplemental security income standard for a dependent for each ineligible child in the home.

(3) The amount of the unmet medical needs of the parents and ineligible dependents.

(4) When all income is earned, an additional basic supplemental security income standard for an individual in a one-parent home or for a couple in a two-parent home.

(5) When the income is both earned and unearned, $65.00 plus one-half of the remainder of the earned income.

b. The income of the child shall be limited to $471.06 per month with the following disregards:

(1) The amount of the basic supplemental security income standard for an individual.

(2) The amount of the established medical needs of the child which are not otherwise met and would not be met if the child were eligible for the medical assistance program.

(3) One-third of the child support payments received from an absent parent.

c. Rescinded, effective 7/1/84.

177.4(9) *Payment.* The client or the person legally designated to handle the client's finances shall be the sole payee for payments made under the program and shall be responsible for making payment to the provider except when the client payee becomes incapacitated or dies while receiving service.

a. The department shall have the authority to issue one payment to a provider on behalf of a client payee who becomes incapacitated or dies while receiving service.

b. When continuation of an incapacitated client payee in the program is appropriate, the department shall assist the client and the client's family to legally designate a person to handle the client's finances. Guardians, conservators, protective or representative payees, or persons holding power of attorney are considered to be legally designated.

c. Payment for the program shall be approved effective as of the date of application or the date all eligibility requirements are met and qualified health care services are provided, whichever is later, notwithstanding 42 U.S.C. 1382(c)(7).

177.4(10) *Application.* Application for in-home health related care shall be made on Form PA-1107-0, Application for Medical Assistance or State Supplementary Assistance. An eligibility determination shall be completed within 30 days from the date of the application, unless one or more of the following conditions exist:

a. An application has been filed and is pending for federal supplemental security income benefits.

b. The application is pending because the department has not received information, which is beyond the control of the client or the department.

c. The application is pending due to the disability determination process performed through the department.

d. The application is pending because the SS-1511-0, Provider Agreement, has not been completed and completion is beyond control of the client. When a Provider Agreement cannot be completed due to client's failure to locate a provider, applications shall not be held pending beyond 60 days from the date of application.

This rule is intended to implement Iowa Code section 249.3(2)"*a.*"

441—177.5(249) Providers of health care services.

177.5(1) *Age.* The provider shall be at least 18 years of age.

177.5(2) *Physician's report.* The provider shall obtain a physician's report at the time service is initiated and annually thereafter. The report shall be on Form SS-1718-0, Provider Health Assessment Form.

177.5(3) *Qualifications.* The provider shall be qualified by training and experience to carry out the health care plan as specified in rule 177.4(4).

177.5(4) *Relative.* The provider may be related to the client, so long as the provider is not a member of the family as defined in rule 441—130.1(234).

177.5(5) Rescinded IAB 8/9/89, effective 10/1/89.

This rule is intended to implement Iowa Code section 249.3(2)*"a."*

441—177.6(249) Health care plan. The nurse shall complete the health care plan with the physician's approval. The health care plan shall include the specific types of services required, the method of providing those services, and the expected duration of services.

177.6(1) *Transfer from medical facility.* When the client is being transferred from a medical hospital or long-term care facility, the service worker shall obtain a transfer document describing the client's current care plan, to be provided to the nurse supervising the in-home care plan.

177.6(2) *Medical records.*

a. Medical records shall include, whenever appropriate, transfer forms, physician's certification and orders, interdisciplinary case plan, interdisciplinary progress notes, drug administration records, treatment records, and incident reports. The nurse shall be responsible for ensuring that record requirements are met.

b. Medical records shall be located in the nurse's case file, with a copy of the interdisciplinary plan of care and physician's plan of service in the service worker's file, and all other records available to the service worker. Upon termination of the in-home care plan, the records shall be maintained in the county office of the department of human services, or in the office of the public health nurse and available to the service worker, for five years or until completion of an audit.

c. The client or legal representative shall have the right to view the client's medical records.

177.6(3) *Review.* The continuing need for in-home health care services shall be reviewed:

a. At a minimum of every 60 days by the physician, including a written recertification of continuing appropriateness of the plan;

b. At a minimum of every three months by the service worker, including a review of the total care plan; and

c. At a minimum of every 60 days by the nurse who shall review the nursing plan.

More frequent reviews may be required by the physician, the service worker, or the nurse.

177.6(4) *Annual physical.* The client shall obtain a physical examination report annually and shall be under the regular supervision of a physician.

This rule is intended to implement Iowa Code section 249.3(2)*"a"*(2).

441—177.7(249) Client participation.

177.7(1) All income remaining after the disregards in 177.4(7) and 177.4(8) shall be considered income available for services and shall be used for service costs before payment for in-home health care begins.

177.7(2) First month. When the first month of service is less than a full month, there is no client participation for that month. Payment will be made for the actual days of service provided according to the agreed-upon rate.

This rule is intended to implement Iowa Code section 249.3(2)*"a"*(2).

441—177.8(249) Determination of reasonable charges. Payment will be made only for reasonable charges for in-home health care services as determined by the service worker. Reasonableness shall be determined by:

177.8(1) *Community standards.* The prevailing community standards for cost of care for similar services.

177.8(2) *Services at no charge.* The availability of service providers at no cost to the department.

This rule is intended to implement Iowa Code section 249.3(2)*"a"*(2).

441—177.9(249) Written agreements.

177.9(1) *Independent contractor.* The provider shall be an independent contractor and shall in no sense be an agent, employee or servant of the state of Iowa, the Iowa department of human services, any of its employees, or of its clients.

177.9(2) *Liability coverage.* All professional health care providers shall have adequate liability coverage consistent with their responsibilities, as the department of human services assumes no responsibility for, or liability for, individuals providing care.

177.9(3) *Provider agreement.* The client and the provider shall enter into an agreement, using Form SS-1511-0, Provider Agreement, prior to the provision of service. Any reduction to the state supplemental assistance program shall be applied to the maximum amount paid by the department of human services as stated in the Provider Agreement by using Form 470-1999, Amendment to Provider Agreement.

This rule is intended to implement Iowa Code section 249.3(2)"*a*"(2).

441—177.10(249) Emergency services. Written instructions for dealing with emergency situations shall be completed by the nurse and maintained in the client's home and in the county department of human services office. The instructions shall include:

177.10(1) *Persons to notify.* The name and telephone number of the client's physician, the nurse, responsible family members or other significant persons, and the service worker.

177.10(2) *Hospital.* Information as to which hospital to utilize.

177.10(3) *Ambulance.* Information as to which ambulance service or other emergency transportation to utilize.

This rule is intended to implement Iowa Code section 249.3(2)"*a*"(2).

441—177.11(249) Termination. Termination of in-home health related care shall occur under the following conditions.

177.11(1) *Request.* Upon the request of the client or legal representative. When termination of the program would result in an individual being unable to protect the individual's own interests, arrangements for guardianship, commitment, or protective placements shall be provided.

177.11(2) *Care unnecessary.* When the client becomes sufficiently self-sustaining to remain in the client's own home with services that can be provided by existing community agencies as determined by the service worker.

177.11(3) *Additional care necessary.* When the physical or mental condition of the client requires more care than can be provided in the client's own home as determined by the service worker.

177.11(4) *Excessive costs.* When the cost of care exceeds the maximum established in 177.4(3).

177.11(5) *Other services utilized.* When the service worker determines that other services can be utilized to better meet the client's needs.

177.11(6) *Terms of provider agreement not met.* When it has been determined by the service worker that the terms of the provider agreement have not been met by the client or the provider, the state supplementary assistance payment may be terminated.

This rule is intended to implement Iowa Code section 249.3(2)"*a*"(2).

441—177.12 Rescinded IAB 8/9/89, effective 10/1/89.

[Filed emergency 10/7/76—published 11/3/76, effective 11/1/76]
[Filed emergency 12/17/76—published 1/12/77, effective 12/17/76]
[Filed 2/25/77, Notice 11/3/76—published 3/23/77, effective 4/27/77]
[Filed emergency 5/24/77—published 6/15/77, effective 7/1/77]
[Filed 10/24/77, Notice 9/7/77—published 11/16/77, effective 12/21/77]
[Filed 5/24/78, Notice 3/22/78—published 6/14/78, effective 7/19/78]
[Filed 12/19/80, Notice 10/29/80—published 1/7/81, effective 2/11/81]
[Filed 6/30/81, Notice 4/29/81—published 7/22/81, effective 9/1/81]
[Filed emergency 10/7/83—published 10/26/83, effective 11/1/83]
[Filed without Notice 10/7/83—published 10/26/83, effective 12/1/83]
[Filed 11/18/83, Notice 10/12/83—published 12/7/83, effective 2/1/84]
[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]
[Filed emergency 6/15/84—published 7/4/84, effective 7/1/84]
[Filed emergency 8/31/84—published 9/26/84, effective 10/1/84]
[Filed emergency 10/1/85—published 10/23/85, effective 11/1/85]
[Filed without Notice 10/1/85—published 10/23/85, effective 12/1/85]
[Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 2/1/86]
[Filed emergency 6/26/86—published 7/16/86, effective 7/1/86]
[Filed 6/20/86, Notice 4/23/86—published 7/16/86, effective 9/1/86]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed emergency 6/9/88—published 6/29/88, effective 7/1/88]
[Filed emergency 6/9/89—published 6/28/89, effective 7/1/89]
[Filed 7/14/89, Notice 4/19/89—published 8/9/89, effective 10/1/89]
[Filed 8/17/89, Notice 6/28/89—published 9/6/89, effective 11/1/89]
[Filed emergency 6/20/90—published 7/11/90, effective 7/1/90]
[Filed 8/16/90, Notice 7/11/90—published 9/5/90, effective 11/1/90]
[Filed 12/11/91, Notice 10/16/91—published 1/8/92, effective 3/1/92]*
[Filed emergency 4/15/92—published 5/13/92, effective 4/16/92]
[Filed 5/14/92, Notice 3/18/92—published 6/10/92, effective 8/1/92]
[Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
[Filed 6/16/94, Notice 4/13/94—published 7/6/94, effective 9/1/94]
[Filed 8/12/94, Notice 7/6/94—published 8/31/94, effective 11/1/94]
[Filed emergency 6/7/95—published 7/5/95, effective 7/1/95]
[Filed 8/10/95, Notice 7/5/95—published 8/30/95, effective 11/1/95]
[Filed 3/13/96, Notice 1/17/96—published 4/10/96, effective 6/1/96]
[Filed emergency 6/13/96—published 7/3/96, effective 7/1/96]
[Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]
[Filed emergency 3/12/97—published 4/9/97, effective 4/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed 5/14/97, Notice 4/9/97—published 6/4/97, effective 8/1/97]
[Filed emergency 12/9/98—published 12/30/98, effective 1/1/99]
[Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/15/99]
[Filed emergency 12/8/99—published 12/29/99, effective 1/1/00]
[Filed 2/9/00, Notice 12/29/99—published 3/8/00, effective 5/1/00]
[Filed emergency 7/13/00—published 8/9/00, effective 8/1/00]

*Effective date of 3/1/92 delayed until adjournment of the 1992 General Assembly by the Administrative Rules Review Committee at its meeting held February 3, 1992.

RACING AND GAMING COMMISSION[491]

[Prior to 11/19/86, Chs 1 to 10, see Racing Commission[693]; Renamed Racing and Gaming Division [195] under the "umbrella" of Commerce, Department of [181], 11/19/86]
[Prior to 12/17/86, Chs 20 to 25, see Revenue Department[730] Chs 91 to 96]
[Transferred from Commerce Department[181] to the Department of Inspections and Appeals "umbrella"[481] pursuant to 1987 Iowa Acts, chapter 234, section 421]
[Renamed Racing and Gaming Commission[491], 8/23/89; See 1989 Iowa Acts, ch 67 §1(2), and ch 231 §30(1), 31]

CHAPTER 23
Reserved

CHAPTER 24
ACCOUNTING AND CASH CONTROL

CHAPTER 25
Reserved

CHAPTER 26
RULES OF THE GAMES

CHAPTER 1
ORGANIZATION AND OPERATION

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[Prior to 8/9/00, see also 491—Chs 6, 20 and 21]

491—1.1(99D,99F) Function. The racing and gaming commission was created by Iowa Code chapter 99D and is charged with the administration of the Iowa pari-mutuel wagering Act and excursion boat gambling Act. Iowa Code chapters 99D and 99F mandate that the commission shall have full jurisdiction over and shall supervise all race meetings and gambling operations governed by Iowa Code chapters 99D and 99F.

491—1.2(99D,99F) Organization and operations.

1.2(1) The racing and gaming commission is located at 717 E. Court, Suite B, Des Moines, Iowa 50309; telephone (515)281-7352. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

1.2(2) The racing and gaming commission consists of five members. The membership shall elect a chairperson and vice-chairperson in July of each year. No chairperson shall serve more than two consecutive one-year full terms.

1.2(3) The commission meets periodically throughout the year and shall meet in July of each year. Notice of a meeting is published on the commission's Web site at www3.state.ia.us/irgc/ at least five days in advance of the meeting or will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas are available to any interested persons not less than five days in advance of the meeting. All meetings shall be open to the public unless a closed session is voted by four members or all members present for the reasons specified in Iowa Code section 21.5. The operation of commission meetings shall be governed by the following rules of procedure:

a. A quorum shall consist of three members.

b. When a quorum is present, a position is carried by an affirmative vote of the majority of the entire membership of the commission.

c. Persons wishing to appear before the commission should submit a written request to the commission office not less than ten working days prior to the meeting. The administrator or commission may place a time limit on presentations after taking into consideration the number of presentations requested.

d. Special or electronic meetings may be called by the chair only upon a finding of good cause and shall be held in strict accordance with Iowa Code section 21.4 or 21.8.

e. The presiding officer may exclude any person from the meeting for behavior that disrupts or obstructs the meeting.

f. Cases not covered by this rule shall be governed by the 1990 edition of Robert's Rules of Order Newly Revised.

491—1.3(99D,99F) Administration of the commission. The commission shall appoint an administrator for the racing and gaming commission who is responsible for the day-to-day administration of the commission's activities.

491—1.4(17A,22,99F) Open records. Except as provided in Iowa Code sections 17A.2(11)*"f"* and 22.7, all public records of the commission shall be available for public inspection during business hours. Requests to obtain records may be made either by mail, telephone, or in person. Minutes of commission meetings, forms, and other records routinely requested by the public may be obtained without charge or viewed on the commission's Web site. Other records requiring more than ten copies may be obtained upon payment of the actual cost for copying. This charge may be waived by the administrator.

491—1.5(17A,99D,99F) Forms. All forms utilized in the conduct of business with the racing and gaming commission shall be available from the commission upon request. These forms include but are not limited to:

1.5(1) *Racetrack or excursion boat license application.* This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the facility, and description of proposed operation. The form may include other information the commission deems necessary to make a decision on the license application. The qualified nonprofit corporation and the boat operator, if different than the qualified nonprofit corporation, shall pay a nonrefundable application fee to offset the commission's cost for processing the application in the amount of $25,000. The fee shall be $5,000 for each subsequent application involving the same operator and the same qualified sponsoring organization. Additionally, the applicant shall remit an investigative fee of $15,000 to the department of public safety to do background investigations as required by the commission. The department of public safety shall bill the applicant/licensee for additional fees as appropriate and refund any unused portion of the investigative fee within 90 days after the denial or operation begins.

1.5(2) *Renewal application for racing license.* This form shall contain, at a minimum, the full name of the applicant, racing dates, simulcast proposal, feasibility of racing facility, distribution to qualified sponsoring organizations, table of organization, management agreement, articles of incorporation and bylaws, lease agreements, financial statements, information on the gambling treatment program, and description of racetrack operations. The form may include other information the commission deems necessary to make a decision on the license application.

1.5(3) *Renewal application for excursion boat license.* This form shall contain, at a minimum, the full name of the applicant, annual fee, distribution to qualified sponsoring organizations, table of organization, internal controls, operating agreement, hours of operation, casino operations, Iowa resources, contracts, guarantee bond, notarized certification of truthfulness, and gambling treatment program. The form may include other information the commission deems necessary to make a decision on the license application. An annual fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew. The fee shall be $5 per person capacity and accompany this application.

1.5(4) *Renewal application for racetrack enclosure license.* This form shall contain, at a minimum, the full name of the applicant, annual fee, casino operations, internal controls, Iowa resources, guarantee bond, and notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application. A $1,000 application fee must accompany this license application.

1.5(5) *Occupational license application.* This form shall contain, at a minimum, the applicant's full name, social security number, residence, date of birth, and other personal identifying information that the commission deems necessary. A fee set by the commission shall apply to this application. (Refer to 491—Chapter 6* for additional information.)

1.5(6) *Application for season approvals.* This form shall contain, at a minimum, a listing of the department heads and racing officials, minimum purse, purse supplements for Iowa-breds, grading system (greyhound racing only), schedule and wagering format, equipment, security plan, certification, and any other information the commission deems necessary for approval. This request must be submitted 45 days prior to the meet. Any changes to the items approved by the commission shall be requested in writing by the licensee and subject to the written approval of the administrator or commission representative before the change occurs.

*See ARC 9948A, IAB 7/12/00, for proposed 491—Chapter 6.

1.5(7) *Manufacturers and distributors license application.* This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. (Refer to 491—Chapter 22 for additional information.)

491—1.6(99D,99F) Limitation on location and number of racetracks and excursion gambling boats.

1.6(1) The number of licenses to conduct horse racing shall be one for a racetrack located in Polk County. The number of licenses to conduct dog racing shall be two, one for a racetrack located in Dubuque County and one for a racetrack located in Pottawattamie County. The total number of licenses issued to conduct gambling games on excursion boats shall not exceed ten and shall be restricted to the counties where such boats were operating (or licensed to operate in the future) as of May 1, 1998.

1.6(2) Notwithstanding subrule 1.6(1), with the approval of the commission:

a. A licensed facility may be sold and a new license may be issued for operation in the same county.

b. A licensee may move to a new location within the same county.

c. If a license is surrendered, not renewed, or revoked, a new license may be issued for operation in the same county.

1.6(3) A licensee seeking an increase in the number of gaming machines or gaming tables must obtain prior approval from the commission. In the request for approval from the commission, a licensee shall demonstrate to the commission's satisfaction that the additional gaming equipment:

a. Will have a positive economic impact on the community in which the licensee operates;

b. Will benefit the residents of Iowa;

c. Will result in increased distributions to qualified organizations entitled to distributions under Iowa Code section 99F.6(4)"*a*";

d. Is necessary to satisfy overall excess demand in the particular market in which the licensee is located;

e. Will result in permanent improvements and land-based development in Iowa;

f. Is supported within the broader community in which the licensee operates;

g. Will not have a detrimental impact on the financial viability of other licensees operating in the market in which the licensee operates;

h. Is consistent with legislative intent concerning the purpose of excursion gambling boats or the definition of "racetrack enclosure" and the purpose of gambling games at racetrack enclosures; and

i. If for a racetrack enclosure, will benefit the horse or greyhound industries in Iowa.

The various criteria set forth may not have the same importance in each instance, and other factors may present themselves in the consideration of the increase. The criteria are not listed in any order of priority.

In addition to the foregoing criteria, a licensee requesting additional gaming machines shall demonstrate to the commission's satisfaction that the licensee is in compliance with applicable statutes, rules, and orders, has not had any material violation of any statutes, rules, or orders in the previous 12 months, and has taken sufficient steps to address the social and economic burdens of problem gambling.

491—1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates. The commission sets forth the following criteria which the commission will consider when deciding whether to issue a license to conduct racing or gaming in Iowa. The various criteria may not have the same importance in each instance and other factors may present themselves in the consideration of an application or applications for a license. The criteria are not listed in order of priority. After the initial consideration for issuing a license, applicable criteria need only be considered when an applicant has demonstrated a deficiency.

1.7(1) Compliance. The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99D.9 or 99F.4.

1.7(2) Revenue provided by facility. The commission will consider the amount of revenue to be provided by the proposed facility to the state and local communities through direct taxation on its operation and indirect revenues from tourism, ancillary businesses, creation of new industry, and taxes on employees and patrons.

1.7(3) Viability. The commission will consider whether the proposed operation is economically viable and properly financed.

1.7(4) Security. The commission will consider whether the proposed operation is planned in a manner that provides adequate security for all aspects of its operation and for the people working at and visiting the facility.

1.7(5) Efficient and safe operation. The commission will consider whether the proposed facility is planned in a manner that promotes efficient and safe operation of all aspects of its facility.

1.7(6) Efficient, safe, and enjoyable for patrons. The commission will consider whether the proposed facility, including, but not limited to, parking facilities, concessions, the casino/grandstand, access to cashier windows, and restrooms, is planned in a manner that promotes efficient, safe, and enjoyable use by patrons.

1.7(7) Compliance with applicable state and local laws. The commission will consider whether the proposed facility is in compliance with applicable state and local laws regarding fire, health, construction, zoning, and other similar matters.

1.7(8) Employ appropriate persons. The commission will consider whether the applicant will employ the persons necessary to operate the facility in a manner consistent with the needs, safety, and interests of all persons who will be at the facility.

1.7(9) Population. The commission will consider the population of the area to be served by a facility together with location of other facilities of whatever nature within and without the state. The commission may engage an independent firm proficient in market feasibility studies in the industry for specific analysis of any application to determine the potential market of any proposed facility as well as the impact on existing licensees.

1.7(10) Community support. The commission will consider support within the community in which a proposed facility is to be located for the promotion and continuation of racing or gaming.

1.7(11) Character and reputation. The commission will consider whether there is substantial evidence that the officers, directors, partners, or shareholders of the applicant are not of good repute and moral character. Any evidence concerning an officer's, director's, partner's, or shareholder's current or past conduct, dealings, habits, or associations relevant to that individual's character and reputation may be considered. The commission may consider all relevant facts surrounding alleged criminal or wrongful conduct resulting in the filing of criminal charges, a conviction, nolo contendere, no contest or Alford pleas entered by the applicant or operator in any court or administrative proceedings. A criminal conviction of an individual shall be conclusive evidence that the individual committed the offense for which the individual was convicted, but this does not preclude the commission from considering evidence that the individual committed additional offenses. The commission shall decide what weight and effect evidence about an officer, director, partner, or shareholder should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. Officers, directors, partners, and shareholders who have a significant interest in the management, ownership, operation, or success of an application may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role in such matters.

1.7(12) Nurture the racing industry. The commission will consider whether the proposed racetrack operation would serve to nurture, promote, develop, and improve the racing industry in Iowa and provide high quality racing in Iowa.

1.7(13) Purses. The commission will consider whether the proposed racetrack operation will maximize purses.

1.7(14) Breeders. The commission will consider whether the proposed racetrack operation is beneficial to Iowa breeders.

1.7(15) Gaming integrity. The commission will consider whether the proposed operation would ensure that gaming is conducted with a high degree of integrity in Iowa.

1.7(16) Economic development. The commission will consider whether the proposed operation will maximize economic development.

1.7(17) Tourism. The commission will consider whether the proposed operation is beneficial to Iowa tourism.

1.7(18) Employment opportunities. The commission will consider the number and quality of employment opportunities for Iowans the proposed operation will create and promote.

1.7(19) Sale of Iowa products. The commission will consider how the proposed operation will promote the development and sale of Iowa products.

1.7(20) Shore development. The commission will consider the amount and type of shore developments associated with the proposed excursion gambling boat project.

1.7(21) The commission will consider such other factors as may arise in the circumstances presented by a particular application.

These rules are intended to implement Iowa Code chapters 99D and 99F.

[Filed 5/18/84, Notice 4/11/84—published 6/6/84, effective 7/13/84]
[Filed emergency 10/20/86—published 11/19/86, effective 10/20/86]
[Filed 3/6/87, Notice 1/14/87—published 3/25/87, effective 4/29/87]
[Filed 6/11/87, Notice 4/8/87—published 7/1/87, effective 8/6/87]
[Filed 10/23/87, Notice 9/9/87—published 11/18/87, effective 12/23/87]
[Filed 2/16/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]
[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed 12/6/91, Notice 10/16/91—published 12/25/91, effective 1/29/92]
[Filed emergency 3/22/93—published 4/14/93, effective 3/22/93]
[Filed 5/21/93, Notice 4/14/93—published 6/9/93, effective 7/14/93]
[Filed 4/10/97, Notice 2/12/97—published 5/7/97, effective 6/11/97]
[Filed 8/22/97, Notice 7/16/97—published 9/10/97, effective 10/15/97]
[Filed 3/6/98, Notice 12/17/97—published 3/25/98, effective 4/29/98]
[Filed 7/24/98, Notice 6/17/98—published 8/12/98, effective 9/16/98*]
[Filed 10/26/98, Notice 9/9/98—published 11/18/98, effective 12/23/98]
[Filed 1/20/00, Notice 12/15/99—published 2/9/00, effective 3/15/00**]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

*Effective date of Item 1, subrule 1.6(4), delayed by the Administrative Rules Review Committee at its meeting held September 8, 1998, until the adjournment of the 1999 Session of the General Assembly.

**Effective date of 1.8 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000.

c. An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.6(2) The stewards shall monitor, supervise, and regulate the activities of occupational and parimutuel racetrack licensees. A steward may investigate any questionable conduct by a licensee for any violation of the rules or statutes. Any steward may refer an investigation to the board of stewards upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

4.6(3) A steward shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the person from a license if convicted. The steward shall take one the following courses of action upon resolution of the criminal action:

a. The steward shall reinstate the licensee if the charges are dismissed or the licensee is acquitted of the charges.

b. The steward shall deny the license.

c. If convicted of a lesser charge, it is at the discretion of the steward whether to reinstate or deny the license.

4.6(4) A steward may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

4.6(5) Hearings before the board of stewards intended to implement Iowa Code section 99D.7(13) shall be conducted under the following parameters:

a. Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder. The license holder may request a continuance in writing for good cause not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

b. The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing, and shall specify by number the statutes or rules allegedly violated. Delivery of the notice of hearing may be executed by either personal service or certified mail with return receipt requested to the last-known address listed in the application. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

c. The board has complete and total authority to decide the process of the hearing. The board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The board may request additional documents or witnesses before making a decision. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the board.

d. It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

e. Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

f. The board of stewards has the power to interpret the rules and to decide all questions not specifically covered by them. The board of stewards has the power to determine all questions arising with reference to the conduct of racing, and the authority to decide any question or dispute relating to racing in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

g. The board of stewards shall enter a written decision after each hearing. The decision shall state whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The board of stewards has the authority to impose any penalty, as set forth in these rules.

h. A licensee may appeal a board of stewards' decision. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal shall be on a form prescribed by the commission or must contain numbered paragraphs and set forth the name of the person seeking the review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, and the name, address, and telephone number of the person seeking the review or that person's representative. If a licensee is granted a stay of a suspension, pursuant to 491—4.45(17A), and the ruling is upheld in a contested case proceeding, then the board of stewards may reassign the dates of suspension so that the suspension dates are served in the state of Iowa.

i. Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.6(6) A steward may eject and exclude any person from the premises of a pari-mutuel racetrack or excursion gambling boat for any reason justified by the rules or statutes. The steward may provide notice of ejection or exclusion orally or in writing. The steward may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The steward may exclude the person for a certain or indefinite period of time.

4.6(7) The stewards shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

491—4.7(99D,99F) Penalties (gaming board and board of stewards). The board may remove the license holder, either from any racetrack or riverboat, under its jurisdiction, suspend the license of the holder for up to 365 days from the date of the original suspension, or impose a fine of up to $1000, or both. The board may set the dates in which the suspension must be served. In addition, the board may order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing and gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission. All fines and suspensions imposed will be promptly reported to the riverboat or racetrack licensee and commission in writing.

4.7(1) Fines shall be paid within ten calendar days of receipt of the ruling, by the end of business hours at any commission office. Nonpayment or late payment may result in an immediate license suspension. All fines are to be paid by the individual assessed the fine.

4.7(2) If the fine is appealed to the board, the appeals process will not stay the fine. The fine will be due as defined in subrule 4.7(1).

4.7(3) If the party is successful in the appeal, the amount of the fine will be refunded to the party as soon as possible after the date the decision is rendered.

(1) Personal delivery;
(2) Certified mail, return receipt requested, to the last address on file with the commission;
(3) Certified mail to the last address on file with the commission;
(4) First-class mail to the last address on file with the commission; or
(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that commission orders be sent by fax and has provided a fax number for that purpose.

b. To the degree practicable, the commission shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

4.47(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.47(4) *Completion of proceedings.* Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapters 99D and 99F and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/5/85, Notice 2/27/85—published 4/24/85, effective 5/29/85]
[Filed emergency 10/20/86—published 11/19/86, effective 10/20/86]
[Filed 6/19/87, Notice 5/6/87—published 7/15/87, effective 8/20/87]
[Filed 10/23/87, Notice 9/9/87—published 11/18/87, effective 12/23/87]
[Filed 11/4/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]
[Filed 2/17/89, Notice 1/11/89—published 3/8/89, effective 4/12/89]
[Filed 2/16/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]
[Filed 2/15/91, Notice 1/12/91—published 3/6/91, effective 4/10/91]
[Filed 12/6/91, Notice 10/16/91—published 12/25/91, effective 1/29/92]
[Filed emergency 12/12/91—published 1/8/92, effective 12/12/91]
[Filed 2/12/92, Notice 1/8/92—published 3/4/92, effective 4/8/92]
[Filed 10/30/92, Notice 9/16/92—published 11/25/92, effective 1/6/93]
[Filed 12/18/92, Notice 10/14/92—published 1/6/93, effective 2/10/93]
[Filed emergency 2/5/93—published 3/3/93, effective 2/5/93]
[Filed emergency 3/22/93—published 4/14/93, effective 3/22/93]◊
[Filed emergency 4/19/93—published 5/12/93, effective 4/19/93]
[Filed 4/19/93, Notice 3/3/93—published 5/12/93, effective 6/16/93]
[Filed 5/21/93, Notice 4/14/93—published 6/9/93, effective 7/14/93]
[Filed 7/23/93, Notice 5/12/93—published 8/18/93, effective 9/22/93]
[Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
[Filed 11/17/95, Notice 9/13/95—published 12/6/95, effective 1/10/96]
[Filed 1/23/96, Notice 12/6/95—published 2/14/96, effective 3/20/96]
[Filed 1/17/97, Notice 11/6/96—published 2/12/97, effective 3/19/97]
[Filed 4/10/97, Notice 2/12/97—published 5/7/97, effective 6/11/97]
[Filed 9/19/97, Notice 8/13/97—published 10/8/97, effective 11/12/97]
[Filed 3/6/98, Notice 12/17/97—published 3/25/98, effective 4/29/98]
[Filed 11/23/98, Notice 10/7/98—published 12/16/98, effective 1/20/99]
[Filed 4/16/99, Notice 2/10/99—published 5/5/99, effective 6/9/99]
[Filed 6/18/99, Notice 5/5/99—published 7/14/99, effective 8/18/99]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

◊Two ARCs

CHAPTER 5
TRACK AND EXCURSION BOAT LICENSEES' RESPONSIBILITIES

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[Prior to 8/9/00, see also 491—Chs 20 and 25]

491—5.1(99D,99F) In general. For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license to race or operate a gaming facility has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of the license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

491—5.2(99D,99F) Annual reports. Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13. The audit of financial transactions and condition of licensee's operation shall include an internal control letter, a balance sheet, and a profit-and-loss statement pertaining to the licensee's activities in the state. If the licensee's fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar year basis shall be included in the report. In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

5.2(1) The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; taxable attendance and the dollar amount remitted to the state; total mutuel handle and taxes paid to state, city, and county; unclaimed winnings; purses paid indicating sources; total breakage and disbursements; and the disbursements of 1 percent of the triples.

5.2(2) The annual audit report required by Iowa Code section 99F.13 shall include:

a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, and gambler's treatment; and admission fees.

b. A report on whether material weaknesses in internal accounting control exist.

c. A report on whether the licensee has followed the system of internal accounting control approved by the administrator.

491—5.3(99D,99F) Information. The licensee shall submit all information specifically requested in writing by the commission or commission representative.

491—5.4(99D,99F) Uniform requirements.

5.4(1) *Maintenance of grounds and facilities.* Each licensee shall at all times maintain its grounds and facilities so as to be neat and clean, well landscaped, painted and in good repair, handicapped accessible, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance.

5.4(2) *Facilities for commission.* Each licensee shall provide reasonable, adequately furnished office space, including utilities, direct long-distance access for voice and data lines, custodial services, and necessary office equipment, and, if applicable, work space on the boat for the exclusive use of the commission employees and officials. The licensee shall also make available appropriate parking places for commission staff.

5.4(3) *Sanitary facilities for patrons.* Each licensee shall, on every day of operation, provide adequate and sanitary toilets and washrooms and furnish free drinking water for patrons and persons having business on the licensee's grounds.

5.4(4) *First-aid room.* Each licensee shall equip and maintain adequate first-aid facilities and have in attendance, during the hours of operation, either a physician, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician, all properly licensed according to requirements of the Iowa department of public health.

5.4(5) *Security force.*

a. *Peace officer.* Each licensee shall ensure that a person who is a certified peace officer is present during all gaming hours, unless permission is otherwise granted by the administrator.

b. *Employ adequate security.* Each licensee shall employ sufficient security to remove a person violating a provision of Iowa Code chapter 99D or 99F, commission rules, or orders; any person deemed to be undesirable by racing and gaming commission officials; or any person engaging in a fraudulent practice from the licensed premises. Security shall also be provided in and about the grounds to secure restricted areas such as the barn area, kennel area, paddock, and testing area.

c. *Incident reports.* The licensee shall be required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99D or 99F, a commission rule or order, or internal controls; or is removed for reasons specified under paragraph 5.4(5)*"b."* In addition to the written report, the licensee shall provide immediate notification to the commission and DCI representatives on duty or, if representatives are not on duty, provide notification on each office's messaging system if the incident involved employee theft, criminal activity, Iowa Code chapter 99D or 99F violations, or gaming receipts.

d. *Ejection or exclusion.* A licensee may eject or exclude any person, licensed or unlicensed, from the grounds or a part thereof of the the licensee's facility, solely of the licensee's own volition and without any reason or excuse given, provided ejection or exclusion is not founded on race, creed, color, disability, or national origin.

Reports of all ejections or exclusions for any reason shall be made promptly to the commission representative and DCI and shall state the circumstances. The name of the person must be reported when ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all pari-mutuel facilities or excursion gambling boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

5.4(6) *Firearms possession within casino.*

a. No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a casino without the express written approval of the administrator unless:

(1) The person is a peace officer, on duty, acting in the peace officer's official capacity; or

(2) The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that casino.

b. Each casino licensee shall post in a conspicuous location at each entrance to the casino a sign that may be easily read stating, "Possession of any firearm within the casino without the express written permission of the Iowa racing and gaming commission is prohibited".

5.4(7) *Videotaping.* Licensees are required to conduct continuous surveillance with the capability of videotaping all gambling activities under Iowa administrative rules 661— Chapter 23, promulgated by the department of public safety.

5.4(8) *Commission approval of contracts and business arrangements.*

a. No track or boat operator shall enter into any contract or business arrangement, verbal or written, with any related party, or in which the term exceeds three years or the total value of the contract exceeds $50,000, without first submitting advance written notice thereof to the commission and obtaining commission approval therefor.

b. Purpose of contract review. The commission conducts reviews of contracts to serve the public interests in order that:

(1) Gaming is free from criminal and corruptive elements.

(2) Gaming-related funds are directed to the lawful recipient.

(3) Gaming profits are not improperly distributed.

c. Related parties. Other contract submittal requirements notwithstanding, contracts negotiated between the operator and a related party must be accompanied by an economic and qualitative justification.

d. Review criteria. The commission shall approve all contracts that, in their opinion, represent a normal business transaction. The commission may deny approval of any contract that, in their sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This rule does not prohibit the commission from changing the approved ownership or beneficial interest.

5.4(9) *Checks.* The acceptance of personal checks shall be allowed; however, "counter" checks shall not be allowed. All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

5.4(10) *Taxes and admission fees.*

a. *Annual taxes and fees.* All taxes and fees, whose collection by the state is authorized under Iowa Code chapters 99D and 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

b. *Admission fees.*

(1) Excursion gambling boat. Admission fees, whose collection by the state is authorized under Iowa Code section 99F.10(2), shall be set for the following fiscal year by the commission on or before the June meeting of the commission. The total amount payable to the commission shall be determined on a per-boat basis with each responsible licensee paying a proportionate amount of the total amount consistent with Iowa Code section 99F.10(4).

(2) Racetrack enclosure. Admission fees as required by Iowa Code section 99D.14(2) shall be collected in lieu of any fees imposed by Iowa Code section 99F.10.

(3) Fee free passes. A fee free pass may be issued at the discretion of the facility for persons actually working in the facility. The facility must maintain a fee free pass logbook, available for inspection by commission or DCI representatives. The logbook must reflect the following information: date the fee free pass is being used; user's name and date of birth (verified by photo ID); company or purpose that the fee free pass is being used for; issuer; pass number; time out; and time in. Fee free passes shall only be issued on a daily basis and must be returned before the individual who is using the fee free pass leaves the facility grounds. Fee free passes are subject to the license requirements of 491—subrule 6.2(6). A fee free pass may be used by an employee who has forgotten the employee's license but may not be used to avoid obtaining a duplicate license. An occupational license issued by the commission may be used in lieu of a fee free pass. A holder of a fee free pass will not be counted toward admission for tax purposes.

c. Submission of taxes and admission fees. All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis on a form provided by the commission. A week shall begin on Monday and end on Sunday. The reporting form must be received in the commission office by 3 p.m. on Wednesday following the week's end. The moneys owed, according to the reporting form, must be received in the treasurer's office by 11 a.m. on the Thursday following the week's end. Additionally, each licensee shall file a monthly report indicating adjusted gross receipts received from gambling games, total number of admissions, and amount of admission fees paid. These reports shall be by calendar month and filed by close of the third business day following the end of the month.

d. Admission tracking requirement. All entrances used for admission of patrons must have a counting device of a type approved by the commission.

5.4(11) *Rate of tax revenue.* Each licensee shall prominently display at the licensee's gambling facility the annual percentage rate of state and local tax revenue collected by state and local government from the gambling facility annually.

5.4(12) *Gambling treatment program.*

a. The holder of a license to operate gambling games shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) Prevent previously identified problem gamblers from gambling at the licensee's facility or other facilities licensed by the state of Iowa.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

(1) Training of key employees to identify and report suspected problem gamblers;

(2) Procedures for recording and tracking identified problem gamblers;

(3) Policies designed to prevent serving alcohol to intoxicated casino patrons;

(4) Steps for removing problem gamblers from the casino; and

(5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include information on the availability of the gambling treatment program in a substantial number of its advertisements and printed materials.

5.4(13) *Records regarding ownership.*

a. In addition to other records and information required by these rules, each licensee shall maintain the following records regarding the equity structure and owners:

(1) If a corporation:

1. A certified copy of articles of incorporation and any amendments thereto.
2. A copy of bylaws and amendments thereto.
3. A current list of officers and directors.
4. Minutes of all meetings of stockholders and directors.
5. A current list of all stockholders and stockholders of affiliates, including their names and the names of beneficial shareholders.
6. A complete record of all transfers of stock.
7. A record of amounts paid to the corporation for issuance of stock and other capital contributions and dates thereof.
8. A record, by stockholder, of all dividends distributed by the corporation.
9. A record of all salaries, wages, and other remuneration (including perquisites), direct and indirect, paid by the corporation during the calendar or fiscal year to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to or greater than 5 percent of the outstanding stock of any class of stock.

(2) If a partnership:

1. A schedule showing the amounts and dates of capital contributions, the names and addresses of the contributors, and percentage of interest in net assets, profits, and losses held by each.

2. A record of the withdrawals of partnership funds or assets.

3. A record of salaries, wages, and other remuneration (including perquisites), direct and indirect, paid to each partner during the calendar or fiscal year.

4. A copy of the partnership agreement and certificate of limited partnership, if applicable.

(3) If a sole proprietorship:

1. A schedule showing the name and address of the proprietor and the amount and date of the original investment.

2. A record of dates and amounts of subsequent additions to the original investment and withdrawals therefrom.

3. A record of salaries, wages, and other remuneration (including perquisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

b. All records regarding ownership shall be located in a place approved by the commission.

c. If the licensee is publicly held, upon the request of the administrator, the licensee shall submit to the commission one copy of any report required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency. If the licensee is privately held, upon the request of the administrator, the licensee shall submit financial, ownership, or other entity records for an affiliate.

5.4(14) *Retention, storage, and destruction of books, records, and documents.*

a. Except as otherwise provided, all original books, records, and documents pertaining to the licensee's operations shall be:

(1) Prepared and maintained in a complete and accurate form.

(2) Retained at a site approved by the administrator until audited.

(3) Held immediately available for inspection by the commission during business hours of operations.

(4) Organized and indexed in such a manner as to provide immediate accessibility to the commission.

b. For the purpose of this subrule, "books, records, and documents" shall be defined as any book, record, or document pertaining to or prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records.

c. All original books, records, and documents may be copied and stored on microfilm, microfiche, or other suitable media system approved by the administrator.

d. No original book, record, document, or suitable media copy may be destroyed by a licensee, for three years, without the prior approval of the administrator.

5.4(15) *Remodeling.* For any change to be made to the facility itself directly associated with racing or gaming or in the structure of the boat itself, the licensee must first submit plans to and receive the approval of the administrator.

491—5.5(99D) Pari-mutuel uniform requirements.

5.5(1) *Insect and rodent control.* The licensee shall provide systematic and effective insect and rodent control, including control of flies, mosquitoes, fleas, and mice, to all areas of licensee's premises at all times during a race meeting.

5.5(2) *Results boards, totalizators required.* Each licensee shall provide and maintain computerized totalizators and electronic boards showing odds, results, and other racing information located in plain view of patrons.

5.5(3) *Photo finish camera.* A licensee shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish device must be approved by the commission before its first use in a race. The licensee shall promptly post a photograph, on a monitor, of each photo finish for win, place or show, or for fourth place in superfecta races, in an area accessible to the public. The licensee shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the licensee shall provide, without cost, a print of a photo finish to the commission. A photo finish of each race shall be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the commission.

5.5(4) *Electric timing device.* Any electric timing device used by the licensee shall be approved by the commission.

5.5(5) *Official scale.* The licensee shall provide and maintain in good working order official scales or other approved weighing devices. The licensee shall provide to the stewards certification of the accuracy of the scales at the beginning of each race meeting or more frequently if requested by the stewards.

5.5(6) *Lighting.* Each licensee shall provide and maintain adequate illumination in the barn/kennel area, parking area, and racetrack area.

5.5(7) *Fencing.* The stable and kennel areas should be properly fenced as defined by the commission and admission permitted only in accord with rules of the commission.

5.5(8) *Guest passes.* The licensee shall develop a policy to be approved by the stewards for the issuance of guest passes for entrance to the kennel or stable area. The guest pass is not an occupational license and does not permit the holder to work in any capacity or in any way confer the benefits of an occupational license to participate in racing. The license holder shall be responsible for the conduct of the guest pass holder.

491—5.6(99F) Excursion gambling boat uniform requirements.

5.6(1) *Boat design.*

a. The minimum passenger capacity necessary for an excursion gambling boat is 250.

b. Boats must be self-propelled. A boat may contain more than one "vessel" as defined by the U.S. Coast Guard. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed, and operated as a single unit.

5.6(2) *Excursions.*

a. *Length.* The excursion season shall be from April 1 through October 31 of each calendar year. An excursion gambling boat must operate at least one excursion each day for 100 days during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat's operation if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of two hours in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked, passengers may embark or disembark at any time during its business hours pursuant to Iowa Code section 99F.4(17).

b. *Dockside completion of excursions.* If, during the excursion season, the captain determines that it would be unsafe to complete any portion of an excursion, or if mechanical problems prevent the completion of any portion of an excursion, the boat may be allowed to remain at the dock or, if the excursion is underway, return to the dock and conduct the gaming portion of the excursion while dockside, unless the captain determines that passenger safety is threatened.

c. *Notification.* If an excursion is not completed due to reasons specified in paragraph 5.6(2)"*b,*" a commission representative shall be notified as soon as is practical.

These rules are intended to implement Iowa Code chapters 99D and 99F.

[Filed emergency 2/24/84—published 3/14/84, effective 4/1/84]
[Filed 8/24/84, Notice 3/14/84—published 9/12/84, effective 10/17/84]
[Filed 4/5/85, Notice 2/27/85—published 4/24/85, effective 5/29/85]
[Filed emergency 10/20/86—published 11/19/86, effective 10/20/86]
[Filed 10/23/87, Notice 9/9/87—published 11/18/87, effective 12/23/87]
[Filed 11/4/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]
[Filed 2/16/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]
[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed emergency 3/22/93—published 4/14/93, effective 3/22/93]◊
[Filed 4/19/93, Notice 3/3/93—published 5/12/93, effective 6/16/93]
[Filed 5/21/93, Notice 4/14/93—published 6/9/93, effective 7/14/93]
[Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
[Filed 5/18/95, Notice 3/29/95—published 6/7/95, effective 7/12/95]
[Filed 10/18/96, Notice 9/11/96—published 11/6/96, effective 12/11/96]
[Filed 4/10/97, Notice 2/12/97—published 5/7/97, effective 6/11/97]
[Filed 8/22/97, Notice 7/16/97—published 9/10/97, effective 10/15/97]
[Filed 5/22/98, Notice 3/25/98—published 6/17/98, effective 7/22/98]
[Filed 7/24/98, Notice 6/17/98—published 8/12/98, effective 9/16/98]
[Filed 10/26/98, Notice 9/9/98—published 11/18/98, effective 12/23/98*]
[Filed 1/21/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]
[Filed 1/20/00, Notice 11/17/99—published 2/9/00, effective 3/15/00]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

CHAPTER 6
CRITERIA FOR GRANTING LICENSES AND DETERMINING RACE DATES

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]
Rescinded IAB 8/9/00, effective 9/13/00

◊ Two ARCs
*Effective date of 5.1(5)"*c*" delayed until the end of the 1999 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 8, 1998.

491—7.2(99D) Track licensee's responsibilities.

7.2(1) *Racetrack.* Each licensee shall provide a race course which:

a. Is constructed and elevated in a manner that is safe and humane for greyhounds.

b. Has a surface, including cushion subsurface and base, constructed of materials and to a depth that adequately provides for the safety of the greyhounds.

c. Has a drainage system approved by the commission.

d. Must be approved by the commission and be subject to periodic inspections by the commission.

7.2(2) *Patrol films or videotapes.* Each licensee shall at all times during a race meeting provide and maintain personnel and equipment necessary to produce adequate motion pictures or videotapes and record with the same personnel and equipment each race from start to finish. Films and videotapes shall be retained and secured by the licensee until the first day of the following racing season.

7.2(3) *Communications.* Each licensee shall install and maintain in good working order communications systems among the stewards, pari-mutuel department, starting gate/box, public address announcer, paddock, testing area, and necessary on-track officials.

491—7.3(99D) Trainer responsibility.

7.3(1) The trainer is responsible for the condition of a greyhound entered in an official race and is responsible for the presence of any prohibited drug, medication or other substance, regardless of the acts of third parties. A positive test for a prohibited drug, medication or substance, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule or Iowa Code chapter 99D. In the absence of substantial evidence to the contrary, the trainer shall be responsible.

7.3(2) A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

7.3(3) Other responsibilities. A trainer is responsible for:

a. Ensuring that facilities and primary enclosures shall be cleaned and sanitized as may be necessary to reduce disease hazards and odors. Runs and exercise areas having gravel or other nonpermanent surface materials shall be sanitized by periodic removal of soiled materials, application of suitable disinfectants, and replacement with clean surface materials;

b. Ensuring that fire prevention rules are strictly observed in the assigned area;

c. Providing a list to the commission of the trainer's employees on association grounds and any other area under the jurisdiction of the commission. The list shall include each employee's name, occupation, social security number and occupational license number. The commission shall be notified by the trainer, in writing, within 24 hours of any change. No trainer shall employ any person under the age of 16;

d. The proper identity, custody, care, health, condition and safety of greyhounds in the trainer's charge;

e. Disclosure to the racing secretary of the true and entire ownership of each greyhound in the trainer's care upon arrival on licensee's property, or at time of license application, or entry, whichever event occurs first, and making revision immediately upon any subsequent change in ownership. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a greyhound, shall be attached to the registration certificate for the greyhound and filed with the racing secretary;

f. Licensed trainers shall ensure that greyhounds under their care have not been trained using a live lure or live bait;

g. Using the services of those veterinarians licensed by the commission to attend greyhounds that are on association grounds;

h. Promptly reporting to the stewards and the commission veterinarian the serious illness of any greyhound in the trainer's charge;

i. Promptly reporting the death of any greyhound in the trainer's care on association grounds to the stewards, owner and the commission veterinarian and complying with the rules on postmortem examination;

j. Immediately reporting to the stewards and the commission veterinarian if the trainer knows, or has cause to believe, that a greyhound in the trainer's custody, care or control has received any prohibited drugs or medication; and

k. Every trainer who does not have the trainer's greyhound at the weighing-in room promptly at the time appointed may have the greyhound scratched and may be subject to disciplinary action.

7.3(4) Restrictions on wagering. A trainer with a greyhound(s) entered in a race shall only be allowed to wager on that greyhound(s) or that greyhound(s) in combination with other greyhounds.

7.3(5) Assistant trainers.

a. Upon the demonstration of a valid need, a trainer may employ an assistant trainer as approved by the stewards. The assistant trainer shall be licensed prior to acting in such capacity on behalf of the trainer.

b. Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission and may include those requirements prescribed above.

c. An assistant trainer may substitute for and shall assume the same duties, responsibilities and restrictions as imposed on the licensed trainer, in which case, the trainer shall be jointly responsible for the assistant trainer's compliance with the rules governing racing.

d. When a trainer is to be absent for 24 hours or more from the kennel or grounds where greyhounds are racing, the trainer shall provide a licensed trainer or assistant trainer to assume complete responsibility for all greyhounds under the trainer's care, and both shall sign a "trainer's responsibility form" which must be approved by the stewards.

491—7.4(99D) Disciplinary actions. Rescinded IAB 8/17/94, effective 9/21/94.

491—7.5(99D) Registration.

7.5(1) No greyhound shall be entered or permitted to race or to be schooled at any racetrack licensed by the commission unless properly registered by the National Greyhound Association of Abilene, Kansas. The National Greyhound Association (NGA) shall be recognized as the official breeding registry of all greyhounds. The commission may certify any greyhound whose lack of registration with the approved registry is attributable to arbitrary, discriminatory or other unreasonable action or inaction.

7.5(2) A greyhound shall not be entered for racing or schooling at any official track unless it has been tattooed and registered in the NGA stud book and the last four past-performance lines are made available to the racing secretary.

7.5(3) Rescinded IAB 8/17/94, effective 9/21/94.

7.5(4) A certificate of registration for each greyhound shall be filed with the racing secretary at the racetrack where the greyhound is to be schooled, entered, or raced. All certificates of registration must be available at all times for inspection by the stewards.

7.5(5) All transfers of any title to a leasehold or other interest in greyhounds schooled, entered, or racing at any track under the jurisdiction of the commission shall be registered and recorded with the National Greyhound Association of Abilene, Kansas.

7.5(6) No title or other interest in any greyhound will be recognized by the commission until the title or other interest shall be evidenced by written instrument duly filed with and recorded by the National Greyhound Association of Abilene, Kansas, and certified copies filed with the commission upon request and the racing secretary at the track where the greyhound is to be schooled, entered, or raced. When a greyhound is leased, the lessee of the greyhound shall file a copy of the lease agreement with the racing secretary and, upon request, to the commission. The lease agreement shall include:

a. The name of the greyhound.

b. The name and address of the owner.

d. As each greyhound is weighed in there shall be an identification tag attached to its collar indicating the number of the race in which the greyhound is entered and its post position. This tag shall not be removed until the greyhound has been weighed out and blanketed.

e. The paddock judge shall not allow anyone to weigh in a greyhound for racing unless the person has a valid kennel owner's, trainer's, or assistant trainer's license issued by the commission.

f. The paddock judge shall carefully compare the identification card with the greyhound while in the paddock before post time.

g. Before leaving the paddock for the starting box, every greyhound must be equipped with a regulation muzzle and blanket. The muzzles and blankets used shall be approved by the paddock judge, who shall carefully examine them in the paddock before the greyhound leaves for the post.

h. The paddock judge shall keep on hand, ready for use, extra muzzles of all sizes, lead straps, and collars.

i. The paddock judge shall report all infractions of the rules and any irregularities to the board of stewards.

j. The paddock judge shall report all delays to the stewards.

7.9(7) *Duties of racing secretary.*

a. The racing secretary shall discharge all duties whether expressed or required by the rules of greyhound racing; report to the stewards as the case may demand, all violations of these rules and shall keep a complete record of all races.

b. The racing secretary is responsible for maintaining a file of all National Greyhound Association lease (or appropriate substitute) and ownership papers on greyhounds racing at the meeting. The racing secretary shall inspect all papers and documents dealing with owners and trainers, partnership agreements, appointments of authorized agents, and adoption of kennel names to be sure they are accurate, complete, and up to date. The racing secretary has the authority to demand the production of any documents or other evidence in order to be satisfied as to their validity and authenticity to ensure compliance with the rules. The racing secretary shall be responsible for the care and security of the papers while the greyhounds are located on licensee's property. Disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a greyhound filed with the racing secretary shall be available for public inspection.

c. The racing secretary shall receive all entries and declarations. Conditions of races shall not conflict with these rules and the racing secretary shall each day as soon as the entries have closed, have been compiled, and the declarations have been made, post in a conspicuous place an overnight listing of the greyhounds in each race. The racing secretary shall make every effort to ensure fairness and equal opportunity for all greyhound owners and kennel owners in the forming of all races.

d. The racing secretary shall not allow any greyhound to start in a race unless the greyhound is entered in the name of the legal owner and unless the owner's name appears on the registration papers or on a legal lease or bill of sale attached to the registration papers.

e. Assistant racing secretary. The association may employ an assistant racing secretary, who shall assist the racing secretary in the performance of duties and serve under the supervision of the racing secretary.

7.9(8) *Duties of starter.*

a. The starter shall give orders and take measures, not in conflict with the rules of greyhound racing, necessary to secure a fair start.

b. The greyhounds shall be started from a type of starting box approved by the commission and there shall be no start until, and no recall after, the doors of the starting box have opened.

c. The starter shall report causes of delay, if any should occur, to the stewards.

d. A false start, due to any faulty action of the starting box, break in the machinery, or other cause, is void, and the greyhounds may be started again as soon as practicable, or the race may be canceled at the discretion of the stewards.

7.9(9) *Duties of photo finish operator/timer.*

a. The photo finish operator/timer shall maintain the photo finish and timing equipment in proper working order and shall photograph each race.

b. The photo finish operator/timer shall be responsible for and declare the official time of each race. The time of the race shall be taken from the opening of the doors of the starting box.

c. Each association shall be required to install an automatic timing device approved by the commission. The timer shall use the time shown on the timing device as the official time of the race if the timer is satisfied that the timing device is functioning properly; otherwise, the timer shall use the time shown on the stopwatch.

7.9(10) *Commission veterinarian.*

a. The commission shall employ a graduate veterinarian licensed to practice in the state of Iowa at each race meeting as provided in Iowa Code section 99D.23. This veterinarian shall advise the commission and the stewards on all veterinary matters.

b. The commission veterinarian shall be on the grounds of the association at weigh-in time and during all racing hours. The veterinarian shall make an examination of the physical condition of each greyhound at weighing-in time.

c. The commission veterinarian shall observe each greyhound as it enters the lock-out kennel, examine it when it enters the paddock prior to the race, and recommend to the board of stewards that any greyhound deemed unsafe to race or physically unfit to produce a satisfactory effort in a race be scratched.

d. The commission veterinarian shall place any greyhound determined to be sick or have a communicable disease, or any greyhound deemed unsafe, unsound or unfit on a veterinarian's list which shall be posted in a conspicuous place available to all owners, trainers and officials.

e. Once a greyhound has been placed on the veterinarian's list it may be allowed to race only after it has been removed from the list by the commission veterinarian. The entry of any greyhound on the veterinarian's list may be accepted only after three calendar days from the placing of the greyhound on the veterinarian's list have elapsed.

f. The commission veterinarian shall have full access to each and every kennel where greyhounds are kenneled on the licensee's premises. The commission veterinarian shall inspect the general physical condition of the greyhounds, sanitary conditions of the kennels, segregation of female greyhounds in season, segregation of sick greyhounds, the types of medicine found in use, cruel and inhumane treatment, and any other matters or conditions which are brought to the attention of the commission veterinarian.

g. The commission veterinarian shall have supervision and control of the detention area for collection of samples for the testing of greyhounds for prohibited medication as also provided in Iowa Code section 99D.23. The commission may employ persons to assist the commission veterinarian in maintaining the detention area and collecting specimens.

7.14(3) If a greyhound bolts the course, or runs in the opposite direction during the running of the race, and in so doing, in the opinion of the stewards, interfered with any other greyhound in the race, the stewards shall declare it "No Race" and all moneys wagered shall be refunded; except when, in the opinion of the stewards, the interference clearly did not interfere with the outcome of the race.

7.14(4) If it appears that a greyhound may interfere with the running of the race because of failure to leave the box, because of an accident or for any other reason, any person under the supervision of the stewards stationed around the track may remove the greyhound from the track. However, for the purpose of the rule, that greyhound shall be considered a "starter."

7.14(5) All greyhounds must wear the regulation association muzzle and blanket while racing.

7.14(6) Muzzles and blankets must be carefully examined in the paddock by the paddock judge before the greyhounds leave for the starting box and again be examined by the patrol judge in view of the stewards and the public.

7.14(7) All greyhounds must be exhibited in the show paddock before post time of the race in which they are entered.

7.14(8) No race shall be called official unless the lure is in advance of the greyhounds at all times during the race and if at any time during the race, any greyhound or greyhounds catch or pass the lure, the stewards shall declare it "No Race" and all moneys shall be refunded.

7.14(9) The stewards shall closely observe the operation of the lure and hold the lure operator to strict accountability for any inconsistency of operation.

7.14(10) If a greyhound is left in the box when the doors of the starting box open at the start, there shall be no refund.

7.14(11) If a race is marred by jams, spills or racing circumstances other than accident to the machinery while a race is being run, and three or more greyhounds finish, the stewards shall declare the race finished; but if less than three greyhounds finish, the stewards shall declare it "No Race" and all moneys shall be refunded.

7.14(12) In the event the lure arm is not fully extended or fails to remain fully extended during the running of the race, the stewards may declare a "No Race" if, in their opinion, the position of the lure arm affected the outcome of the race. In the event the lure arm collapses to the rail during the running of the race, the stewards shall declare a "No Race" and all moneys wagered shall be refunded.

7.14(13) Any act of the owner, trainer or handler of a greyhound which would tend to prevent the greyhound from running its best and winning, if possible, shall mean suspension of all persons found guilty of complicity.

491—7.15(99D) Objections.

7.15(1) Every objection must be made by an owner or the authorized agent of the owner, by a trainer of some other greyhound engaged in the same race, or by an official. Objection must be made to the stewards, who may require that the objection be made in writing with a copy sent immediately to the commission.

7.15(2) The stewards may require a cash deposit of $200 to cover costs and expenses in determining an objection. The deposit posted herein may be forfeited if the objection should prove to be without foundation.

7.15(3) Any objection, unless otherwise provided, must be made within 72 hours after the race is run, and shall be determined by the stewards.

7.15(4) Rescinded IAB 8/17/94, effective 9/21/94.

7.15(5) The stewards must decide every objection pertaining to the race. From every decision an appeal in writing may be made to the commission within 48 hours of the time the objector has been officially informed of the decision.

7.15(6) Objection to any decision of the clerk of scales shall be made before the greyhounds leave the paddock for the start of the race.

7.15(7) Pending a decision on an objection, any money or prize to which the greyhound against which the objection is lodged would be entitled shall be withheld until the objection is determined.

491—7.16(99D) Simulcast. Rescinded IAB 3/6/91, effective 4/10/91.

These rules are intended to implement Iowa Code section 99D.7.

[Filed 4/5/85, Notice 2/27/85—published 4/24/85, effective 5/29/85]
[Filed emergency 9/4/85—published 9/25/85, effective 9/4/85]
[Filed emergency 10/20/86—published 11/19/86, effective 10/20/86]
[Filed 10/20/86, Notice 7/30/86—published 11/19/86, effective 12/24/86]*
[Filed emergency 12/23/86—published 1/14/87, effective 1/14/87]
[Filed 5/1/87, Notice 2/11/87—published 5/20/87, effective 6/24/87]
[Filed 6/11/87, Notice 4/8/87—published 7/1/87, effective 8/6/87]
[Filed 10/23/87, Notice 9/9/87—published 11/18/87, effective 12/23/87]
[Filed 5/13/88, Notice 3/9/88—published 6/1/88, effective 7/6/88]
[Filed emergency 9/1/88—published 9/21/88, effective 9/1/88]
[Filed 11/4/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]
[Filed emergency 12/19/88—published 1/11/89, effective 12/23/88]
[Filed 2/17/89, Notice 1/11/89—published 3/8/89, effective 4/12/89]
[Filed 2/16/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]
[Filed 10/24/90, Notice 8/22/90—published 11/14/90, effective 12/19/90]
[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed 12/6/91, Notice 10/16/91—published 12/25/91, effective 1/29/92]
[Filed 5/22/92, Notice 4/15/92—published 6/10/92, effective 7/15/92]
[Filed 9/11/92, Notice 7/22/92—published 9/30/92, effective 11/4/92]
[Filed emergency 3/2/93—published 3/31/93, effective 3/2/93]
[Filed 3/2/93, Notice 1/6/93—published 3/31/93, effective 5/5/93]
[Filed emergency 3/22/93—published 4/14/93, effective 3/22/93]◊
[Filed emergency 4/19/93—published 5/12/93, effective 4/19/93]
[Filed 4/19/93, Notice 3/3/93—published 5/12/93, effective 6/16/93]
[Filed 5/21/93, Notice 4/14/93—published 6/9/93, effective 7/14/93]
[Filed 7/23/93, Notice 5/12/93—published 8/18/93, effective 9/22/93]
[Filed 7/27/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
[Filed 11/17/95, Notice 10/11/95—published 12/6/95, effective 1/10/96]
[Filed 4/10/97, Notice 2/12/97—published 5/7/97, effective 6/11/97]
[Filed 8/22/97, Notice 7/16/97—published 9/10/97, effective 10/15/97]
[Filed 3/6/98, Notice 12/17/97—published 3/25/98, effective 4/29/98]
[Filed 1/20/00, Notice 11/17/99—published 2/9/00, effective 3/15/00]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

*Effective date of subrule 7.9(1) delayed 70 days by the Administrative Rules Review Committee at its 12/10/86 meeting. Delay lifted by the Administrative Rules Review Committee at its 1/7/87 meeting.
◊Two ARCs

9.2(5) *Single official appointment.* No official appointed to any meeting may hold more than one official position listed in 9.2(1) unless, in the determination of the stewards or commission, the holding of more than one appointment would not subject the official to a conflict of interests and duties in the two appointments.

9.2(6) *Stewards (for practice and procedure before the stewards and the racing commission, see 491—Chapter 4).*

a. General authority.

(1) General. The board of stewards for each racing meet shall be responsible to the commission for the conduct of the race meetings in accordance with the laws of this state and the rules adopted by the commission. The stewards shall only have authority to resolve conflicts or disputes between all other racing officials or licensees where the disputes are reasonably related to the conduct of a race, or races, and to punish violators of these rules in accordance with the provisions of these rules.

(2) Appointment of substitute. Should any steward be absent at race time, the other two stewards shall agree on the appointment of a deputy for the absent steward or if they are unable to agree on a deputy, then the racing secretary shall appoint a deputy for that race. If any deputy steward is appointed, the commission shall be notified immediately by the stewards.

(3) Attendance. All three stewards shall be present in the stand while the race is contested.

(4) Period of authority. The period of authority shall commence 30 days prior to the beginning of each racing meet and shall terminate 30 days after the end of each racing meet.

(5) Initiate action. Stewards may, from their own observations, take notice of misconduct or rule violations and institute investigations and compliance of possible rule violations.

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of racing during racing. They shall have the authority to charge any licensee for a violation of these rules, to conduct hearings and to impose fines or suspensions within the limits and procedures of the commission. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final for purposes of distribution of the pari-mutuel pool.

b. Duties of stewards.

(1) The laws of Iowa and the rules of racing supersede the conditions of a race and the regulations of a race meeting, and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the association.

(2) The stewards shall have the power to interpret the rules and to decide all questions not specifically covered by them.

(3) All questions pertaining to which their authority extends shall be determined by a majority of the stewards.

(4) The stewards shall have the power to regulate and control owners, trainers, grooms and other persons attendant on horses and also over all officials and licensed personnel of the meeting.

(5) The stewards shall have control over and access to all areas of the racetrack grounds.

(6) The stewards shall have the power to determine all questions arising with reference to entries and racing.

(7) Persons entering horses to run on licensed Iowa tracks agree in so doing to accept the decision of the stewards on any questions relating to a race or racing.

(8) The stewards shall have the power to punish for violation of the rules any person subject to their control and in their discretion to impose fines or suspensions or both for infractions.

(9) The stewards shall have the power to order the exclusion or ejection from all premises and enclosures of the association any person who is disqualified for corrupt practices on any race course in any country.

(10) The stewards shall have the power to call for proof that a horse is neither itself disqualified in any respect, nor nominated by, nor the property, wholly or in part, of a disqualified person, and in default of proof being given to their satisfaction, they may declare the horse disqualified.

(11) The stewards shall have the power at any time to order an examination, by person or persons they think fit, of any horse entered for a race or which has run in a race.

(12) The stewards shall take notice of any questionable conduct with or without complaint and shall investigate promptly and render a decision on every objection and on every complaint made to them.

(13) The stewards, in order to maintain necessary safety and health conditions and to protect the public confidence in horse racing as a sport, shall have the right to authorize a person or persons in their behalf to enter into or upon the buildings, barns, motor vehicles, trailers or other places within the grounds of a licensed racetrack, to examine same, and to inspect and examine the person, personal property, and effects of any person within such place, and to seize any illegal articles or any items as evidence found.

(14) Upon the finding of a violation of these rules, or an attempted violation, on the grounds of a licensed facility, the stewards may suspend the license of any person for one calendar year or racing season, whichever is greater, or they may impose a fine not to exceed $1,000 or both. All fines imposed by the stewards/judges shall be paid to the commission within ten days after the ruling is issued, unless otherwise ordered. They may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing commission or a board of stewards of any recognized meeting. They may also order the redistribution of purse payments where appropriate. All suspensions and fines must be reported to the commission. If the punishment so imposed is not sufficient, in the opinion of the stewards, they shall so report to the commission. All fines and suspensions imposed by the stewards shall be promptly reported to the racing secretary and commission.

c. Emergency authority.

(1) Substitute officials. When in an emergency any official is unable to discharge duties, the stewards may approve the appointment of a substitute. The stewards shall report the appointment immediately to the commission.

(2) Substitutes. The stewards have the authority in an emergency to designate a substitute trainer or driver for any horse.

(3) Excuse horse. In case of accident or injury to a horse or any other emergency deemed by the stewards before the start of any race, the stewards may excuse the horse from starting.

d. Investigations and decisions.

(1) Investigations. The stewards may, upon direction of the commission, conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses and shall submit a written report of every inquiry made by them to the commission.

(2) Cancel trifecta. Rescinded IAB 8/9/00, effective 9/13/00.

(3) Protest to patrol judge. A driver who intends to enter a protest must report to the patrol judge in the starting gate following the running of any race and, before the race is declared official, shall notify the patrol judge of the driver's intention immediately after the finish of the race. The driver then will proceed to the paddock judge's office to be available to talk to the stewards.

(4) Form reversal. The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer or other persons connected with the horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win or finish as near as possible to first.

(5) Fouls.

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and shall place any horse found to be disqualified behind others in the race with which it interfered or the stewards may place the offending horse last in the race.

2. Coupled entry. When a horse is disqualified under this rule and that horse was part of a coupled entry and, in the opinion of the stewards, the act which led to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may, at their discretion, disqualify the other part of the entry.

(6) Protests and complaints. The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and complaints and any rulings made by the stewards and file reports daily with the administrator.

1. Involving fraud. Protests involving fraud may be made by any person at any time to the stewards.

2. Not involving fraud. Protests arising out of the contesting of a race may be filed only by the owner of a horse, authorized agent, the trainer, or the driver of the horse in the race over which the protest is made. The protest must be made to the stewards before the race is declared official.

3. Prize money of protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race shall be paid to and held by the horsemen's accountant until the protest is decided.

4. Protest in writing. A protest, other than one arising out of the actual contesting of a race, must be in writing, signed by the complainant, and filed with the stewards one hour before post time of the race out of which the protest arises.

5. Frivolous protests. No person or licensee shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

9.2(7) *Racing secretary.*

a. General authority. The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due and the recording of racing results. The racing secretary shall permit no person other than licensed racing officials to enter the racing secretary's office or work areas until such time as all entries are closed, drawn, or smoked. Exceptions to this rule must be approved by the stewards.

(1) Minimum purse. Thirty days prior to the opening of a race meeting, the association shall present to the commission for approval the proposed purse structure for the race meeting, including the minimum purse to be offered. Any contract with an organization representing the horsemen shall also be presented for commission approval at this time.

(2) Purse supplements for registered Iowa-bred horses. The commission shall also approve the proposed plan for purse supplements for the owners of registered Iowa-bred horses to be funded by the breakage as provided in Iowa Code section 99D.12.

b. Conditions. The secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers and the commission and be posted in the racing secretary's office. Corrections to the conditions must be made within 24 hours of publication.

c. Posting of entries. Upon the completion of the draw each day, the race secretary shall post a list of entries in a conspicuous location in the race office and make the list available to the media.

d. Stakes and entrance money records. The race secretary shall be caretaker of the permanent records of all stakes, entrance moneys and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.

e. Winnings—all inclusive. For the purpose of the setting of conditions by the race secretary, winnings shall be considered to include all moneys and prizes won up to the time when entries close, but winnings on the closing date of eligibility shall not be considered.

f. Cancellation of a race. The secretary has the authority to withdraw, cancel or change any race which has not been closed. In the event the canceled race is a stakes race, all subscriptions and fees paid in connection with the race shall be refunded.

g. Coggins test or equine infectious anemia. The racing secretary shall ensure that all horses have a current negative Coggins test or negative equine infectious anemia test. The racing secretary shall report all expired certificates to the board of stewards.

h. Rejection of declaration.

(1) The race secretary may reject the declaration on any horse whose eligibility certificate was not in possession of the race secretary on the date the condition book is published.

(2) The race secretary may reject the declaration on any horse whose past performance indicates that the horse would be below the competitive level of other horses declared, provided the rejection does not result in a race being canceled.

i. Eligibility certificates. The race secretary will receive and keep the eligibility certificate of horses competing at the racetrack or stabled on the grounds of member tracks and to return same to the owner of a horse or the owner's representative upon request.

j. Declaration blanks. The race secretary will examine all declaration blanks to verify all information set forth therein.

k. Verify eligibility. The race secretary will check the eligibility of all horses drawn in to race and verify the horses' eligibility with the stewards/judges.

l. Registration. The racing secretary shall be responsible for the care and security of all registrations and supporting documents submitted by the trainer while the horses are located on licensee's property. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership or lease of a horse filed with the racing secretary shall be available for public inspection.

9.2(8) *Paddock judge.*

a. General authority. The paddock judge shall:

(1) Be in charge of the paddock and shall have general responsibility for the inspection of horses and for the equipment used.

(2) Attempt to maintain consistency in the use of equipment on individual horses.

(3) Supervise paddock gate men.

b. Duties.

(1) Require that a farrier be in the paddock prior to each race to ensure that all horses are properly shod.

(2) Exclude from the paddock all those persons who have no immediate business with the horses entered in a race and report rule violations in the paddock area to the stewards.

(3) Get the fields on the racetrack for post parades.

(4) Properly check in and check out horses and drivers.

(5) Immediately notify the stewards of anything that could in any way change, delay, or otherwise affect the racing program.

(6) Report to stewards any observed cruelty to a horse.

9.2(9) *Horse identifier.*

a. General authority. The horse identifier shall be present for each race and shall inspect each horse prior to its departure from the paddock to the post for identification to include tattoo number, color, and any markings.

b. Report violations. Any discrepancy detected in the tattoo number, color or markings of a horse shall be reported immediately to the paddock judge, who shall in turn report same forthwith to the stewards.

9.2(10) *Clerk of the course.* The clerk of the course shall be responsible for:

a. Keeping and verifying the stewards/judges' book and eligibility certificates provided by the U.S.T.A./C.T.A. and record therein all required information:

(1) Names and addresses of owners;

(2) The standard symbols for medications, where applicable;

(3) Notations of placing, disqualifications and claimed horses;

(4) Notations of scratched or ruled out horses;

(5) Returning the eligibility certificate to the horse's owner or the owner's representative after the race, when requested;

(6) Notifying owners and drivers of penalties assessed by the officials;

(7) Assisting in drawing post positions, if requested; and

(8) Maintaining the stewards/judges' list.

b. Reserved.

9.2(11) *Starter.*

a. *General authority.* The starter is responsible to provide a fair start for each race.

b. *Violations.* The starter shall report to the stewards any violations of these rules occurring in the starting of a race.

c. *Disciplinary action.* The official starter may recommend fines or suspension of the licenses of drivers for any violations of these rules from the formation of the parade until the word "go" is given to the stewards/judges.

9.2(12) *Timer.*

a. *General authority.* Each association shall provide for each race an official timer who shall occupy the timer's stand or other appropriate place to observe the contesting of each race. The official timer shall accurately record the time elapsed between the start and finish of each race. The chief timer shall sign the stewards' book for each race verifying the correctness of the record.

b. *Timing procedure.* The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line. The time of the leading horse at the quarter, half, three-quarters and the finish shall be taken.

c. *Timing races.*

(1) In every race, the time of each heat shall be accurately recorded by two timers or an approved electrical timing device, in which case, there shall be one timer.

(2) Times of heats shall be recorded in minutes, seconds and fifths of a second.

(3) Immediately following each heat, the elapsed time of the heat shall be publicly announced or posted, or both, on the totalizator board.

(4) No unofficial timing shall be announced, posted or entered in the official record.

9.2(13) *Patrol judges.*

a. *General authority.* An association may employ patrol judges who shall observe the contesting of the race and report the following to the stewards:

(1) Violation of the racing rules.

(2) Violation of the rules of decorum.

(3) Lameness or unfitness of any horse.

(4) Lack of proper racing equipment.

(5) Any action on the track which could improperly affect the result of a race.

b. *Duty stations.* Each patrol judge shall have a duty station assigned by the stewards.

9.2(14) *Placing judges.*

a. General authority. It is the duty of the placing judges to determine the winner of each race and the order of finish for each of the remaining horses in the race. In case of a difference of opinion among the judges, the majority opinion shall govern. In determining places at the finish of a race, the placing judges shall consider only the noses of the placing horses.

b. Corrections. The placing judges, with approval of the stewards, may correct errors in their determination of the placing of horses at the finish before the display of the official sign, or if the official's sign has been displayed in error, after that display. If the display is in error, no person shall be entitled to any proceeds of the pari-mutuel pool on account of the error.

c. The stewards' decision on the race shall be final.

9.2(15) *Commission veterinarians.*

a. The commission shall employ graduate veterinarians licensed to practice in the state of Iowa at each race meeting as provided in Iowa Code section 99D.23. The veterinarians shall advise the commission and the stewards on all veterinary matters.

b. The commission veterinarians shall have supervision and control of the detention barn for the collection of test samples for the testing of horses for prohibited medication as provided in Iowa Code sections 99D.23 and 99D.25. The commission may employ persons to assist the commission veterinarians in maintaining the detention barn area and collecting test samples.

c. The commission veterinarians shall not buy or sell any horse under their supervision; shall not wager on a race under their supervision; and shall not be licensed to participate in racing in any other capacity.

d. Prerace examination. The stewards or commission veterinarians may request that any horse entered in a race undergo an examination on the day of the race to determine the general fitness of the horse for racing. During the examination, all bandages shall be removed by the groom upon request and the horse may be exercised outside the stall to permit the examiner to determine the condition of the horse's legs and feet. The examining veterinarian shall report any unsoundness in a horse to the stewards.

e. Inspection prior to and following a race. All of the horses in a race shall be inspected during warm-ups and in the paddock by a commission veterinarian. After the finish of a race, the veterinarian shall observe the horses upon their leaving the track.

f. The commission veterinarian shall place any horse determined to be sick or too unsafe, unsound or unfit to race on a veterinarian's list which shall be posted in a conspicuous place available to all owners, trainers, and officials.

g. A horse placed on the veterinarian's list may be allowed to enter only after it has been removed from the list by the commission veterinarian. Requests for the removal of any horse from the veterinarian's list will be accepted only after three calendar days from the placing of the horse on the veterinarian's list have elapsed. Removal from the list will be at the discretion of the commission veterinarian and the commission veterinarian may require satisfactory workouts or examinations to adequately demonstrate that the problem that caused the horse to be placed on the list has been rectified.

h. The commission veterinarians shall perform the duties and responsibilities regarding:

(1) The administration of lasix and phenylbutazone;

(2) Postmortem examination on all horses which have expired or been euthanized on racetrack grounds; and

(3) Receipt of veterinary reports as required by Iowa Code section 99D.25.

9.2(16) *Driver room custodian.* The driver room custodian shall have the following duties:

a. Maintain order, decorum and cleanliness in the driver's room.

b. Ensure that no person other than representatives of the commission, association, and drivers are admitted to the driver's room on a racing day except by permission of the stewards and ensure that no unauthorized personnel are permitted in the driver's room after the final race on racing days.

c. Ensure that drivers are neat in appearance and properly attired when they leave the driver's room to drive in a race.

d. Report any rule violations within the driver's room to stewards.

e. Assign to drivers a locker capable of being locked for the use of the driver in storing clothing, equipment and personal effects.

9.2(17) *Licensed charter.* The charting of races is mandatory and the track shall employ a licensed charter from the U.S.T.A.

491—9.3(99D) Trainer and driver responsibilities.

9.3(1) *Trainer.*

a. *Responsibility.*

(1) Absolute insurer. Trainers are responsible for and are the absolute insurers of the condition of the horses in their care and custody and for the conditions and contents of stalls, tack rooms, feed rooms, and other areas which have been assigned them by the association. Trainers are the absolute insurers of the condition of the horses in their care and custody during the race and are liable for the presence of any drug, medication, or any other prohibited substance in the horse during the race. A trainer whose horse has been claimed remains responsible for the horse under this rule until after the collection of required urine or blood specimens. The licensed trainer of a horse found to have been administered a medication, drug, or foreign substance in violation of these rules or Iowa Code chapter 99D shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering; and, failing to prove freedom from negligence, shall be subject to disciplinary action.

(2) The assistant trainer, groom or any other person having immediate care and custody of a horse found to have been administered a medication, drug, or foreign substance in violation of these rules or Iowa Code chapter 99D, found negligent in guarding or protecting the horse from tampering shall be subject to disciplinary action.

(3) Licensed trainers shall maintain the barn area assigned to them in a clean, neat and sanitary condition at all times and ensure that fire prevention rules are strictly observed in those areas.

(4) Report of illness or sex alteration. Trainers shall report immediately to the stewards and the commission veterinarian any illness in a horse entrusted to their care presenting unusual or unknown symptoms. Any alteration in the sex of a horse must be reported and noted by the trainer to the racing secretary or horse identification office immediately, and that office must note the same on the eligibility certificate.

(5) On a form provided by track security, trainers shall register with track security the names of all employees. This form must be presented to track security not later than 24 hours after the arrival of any personnel. All changes must be made not later than 24 hours after taking place.

(6) Trainers shall register with the racing secretary, on a form provided by the racing secretary, all horses which are intended to race at the meeting stating their names, age, sex, color, breeding, and disclosing any and all person(s) having any interest in said horse(s). Any change in ownership shall be reported immediately to, and approved by, the commission representative and recorded by the racing secretary. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a horse, shall be attached to the registration certificate for the horse and filed with the racing secretary. This registration must be presented to the racing secretary immediately upon arrival of the trainer and all changes must be reported within 24 hours after taking place.

(7) Trainer at paddock. A trainer or assistant must be present with the horse in the paddock and shall supervise the preparation of the horse to race unless the stewards permit a substitute trainer to perform those duties. Every trainer who brings a horse to the paddock warrants that the horse is qualified for the race, is ready to race and is in physical condition to exert its best efforts, and is entered with the intention to win.

(8) Paddock time. A trainer shall present the horse in the paddock at the time so designated by the steward prior to post time before the race in which the horse is entered. Except for warm-up trips, no horse shall leave the paddock until called to the post.

(9) Coggins test certificate or equine infectious anemia. Each trainer shall maintain for each horse under the trainer's care a valid certificate indicating that the horse has a negative Coggins test or a negative test for equine infectious anemia and attach it to the horse's eligibility certificate. The test must have been conducted within the previous 12 months and must be repeated upon expiration.

(10) The transfer of ownership of a horse or the change of trainers must be presented to the stewards in writing and approved by the stewards before any entry is made reflecting the change. The transfer or attempt to transfer a horse to circumvent a commission rule or order is prohibited.

(11) Three-day absence. Trainers shall not be absent from their stable or from the association premises where their horses are racing for more than three full days unless they have delegated responsibility for the horses in their care to another licensed trainer. In the event of a delegation, the temporary trainer shall accept, in writing and in the presence of the stewards, the responsibility for the horses.

b. Prohibited acts.

(1) Entry ineligible. No trainer shall enter or start a horse in any race if the horse is ineligible under these rules or the laws of this state related to racing.

(2) Employees.

1. Unlicensed veterinarian. No trainer shall employ a veterinarian who is not licensed by both this state's veterinary regulatory authority and the commission.

2. Minor. No trainer shall employ any person under the age of 16. Persons under the age of 16 may be allowed to work for their parents if one of their parents is present during working hours.

(3) Training for suspended persons. No trainer shall train or be responsible for any horse that is wholly or partly owned by a person under suspension by the stewards or the commission.

9.3(2) *Driver.*

a. Driving duty. Every driver shall participate when programmed unless excused by the stewards.

b. Driver suspension.

(1) Offenses involving fraud. Suspension of a license for an offense involving fraud or deception of the public or another participant in racing shall begin immediately after the ruling unless otherwise ordered by the stewards or commission.

(2) Offenses not involving fraud. Suspension for an offense not involving fraud or deception of the public or another participant in racing shall begin on the third day after the ruling or at the stewards' discretion subject to the following. Where the penalty is for a driving violation and does not exceed five days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five days or less, but the suspension will be extended one day for each date the driver drives.

(3) Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission shall be deemed a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the commission why the withdrawal should not be deemed frivolous.

c. Driving colors. Drivers must wear distinguishing colors and clean white pants and shall not be allowed to start in a race or other public performance unless, in the opinion of the stewards, they are properly dressed. No person shall drive a horse during the time when colors are required on the racetrack unless wearing a protective helmet, painted as registered or of compatible colors, and having a chin strap in place. The helmet shall be approved by the stewards.

d. Driver betting. No driver, trainer, or owner of a horse shall bet or cause any other person to bet on their behalf on any other horse in any race in which they shall start a horse driven, trained, or owned by them, or which they in any way represent or handle or in which they have an interest. No such person shall participate in exacta, quinella or other multiple-pool wagering on a race in which such horse starts other than the daily double.

491—9.4(99D) Conduct of races.

9.4(1) *Horses ineligible.* Any horse ineligible to be entered for a race, or ineligible to start in any race, that competes in that race may be disqualified and the stewards may discipline the persons responsible for that horse competing in that race. A horse is ineligible to start a race when:

a. The horse is not stabled on the grounds of the licensed association by the time so designated by the stewards, or

b. The U.S.T.A. or C.T.A. eligibility certificate has not been examined by the racing secretary, or horse identifier, and determined to be proper and in order, or

c. The horse is not fully identified by an official tattoo on the inside of the upper lip, or

d. Report of illness. Each veterinarian shall report immediately to the stewards and the commission veterinarian any illness in a horse entrusted to the veterinarian's care presenting unusual or unknown symptoms.

e. Employees. Practicing veterinarians may have employees working under their direct supervision licensed as "veterinary assistants" or "veterinary technicians." Activities of these employees shall not include direct treatment or diagnosis of any racing animal. A practicing veterinarian must be present if an employee is to have access to injection devices or injectables.

f. Equine dentistry. Equine dentistry is considered a function of veterinary practice by the Iowa veterinary practice Act. Any dental procedures performed at the racetrack must be performed by a licensed veterinarian or a licensed veterinary assistant.

These rules are intended to implement Iowa Code chapter 99D.

[Filed emergency 5/17/85—published 6/5/85, effective 5/17/85]
[Filed emergency 10/20/86—published 11/19/86, effective 10/20/86]
[Filed 3/6/87, Notice 1/14/87—published 3/25/87, effective 4/29/87]
[Filed 10/23/87, Notice 9/9/87—published 11/18/87, effective 12/23/87]
[Filed emergency 5/13/88 after Notice 4/6/88—published 6/1/88, effective 5/13/88]
[Filed 5/13/88, Notice 4/6/88—published 6/1/88, effective 7/6/88]
[Filed 12/21/88, Notice 9/21/88—published 1/11/89, effective 2/15/89]
[Filed emergency 1/19/89—published 2/8/89, effective 1/20/89]
[Filed 3/15/89, Notice 2/8/89—published 4/6/89, effective 5/10/89]
[Filed emergency 6/23/89—published 7/12/89, effective 6/23/89]
[Filed 9/26/89, Notice 7/12/89—published 10/18/89, effective 11/22/89]
[Filed 2/16/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]
[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed 6/18/99, Notice 5/5/99—published 7/14/99, effective 8/18/99]
[Filed 1/20/00, Notice 11/17/99—published 2/9/00, effective 3/15/00]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

(2) Substitute jockeys. The stewards have the authority in an emergency to place a substitute jockey on any horse in the event the trainer does not do so. Before using that authority, the stewards shall in good faith attempt to inform the trainer of the emergency and to afford the trainer the opportunity to appoint a substitute jockey. If the trainer cannot be contacted, or if the trainer is contacted but fails to appoint a substitute jockey and to inform the stewards by 30 minutes prior to post time, then the stewards may appoint under this rule.

(3) Substitute trainer. The stewards have the authority in an emergency to designate a substitute trainer for any horse.

(4) Excuse horse. In case of accident or injury to a horse or any other emergency deemed by the stewards before the start of any race, the stewards may excuse the horse from starting.

(5) Exercise authority. No licensee may exercise a horse on the track between races unless upon the approval of the stewards.

(6) At the discretion of the stewards, any horse(s) precluded from having a fair start may be declared a nonstarter, and any wagers involving said horse(s) may be ordered refunded.

d. Investigations and decisions.

(1) Investigations. The stewards may, upon direction of the commission, conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses and submit a written report of every such inquiry made by them to the commission.

(2) Cancel trifecta. Rescinded IAB 8/9/00, effective 9/13/00.

(3) Form reversal. The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer or other persons connected with the horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win or finish as near as possible to first.

(4) Fouls.

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and shall place any horse found to be disqualified behind others in the race with which it interfered or may place the offending horse last in the race.

2. Coupled entry. When a horse is disqualified under this rule and that horse was a part of a coupled entry and, in the opinion of the stewards, the act which led to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may, at their discretion, disqualify the other part of the entry.

3. Jockey guilty of foul. The stewards may discipline any jockey whose horse has been disqualified as a result of a foul committed during the running of a race.

(5) Protests and complaints. The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and complaints and any rulings made by the stewards and file reports daily with the commission.

1. Involving fraud. Protests involving fraud may be made by any person at any time to the stewards.

2. Not involving fraud. Protests, except those involving fraud, may be filed only by the owner of a horse, authorized agent, the trainer, or the jockey of the horse in the race over which the protest is made. The protest must be made to the clerk of the scales or to the stewards before the race is declared official. If the placement of the starting gate is in error, no protest may be made, unless entered prior to the start of the race.

3. Protest to clerk of scales. A jockey who intends to enter a protest to the clerk of scales following the running of any race, and before the race is declared official, shall notify the clerk of scales of this intention immediately upon the arrival of the jockey at the scales or a person designated by the stewards to be notified.

4. Prize money of protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race shall be paid to and held by the horsemen's accountant until the protest is decided.

5. Protest in writing. A protest, other than one arising out of the actual running of a race, must be in writing, signed by the complainant, and filed with the stewards one hour before post time of the race out of which the protest arises.

6. Frivolous protests. No person or licensee shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

10.2(7) *Racing secretary.*

a. General authority. The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due, and recording of racing results. The racing secretary shall permit no person other than licensed racing officials to enter the racing secretary's office or work areas until such time as all entries are closed, drawn, smoked, etc. Exceptions to this rule must be approved by the stewards.

(1) Minimum purse. Thirty days prior to the opening of a race meeting, the association shall present to the commission for approval the proposed purse structure for the race meeting including the minimum purse to be offered. Any contract with an organization representing the horsemen shall also be presented for commission approval at this time.

(2) Purse supplements for Iowa-bred horses. The commission shall also approve the proposed plan for purse supplements for the owners of Iowa-bred horses to be funded by the breakage as provided in Iowa Code section 99D.12.

b. Conditions. The secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers and the commission. Unless otherwise provided by the conditions, the winner of a certain sum means the winner of a single race of that sum. Corrections to the conditions must be made within 24 hours of publication.

c. Posting of entries. Upon the closing of entries each day, the secretary shall post a list of entries in a conspicuous location in the office of the secretary and furnish that list to local newspaper, radio and television stations.

d. Stakes and entrance money records. The secretary shall be caretaker of the permanent records of all stakes, entrance moneys and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.

e. Record of racing. The secretary shall no later than the day following each race, attach or endorse on the registration certificate of each horse winning in any race the fact of that winning performance and the distance, the date of the race, and the type or conditions of the race.

f. Naming/engaging of riders. Riders must be named at the time of entry or no later than scratch time. Before naming any rider, the trainer, owner or other person authorized must first engage the services of the rider and state on the entry or to the clerk of scales whether it is a first or second call. Riders properly engaged must fulfill their requirements as provided in 10.4(2)*"h."*

g. Handicapping. The secretary, or a handicapper assigned by the secretary, shall assign the weight to be carried by each horse in a handicap when weights are not stated in the condition of the race:

(1) Scale of weights for age,

(2) Sex allowances. In all races except handicaps and races where the conditions expressly state to the contrary, two-year-old fillies are allowed three pounds; mares three years old and upward are allowed five pounds before September 1 and three pounds thereafter.

h. Penalties not cumulative. Penalties and weight allowances are not cumulative unless so declared in the conditions of a race by the secretary.

i. Winnings.

(1) All inclusive. For the purpose of the setting of conditions by the secretary, winnings shall be considered to include all moneys and prizes won up to the time of the start of a race, including those races outside the United States. Foreign winnings shall be determined on the basis of the normal rate of exchange prevailing on the day of the win.

(2) Winnings considered from January 1. Winnings during the year shall be reckoned by the secretary from the preceding January 1.

(3) Winner of a certain sum. Winner of a certain sum means the winner of a single race of that sum, unless otherwise expressed in the condition book by the secretary. In determining the net value to the winner of any race, the sums contributed by its owner or nominator shall be deducted from the amount won. In all stakes races, the winnings shall be computed on the value of the gross earnings.

(4) Winner's award. Unless the conditions of a race provide otherwise, the entrance money, starting and subscription fees and other contributions shall go to the winner of the race. If for any reason a race is not run, those entrance, starting and subscription fees shall be returned to the nominators.

j. Cancellation of a race. The secretary has the authority to withdraw, cancel or change any race which has not been closed. In the event the canceled race is a stakes race, all subscriptions and fees paid in connection with the race shall be refunded.

k. Coggins test. The racing secretary shall ensure that all horses have a current negative Coggins test. The racing secretary shall report all expired certificates to the board of stewards.

l. Registration. The racing secretary shall be responsible for the care and security of all registrations and supporting documents submitted by the trainer while the horses are located on licensee's property. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership or lease of a horse filed with the racing secretary shall be available for public inspection.

10.2(8) *Paddock judge.*

a. General authority. The paddock judge shall:

(1) Supervise the assembly of horses in the paddock no later than 15 minutes before the scheduled post time for each race;

(2) Maintain a written record of all equipment, inspect all equipment of each horse saddled and report any change thereof to the stewards;

(3) Prohibit any change of equipment without the approval of the stewards;

(4) Ensure that the saddling of all horses is orderly, open to public view, free from public interference, and that horses are mounted at the same time, and leave the paddock for the post in proper sequence;

(5) Supervise paddock schooling of all horses approved for such by the stewards;

(6) Report to the stewards any observed cruelty to a horse;

(7) Ensure that only properly authorized persons are permitted in the paddock; and

(8) Report to the stewards any unusual or illegal activities.

b. Paddock judge's list.

(1) The paddock judge shall maintain a list of horses which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing.

(2) At the end of each day, the paddock judge shall provide a copy of the list to the stewards.

(3) To be removed from the paddock judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the horse is capable of performing safely in the paddock.

10.2(9) *Horse identifier.*

a. General authority. The horse identifier shall:

(1) When required, ensure the safekeeping of registration certificates and racing permits for horses stabled or racing on association grounds;

(2) Inspect documents of ownership, eligibility, registration or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting;

(3) Examine every starter in the paddock for sex, color, markings and lip tattoo, for comparison with its registration certificate to verify the horse's identity; and

(4) Supervise the tattooing or branding for identification of any horse located on association grounds.

b. Report violations. The horse identifier shall report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.

10.2(10) *Clerk of scales.* The clerk of scales shall:

a. Verify the presence of all jockeys in the jockey's room at the appointed time;

b. Verify that all such jockeys have a current jockey's license issued by the commission;

c. Verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the stewards immediately;

d. Oversee the security of the jockey's room including the conduct of the jockeys and their attendants;

e. Promptly report to the stewards any infraction of the rules with respect to weight, weighing, riding equipment or conduct;

f. Record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day;

g. Maintain the record of applicable winning races on all apprentice certificates at the meeting;

h. Release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet; and

i. Assume the duties of the jockey room custodian in the absence of such employee.

10.2(11) *Starter.*

a. General authority. The starter shall:

(1) Have complete jurisdiction over the starting gate, the starting of horses and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start;

(2) Appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate. In emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters;

(3) Assign the starting gates stall positions to assistant starters and notify the assistant starters of their respective stall positions more than ten minutes before post time for the race;

h. The commission veterinarians shall perform the duties and responsibilities regarding:

(1) The administration of Lasix and phenylbutazone;

(2) Postmortem examination on all horses which have expired or been euthanized on racetrack grounds; and

(3) Receipt of veterinary reports as required by Iowa Code section 99D.25.

10.2(16) *Jockey room custodian.* The jockey room custodian shall:

a. Supervise the conduct of the jockeys and their attendants while they are in the jockey room;

b. Keep the jockey room clean and safe for all jockeys;

c. Ensure all jockeys are in the correct colors before leaving the jockey room to prepare for mounting their horses;

d. Keep a daily film list as dictated by the stewards and have it displayed in plain view for all jockeys;

e. Keep a daily program displayed in plain view for the jockeys so they may have ready access to mounts that may become available;

f. Keep unauthorized persons out of the jockey room;

g. Report to the stewards any unusual occurrences in the jockey room;

h. Assist the clerk of scales as required;

i. Supervise the care and storage of racing colors; and

j. Assign to each jockey a locker capable of being locked for the use of the jockey in storing clothing, equipment and personal effects.

10.2(17) *Outrider.*

a. The licensee shall appoint a minimum of two outriders on the main track for each race of a performance and during workouts. The licensee shall appoint one outrider on the training track during all workouts. Outriders must be neat in appearance and must wear approved helmets with chin straps securely fastened and approved safety vests while on the main track or training track.

b. The outriders shall:

(1) Accompany the field of horses from the paddock to the post.

(2) Ensure the post parade is conducted in an orderly manner, with all jockeys and pony riders conducting themselves in a manner in conformity with the best interests of racing as determined by the board of stewards.

(3) Assist jockeys with unruly horses.

(4) Render assistance when requested by a jockey.

(5) Be present during morning workouts to assist exercise riders as required by regulations.

(6) Promptly report to the stewards any unusual conduct which occurs while performing the duties of an outrider.

(7) Ensure individuals using the track(s) are appropriately licensed.

491—10.3(99D) Track licensees' responsibilities.

10.3(1) *Stalls.* The licensee shall ensure that racing animals are stabled in individual box stalls; that the stables and immediate surrounding area are maintained in approved sanitary condition at all times; that satisfactory drainage is provided; and that manure and other refuse are kept in separate boxes or containers at locations distant from living quarters and promptly and properly removed.

10.3(2) *Paddocks and equipment.* The licensee shall ensure that paddocks, starting gates and other equipment subject to contact by different animals be kept in a clean condition and free of dangerous surfaces.

10.3(3) *Receiving barn and stalls.* Each licensee shall provide a conveniently located receiving barn or stalls for the use of horses arriving during the meeting. The barn shall have adequate stable room and facilities, hot and cold water, and stall bedding. The licensee shall employ attendants to operate and maintain the receiving barn or stalls in a clean and healthy condition.

10.3(4) *Fire protection.* The licensee shall develop and implement a program for fire prevention on licensee premises in accordance with applicable state fire codes. The licensee shall instruct employees working on licensee premises in procedures for fire prevention and evacuation. The licensee shall, in accordance with state fire codes, prohibit the following:

a. Smoking in horse stalls, in feed and tack rooms, and in the alleyways.

b. Sleeping in feed rooms or stalls.

c. Open fires and oil- or gasoline-burning lanterns or lamps in the stable area.

d. Leaving electrical appliances in use unattended or in unsafe proximity to walls, beds or furnishings.

e. Keeping flammable materials, including cleaning fluids or solvents, in the stable area.

10.3(5) *Horsemen's bookkeeper.*

a. General authority. The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the licensee and commission may prescribe.

b. Records.

(1) The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

(2) The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements, and registrations of authorized agents.

(3) All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the licensee.

(4) All records of the horsemen's bookkeeper including records of accounts and moneys and funds kept on deposit are subject to inspection by the commission at any time.

c. Moneys and funds on account.

(1) All moneys and funds on account with the horsemen's bookkeeper shall be maintained:

1. Separate and apart from moneys and funds of the licensee;

2. In a trust account designated as "horsemen's trust account"; and

3. In an account insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(2) The horsemen's bookkeeper shall be bonded in accordance with commission stipulations.

(3) The amount of purse money earned is credited in the currency of the jurisdiction in which the race was run. There shall be an appeal for any exchange rate loss at the time of transfer of funds from another jurisdiction.

d. Payment of purses.

(1) The horsemen's bookkeeper shall receive, maintain, and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, all applicable taxes and other moneys that properly come into possession in accordance with the provisions of commission rules.

(2) The horsemen's bookkeeper may accept moneys due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.

(3) The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning such purse money.

(4) The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, jockey fees and purchase money in claiming races, and all applicable taxes, upon request, within 48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory.

(5) Absent a prior request, the horsemen's bookkeeper shall disburse moneys to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such races have cleared the drug testing laboratory as reported by the stewards, and further provided that no protest or appeal has been filed with the stewards or the commission.

(6) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper shall disburse the purse within 48 hours of receipt of dismissal or a final nonappealable order disposing of such protest or appeal.

e. No portion of purse money other than jockey fees shall be deducted by the licensee for itself or for another, unless so requested in writing by the person to whom purse moneys are payable or by the person's duly authorized representative. The horsemen's bookkeeper shall mail to each owner at the close of each race meeting a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting the owner's racing account.

10.3(6) *Starting gate.*

a. During racing hours a licensee shall provide at least two operable padded starting gates that have been approved by the commission.

b. During designated training hours a licensee shall make at least one starting gate and qualified starting gate employee available for schooling.

c. If a race is started at a place other than in a chute, the licensee shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

10.3(7) *Distance markers.*

a. A licensee shall provide and maintain starting point markers and distance poles in a size and position clearly seen from the steward's stand.

b. The starting point markers and distance poles must be marked as follows:

1/4 poles	red and white horizontal stripes
1/8 poles	green and white horizontal stripes
1/16 poles	black and white horizontal stripes
220 yards	green and white
250 yards	blue
300 yards	yellow
330 yards	black and white
350 yards	red
400 yards	black
440 yards	red and white
550 yards	black and white horizontal stripes
660 yards	green and white horizontal stripes
770 yards	black and white horizontal stripes
870 yards	blue and white horizontal stripes

10.3(8) *Detention enclosure.* Each licensee shall maintain a detention enclosure for use by the commission in securing, from horses who have run in a race, samples of urine, saliva, blood or other bodily substances or tissues for chemical analysis. The enclosure shall include a wash rack, commission veterinarian office, a walking ring, at least four stalls, workroom for the sample collectors with hot and cold running water and glass observation windows for viewing of the horses from the office and workroom. An owner, trainer, or designated representative, licensed by the commission, shall be with a horse in the detention barn at all times.

10.3(9) *Ambulance.* A licensee shall maintain, on the grounds during every day when its track is open for racing or exercising, an ambulance for humans and an ambulance for horses, each equipped according to prevailing standards and staffed by medical doctors, paramedics, or other personnel trained to operate them. When an ambulance is used for transfer of a horse or patient to medical facilities, a replacement ambulance must be furnished by the track to comply with this rule.

10.3(10) *Helmets and vests.* The licensee shall not allow any person to exercise any horse on association grounds unless that person is wearing a protective helmet and safety vest of a type approved by the commission.

10.3(11) *Racetrack.*

a. The surface of a racetrack, including cushion, subsurface, and base, must be designed, constructed, and maintained to provide for the safety of the jockeys and racing animals.

b. Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

c. A licensee shall provide an adequate drainage system for the racetrack.

d. A licensee shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The licensee shall provide backup equipment for maintaining the track surface. A licensee that conducts races on a turf track shall:

(1) Maintain an adequate stockpile of growing medium; and

(2) Provide a system capable of adequately watering the entire turf course evenly.

e. Rails.

(1) Racetracks, including turf tracks, shall have inside and outside rails, including gap rails, designed, constructed, and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the commission prior to the first race meeting at the track.

(2) The top of the rail must be at least 38 inches but not more than 44 inches above the top of the cushion. The inside rail shall have no less than a 24-inch overhang with a continuous smooth cover.

(3) All rails must be constructed of materials designed to withstand the impact of a horse running at a gallop.

10.3(12) *Patrol films or videotapes.* Each licensee shall provide:

a. A videotaping system approved by the commission. Cameras must be located to provide clear, panoramic head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review, shall be provided in the stewards' stand. The location and construction of video towers must be approved by the commission.

b. One camera, designated by the commission, to videotape the prerace loading of all horses into the starting gate and shall continue to videotape them until the field is dispatched by the starter.

c. One camera, designated by the commission, to videotape the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted, and the equipment has been removed from the horse.

d. At the discretion of the stewards, video camera operators to videotape the activities of any horses or persons handling horses prior to, during, or following a race.

e. That races run on an oval track be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

f. Upon request to the commission, without cost, a copy of a videotape of a race.

g. Videotapes recorded prior to, during, and following each race to be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

h. A viewing room in which, on approval by the stewards, an owner, trainer, jockey, or other interested individual may view a videotape recording of a race.

i. Following any race in which there is an inquiry or objection, the videotaped replays of the incident in question which were utilized by the stewards in making their decision. The licensee shall display to the public these videotaped replays on designated monitors.

10.3(13) *Communications.*

a. Each licensee shall provide and maintain in good working order a communication system between the:

(1) Stewards' stand;
(2) Racing office;
(3) Tote room;
(4) Jockeys' room;
(5) Paddock;
(6) Test barn;
(7) Starting gate;
(8) Weigh-in scale;
(9) Video camera locations;
(10) Clocker's stand;
(11) Racing veterinarian;
(12) Track announcer;
(13) Location of the ambulances (equine and human); and
(14) Other locations and persons designated by the commission.

b. A licensee shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

491—10.4(99D) Trainer, jockey, and jockey agent responsibilities.

10.4(1) *Trainer.*

a. *Responsibility.*

(1) The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses, regardless of the acts of third parties. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule or Iowa Code chapter 99D. In the absence of substantial evidence to the contrary, the trainer shall be responsible.

(2) A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(3) A trainer whose horse has been claimed remains responsible for the race in which the horse is claimed.

b. *Other responsibilities.* A trainer is responsible for:

(1) The condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;

(2) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(3) Ensuring that fire prevention rules are strictly observed in the assigned stable area;

(4) Providing a list to the commission of the trainer's employees on association grounds and any other area under the jurisdiction of the commission. The list shall include each employee's name, occupation, social security number and occupational license number. The commission shall be notified by the trainer, in writing, within 24 hours of any change. No trainer shall employ any person under the age of 16;

(5) The proper identity, custody, care, health, condition and safety of horses in their charge;

(6) Disclosure to the racing secretary of the true and entire ownership of each horse in the trainer's care, custody, or control. Any change in ownership shall be reported immediately to, and approved by, the commission representative and recorded by the racing secretary. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a horse, shall be attached to the registration certificate for the horse and filed with the racing secretary;

(7) Training all horses owned wholly or in part by them which are participating at the race meeting;

(8) Registering with the racing secretary each horse in their charge within 24 hours of the horse's arrival on association grounds;

(9) Ensuring that, at the time of arrival at a licensed racetrack, each horse in their care is accompanied by a valid health certificate which shall be filed with the racing secretary;

(10) Having each horse in their care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary. The test must have been conducted within the previous 12 months and must be repeated upon expiration. Certificate must be attached to foal certificate;

(11) Using the services of those veterinarians licensed by the commission to attend horses that are on association grounds;

(12) Immediately reporting the alteration of the sex of a horse in their care to the horse identifier and the racing secretary, whose office shall note such alteration on the certificate of registration;

(13) Promptly reporting to the racing secretary and the commission veterinarian any horse on which a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration. See Iowa Code subsections 99D.25(1) to 99D.25(3);

(14) Promptly reporting to the stewards and the commission veterinarian the serious illness of any horse in their charge;

(15) Promptly reporting the death of any horse in their care on association grounds to the stewards, owner and the commission veterinarian and compliance with the rules in Chapter 10 governing postmortem examination;

(16) Maintaining a knowledge of the medication record and status of all horses in their care;

(17) Immediately reporting to the stewards and the commission veterinarian if they know, or have cause to believe, that a horse in their custody, care or control has received any prohibited drugs or medication;

[Filed 11/4/88, Notice 8/10/88—published 11/30/88, effective 1/4/89]*
[Filed emergency 12/19/88—published 1/11/89, effective 12/23/88]
[Filed emergency 1/19/89—published 2/8/89, effective 1/20/89]
[Filed 2/17/89, Notice 1/11/89—published 3/8/89, effective 4/12/89]
[Filed 3/15/89, Notice 2/8/89—published 4/5/89, effective 5/10/89]
[Filed emergency 6/23/89—published 7/12/89, effective 6/23/89]
[Filed 9/26/89, Notice 7/12/89—published 10/18/89, effective 11/22/89]
[Filed 2/16/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]
[Filed emergency 5/21/90—published 6/13/90, effective 5/21/90]
[Filed 8/2/90, Notice 6/13/90—published 8/22/90, effective 9/26/90]
[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed 12/6/91, Notice 10/16/91—published 12/25/91, effective 1/29/92]
[Filed 9/11/92, Notice 7/22/92—published 9/30/92, effective 11/4/92]
[Filed 10/30/92, Notice 9/16/92—published 11/25/92, effective 1/6/93]
[Filed emergency 3/2/93—published 3/31/93, effective 3/2/93]
[Filed 3/2/93, Notice 1/6/93—published 3/31/93, effective 5/5/93]
[Filed emergency 3/22/93—published 4/14/93, effective 3/22/93]◊
[Filed emergency 4/19/93—published 5/12/93, effective 4/19/93]
[Filed 4/19/93, Notice 3/3/93—published 5/12/93, effective 6/16/93]
[Filed 5/21/93, Notice 4/14/93—published 6/9/93, effective 7/14/93]
[Filed 7/23/93, Notice 5/12/93—published 8/18/93, effective 9/22/93]
[Filed 10/21/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]
[Filed 5/20/94, Notice 3/30/94—published 6/8/94, effective 7/13/94]
[Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
[Filed emergency 6/15/95—published 7/5/95, effective 6/15/95]
[Filed 8/21/95, Notice 7/5/95—published 9/13/95, effective 10/18/95]
[Filed emergency 3/8/96—published 3/27/96, effective 3/8/96]
[Filed 4/19/96, Notice 2/14/96—published 5/8/96, effective 6/12/96]
[Filed emergency 5/22/96—published 6/19/96, effective 5/22/96]
[Filed 8/19/96, Notice 6/19/96—published 9/11/96, effective 10/16/96]**

*Effective date (1/4/89) of 10.4(14), 10.4(19)"*b*" and 10.6 delayed by the Administrative Rules Review Committee until January 9, 1989, at its December 13, 1988, meeting; effective date of January 4, 1989, delayed seventy days by this Committee at its January 5, 1989, meeting.
Effective date delay lifted by the Committee at its February 13, 1989, meeting.
**Effective date of 10.6(2)"*g*"(3) second paragraph delayed until adjournment of the 1997 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held October 8, 1996.
◊Two ARCs

[Filed 1/17/97, Notice 11/6/96—published 2/12/97, effective 3/19/97]
[Filed 4/10/97, Notice 2/12/97—published 5/7/97, effective 6/11/97]
[Filed 8/22/97, Notice 7/16/97—published 9/10/97, effective 10/15/97]
[Filed 3/6/98, Notice 12/17/97—published 3/25/98, effective 4/29/98]
[Filed emergency 4/17/98—published 5/6/98, effective 4/20/98]
[Filed 6/19/98, Notice 5/6/98—published 7/15/98, effective 8/19/98]
[Filed 11/23/98, Notice 10/7/98—published 12/16/98, effective 1/20/99]
[Filed 1/21/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]
[Filed 1/20/00, Notice 11/17/99—published 2/9/00, effective 3/15/00]
[Filed 1/20/00, Notice 12/15/99—published 2/9/00, effective 3/15/00]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

CHAPTER 11
APPLICATION FOR TAX CREDIT BY HORSE RACING LICENSEES

Rescinded IAB 8/17/94, effective 9/21/94

b. In horse racing only.

(1) A person licensed as a jockey, veterinarian, or farrier may not be licensed in another capacity.

(2) A person may not be licensed as an owner and a jockey agent.

(3) No racing official may serve or act in another capacity at a race meeting at which that person is licensed as an official except if there is no conflict of interest or duties as determined by the administrator's designee.

13.2(4) Applications endorsed by associations and operators. The commission may not issue any license to any association or boat operator employee or to any vendor or vendor employee unless the application includes the prior endorsement of an authorized representative of the employer, from a list submitted to the commission office.

13.2(5) Temporary license.

a. Rescinded IAB 8/9/00, effective 9/13/00.

b. Temporary horse owner emergency license certificates.

(1) A temporary owner's license certificate may be issued at the discretion of the administrator's designee.

(2) Upon submission of reasons why a temporary license certificate should be issued, the administrator's designee may use discretion in granting the certificate. Any certificate issued will be valid only for a maximum of 15 calendar days from the date of notice sent by the commission.

(3) Failure to obtain a permanent license within the designated time may result in the automatic revocation for the license eligibility and may result in a fine or suspension for the licensee that has failed to comply.

(4) Purses shall not be paid to the owner of any racing animal holding a temporary emergency license certificate pursuant to the provisions of this subrule. Payments shall be permitted only after the individual has obtained a permanent license.

(5) The owner and trainer of a horse must be licensed at least one hour before post time of the race in which the horse is entered. In the case of absentee owners, the trainer must submit a properly executed temporary application on behalf of the absentee owner(s) at least one hour before post time of the race in which the horse is entered. Failure on the part of owners to fully comply with the 15-day requirement will result in fine, suspension, or both.

13.2(6) Workers' compensation. Rescinded IAB 8/9/00, effective 9/13/00.

491—13.3(99D,99F) Waiver of privilege. An applicant may claim a privilege afforded by the Constitution of the United States or of the state of Iowa in refusing to answer questions of the commission. However, a claim of privilege with respect to any testimony or evidence pertaining to an application may constitute sufficient grounds for denial.

491—13.4(99D) Disclosure of ownership of racing animals. All entities of ownership, i.e., individual, lessee, lessor, general partnership, limited partnership or corporation, and all trainers are responsible for making full and accurate disclosure of the ownership of all racing animals registered or entered for racing. Disclosure shall identify in writing all individuals or entities who, directly or indirectly, through a contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise hold any interest in and to the racing animal, and those individuals or entities who by virtue of any form of interest might exercise control over the racing animal or can benefit from the racing of the animal. The degree and type of ownership held by each individual person shall be designated. Disclosure shall be made when registering each racing animal with the racing secretary upon arrival on association grounds, or at time of license application or entry, whichever event occurs first, and shall be revised immediately upon any subsequent change in ownership. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a racing animal, shall be attached to the registration certificate for the racing animal and filed with the racing secretary, who shall be responsible for the care and security of the papers while the racing animals are located on association grounds. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership or lease of a racing animal filed with the racing secretary shall be available for public inspection.

491—13.5(99D,99F) License acceptance. Acceptance of a license from the commission by any licensee is deemed a consent to search and inspect by the commission or DCI representative pursuant to this rule and to the seizure of any prohibited medication, drugs, paraphernalia or devices.

13.5(1) *Misuse of license.* No person shall exercise or attempt to exercise any of the powers, privileges, or prerogatives of a license unless and until the appropriate licensing form has been executed and filed with the commission. The commission shall exercise the power to regulate the conduct of all persons holding licenses or who are participating in racing or gaming by the use or exercise of any rights, powers, privileges, or prerogatives of a license.

13.5(2) *Knowledge of rules.* Every licensee, in order to maintain qualifications for any license held, shall be held responsible for knowledge of the rules of the commission and Iowa statutes pertaining to racing and gaming. A viewing copy of the aforementioned rules and statutes is available in the commission offices at racetrack and riverboat locations.

13.5(3) *Occupational license.*

a. Employees are required to wear their occupational licenses at all times while on duty, or in a restricted area, unless it is determined by the administrator's designee to be impractical.

b. A licensee is prohibited from defacing, altering, or modifying an occupational license.

491—13.6(99D,99F) Denials. The administrator's designee shall deny an applicant a license or, if already issued, a license shall be subject to fine, suspension, revocation, or other disciplinary measures if the applicant:

13.6(1) Owns, operates or has an interest in any bookmaking or other illegal enterprise, or who is connected with or associated with any illegal enterprise within the past five years. If the association with the illegal enterprise was more than five years prior to the application, a license may be issued only if the administrator's designee determines that sufficient evidence of rehabilitation exists.

13.6(2) Is not 18 years of age except that persons under 18 years of age may be employed on licensed premises in stable, kennel or paddock areas, parking lots, kitchens and in maintenance and administrative offices, but never be employed near areas where alcohol is served or gaming or wagering is conducted.

[Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
[Filed 5/18/95, Notice 3/29/95—published 6/7/95, effective 7/12/95]
[Filed 11/17/95, Notice 9/13/95—published 12/6/95, effective 1/10/96]
[Filed 11/17/95, Notice 10/11/95—published 12/6/95, effective 1/10/96]
[Filed 6/21/96, Notice 5/8/96—published 7/17/96, effective 8/21/96]
[Filed 10/28/97, Notice 9/10/97—published 11/19/97, effective 12/24/97]
[Filed 1/16/98, Notice 10/8/97—published 2/11/98, effective 3/18/98]
[Filed 3/6/98, Notice 12/17/97—published 3/25/98, effective 4/29/98]
[Filed 5/22/98, Notice 3/25/98—published 6/17/98, effective 7/22/98]
[Filed 10/26/98, Notice 9/9/98—published 11/18/98, effective 12/23/98]
[Filed 4/16/99, Notice 2/10/99—published 5/5/99, effective 6/9/99]
[Filed 6/18/99, Notice 5/5/99—published 7/14/99, effective 8/18/99]
[Filed 1/20/00, Notice 11/17/99—published 2/9/00, effective 3/15/00]
[Filed 4/21/00, Notice 2/9/00—published 5/17/00, effective 6/21/00]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

CHAPTERS 14 to 17
Reserved

CHAPTER 18
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS DIVISION OF RACING AND GAMING
[Prior to 11/18/87, Racing and Gaming Division[195]]
Rescinded IAB 12/25/91, effective 1/29/92

CHAPTER 19
PROCEDURE FOR RULE MAKING
[Prior to 11/18/87, see Racing and Gaming Division[195]]
Rescinded IAB 12/25/91, effective 1/29/92

CHAPTER 20
APPLICATION PROCESS FOR EXCURSION BOATS AND RACETRACK ENCLOSURE GAMING LICENSE
[491—Chapters 20 to 25, relating to Games of Skill, Chance, Raffles and Bingo, transferred to 481—Chapters 100 to 105, 6/14/89 IAB]
Rescinded IAB 8/9/00, effective 9/13/00

CHAPTER 21
CRITERIA FOR GRANTING AN EXCURSION BOAT AND RACETRACK ENCLOSURE GAMING LICENSE
[491—Chapters 20 to 25, relating to Games of Skill, Chance, Raffles and Bingo, transferred to 481—Chapters 100 to 105, 6/14/89 IAB]
Rescinded IAB 8/9/00, effective 9/13/00

491—22.19(99F) Disciplinary procedures.

22.19(1) Unauthorized modifications. Any changes or modifications found in a gambling device or its circuitry that have not been approved by the administrator will be cause for sealing or seizing any or all of the gambling devices manufactured or distributed by a licensee and, further, will be cause for inviting disciplinary penalties which include limiting, conditioning, restricting, suspending or revoking the license, fining the licensee, or a combination of any of the above.

22.19(2) Before all machines of a manufacturer or distributor are seized, the administrator shall make a reasonable effort to determine if the change has occurred in all or in part of the machines and provide the opportunity for an investigative hearing.

22.19(3) Investigative hearing. Efforts will be made to provide an opportunity for an investigative hearing as soon as possible when devices are sealed or seized. If no cause is found, devices will be unsealed or returned to the licensee immediately.

491—22.20(99F) Violation of laws or regulations. Violation of any provision of any laws of the state of Iowa or of the United States of America or of any administrative rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking, suspending the license, fining the licensee or any combination of the above.

491—22.21(99F) Competition. The administrator shall have the power to regulate, control and prevent economic concentration in gaming operations and in gaming service industries so as to encourage and preserve competition.

491—22.22(99F) Consent to inspections, searches and seizures. Each manufacturer or distributor licensed under this chapter shall consent to inspections, searches or seizures deemed necessary by the administrator and authorized by law in order to enforce licensing requirements.

491—22.23(99F) Withdrawal of application. A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

491—22.24(99F) Movement of slot machines and video games of chance. Reports must be filed with the commission on movements of slot machines and video games of chance into and out of the state of Iowa. Reports must be submitted on forms provided by the commission and must be received in the commission office no later than 15 calendar days after the movement.

These rules are intended to implement Iowa Code chapter 99F.

[Filed 9/28/90, Notice 5/16/90—published 10/17/90, effective 11/21/90]
[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed 12/6/91, Notice 10/16/91—published 12/25/91, effective 1/29/92]
[Filed 2/12/92, Notice 1/8/92—published 3/4/92, effective 4/8/92]
[Filed 5/22/92, Notice 4/15/92—published 6/10/92, effective 7/15/92]
[Filed 10/30/92, Notice 9/16/92—published 11/25/92, effective 1/6/93]
[Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
[Filed 5/18/95, Notice 3/29/95—published 6/7/95, effective 7/12/95]
[Filed 3/6/98, Notice 12/17/97—published 3/25/98, effective 4/29/98]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

CHAPTER 23
Reserved

CHAPTER 24
ACCOUNTING AND CASH CONTROL

[491—Chapters 20 to 25, relating to Games of Skill, Chance, Raffles and Bingo, transferred to 481—Chapters 100 to 105, 6/14/89, IAB]

491—24.1 to **24.9** Reserved.

491—24.10(99F) Accounting records.

24.10(1) Each licensee shall maintain complete and accurate records of all transactions pertaining to the revenues and costs for each excursion gambling boat.

24.10(2) General accounting records shall be maintained on a double entry system of accounting with transactions recorded on an accrual basis.

24.10(3) Detailed, supporting, and subsidiary records shall be maintained. These records include, but are not necessarily limited to:

a. Statistical game records to reflect drop and win amounts by table for each game, by each excursion day.

b. Records of all investments, advances, loans and receivable balances, due to the licensee.

c. Records related to investments in property and equipment.

d. Records which identify the handle, payout, win amounts and percentages, theoretical win amounts and percentages, and differences between theoretical and actual win amounts and percentages, for each slot machine or video game of chance on a week-to-date, month-to-date, and year-to-date basis.

e. Records of all loans and other amounts payable by the licensee.

f. Records which identify the purchase, receipt and destruction of gaming chips and tokens.

491—24.11(99F) Licensee's system of internal control.

24.11(1) Each licensee shall submit to the commission a description of its system of internal procedures and administrative and accounting controls. Such submission shall be made at least 90 days before gaming operations are to commence unless otherwise directed by the administrator.

24.11(2) The administrator, or administrator's designee, shall review each submission required by 24.11(1) and shall determine whether it conforms to the requirements of Iowa Code chapter 99F and to these rules or their equivalent and whether the system submitted provides adequate and effective controls for the operations of the licensee. If the administrator finds any insufficiencies, they shall be specified in writing to the licensee, who shall make appropriate alterations. No licensee shall commence gaming operations unless and until such system of controls is approved.

24.11(3) Each licensee shall submit to the commission any changes to the system of internal procedures and administrative and accounting controls previously determined to be adequate in all respects at least 15 days before the changes are to become effective unless otherwise directed by the administrator. The proposed changes shall be submitted to the commission and such changes may be approved or disapproved by the administrator. No licensee shall alter its internal controls unless and until such changes are approved.

24.11(4) It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with the licensee's system of internal controls.

491—24.12(99F) Licensee's organization.

24.12(1) Each licensee shall have a system of internal control that includes the following:

a. Administrative control which includes, but is not limited to, the plan of organization and the procedures and records that are concerned with the decision processes leading to management's levels of authorization of transactions.

b. Accounting control which includes the plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records and are consequently designed to provide reasonable assurance that:

(1) Transactions are executed in accordance with management's general and specific authorization which shall include the requirements of this chapter.

(2) Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets.

(3) Access to assets is permitted only in accordance with management authorization which shall include requirements of this chapter.

(4) The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

24.12(2) The licensee's system of internal control shall provide for:

a. Competent personnel with integrity and an understanding of prescribed procedures.

b. The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of their duties.

491—24.13(99F) Records regarding ownership. Rescinded IAB 8/9/00, effective 9/13/00.

491—24.14(99F) Forms, records and documents. Rescinded IAB 8/9/00, effective 9/13/00.

491—24.15(99F) Standard financial and statistical reports. Rescinded IAB 8/9/00, effective 9/13/00.

491—24.16(99F) Retention, storage and destruction of books, records and documents. Rescinded IAB 2/12/97, effective 3/19/97.

491—24.17(99F) Firearms—possession within casino. Rescinded IAB 6/17/98, effective 7/22/98.

491—24.18(99F) Accounting controls within the cashier's cage.

24.18(1) The assets for which the cage cashiers are responsible shall be maintained on an impress basis. At the end of each shift, the cashiers assigned to the outgoing shift shall record on a cashier's count sheet the face value of each cage inventory item counted and the total of the opening and closing cage inventories and shall reconcile the total closing inventory with the total opening inventory.

24.18(2) At the conclusion of gaming activity each day, a copy of the cashiers' count sheets and related documentation shall be forwarded to the accounting department for agreement of opening and closing inventories, agreement of amounts thereon to other forms, records, and documents required by this chapter, and recording of transactions.

24.18(3) Each licensee shall place on file with the commission the names of all persons authorized to enter the cashier's cage, those who possess the combination or keys to the locks securing the entrance to the cage and those who possess the ability to operate alarm systems.

491—24.19(99F) Drop boxes and drop buckets.

24.19(1) Each gaming table in a casino shall have attached to it a metal container known as a "drop box" in which shall be deposited all cash, coupons authorizing chip purchases exchanged with cash for gaming chips and plaques, duplicate fill and credit slips, requests for fill forms, and table inventory forms. Each drop box shall have:

a. A lock, the key to which shall be maintained by security to be checked out by the drop crew.

b. A separate lock securing the drop box to the gaming tables, the key to which shall be different from each of the keys to locks securing the contents of the drop box.

c. A slot opening through which currency, forms, records, and documents can be inserted into the drop box.

d. A mechanical device that will close and lock the slot opening upon removal of the drop box from the gaming table.

24.19(2) The key utilized to unlock the drop boxes from the gaming tables shall be maintained and controlled by the security department.

491—24.20(99F) Drop boxes, transportation to and from gaming tables—storage in count room.

24.20(1) Each licensee shall place on file with the commission a schedule setting forth the specific times at which the drop boxes will be brought to or removed from the gaming tables.

24.20(2) All drop boxes removed from the gaming tables shall be transported by one security department member and one casino supervisor directly to, and secured in, the count room or on a secure area on the boat until they can be transferred to the count room.

24.20(3) Drop boxes, when not in use, may be stored on the gaming tables provided that there is adequate security, as approved by the commission. If adequate security is not provided during this time, the drop boxes shall be stored in the count room or an enclosed storage cabinet.

491—24.21(99F) Procedure for accepting cash at gaming tables. Whenever cash is presented by a patron at a gaming table in exchange for gaming chips, the following procedures and requirements shall be observed:

24.21(1) The cash shall be spread on the top of the gaming table by the dealer or boxperson accepting it in full view of the patron who presented it and the casino supervisor assigned to such gaming table.

24.21(2) The cash value amount shall be verbalized by the dealer or boxperson accepting it in a tone of voice calculated to be heard by the patron and the casino supervisor assigned to such gaming table.

24.21(3) Immediately thereafter, the cash shall be taken from the top of the gaming table and placed by the dealer or boxperson into the drop box attached to the gaming table.

491—24.22(99F) Procedure for distributing gaming chips to gaming tables.

24.22(1) A request for fill ("request") shall be prepared by an individual approved by the administrator to authorize the preparation of a fill slip ("fill") for the distribution of gaming chips to gaming tables. The request shall be a two-part form, and access to the request shall, prior to use, be restricted to authorized users.

24.22(2) On the original and duplicate request, the following information shall be recorded:

a. The date and time, or shift, of preparation.

b. The denomination of gaming chips to be distributed to the gaming tables.

c. The total amount of each denomination of gaming chips to be distributed to the gaming tables.

d. The game and table number to which the gaming chips are to be distributed.

e. The signature of the casino supervisor.

24.22(3) After preparation of the request the original copy of such request shall be transported directly to the cashier's cage.

24.22(4) The duplicate copy of the request shall be placed by the dealer or boxperson in public view on the gaming table to which the gaming chips are to be received. Such duplicate request shall not be removed until the chips are received, at which time the request and fill are deposited in the drop box.

24.22(5) If fills are computer-prepared and the input data required for preparation complies with 24.22(2), subrules 24.22(3) and 24.22(4) may be ignored.

24.22(6) A fill shall be prepared by a cashier.

24.22(7) Fills shall be serially prenumbered forms, each series of fills shall be used in a sequential order, and the series numbers of all fills received by a casino shall be accounted for by employees with no incompatible functions. All original and duplicate void fills shall be marked "void" and shall require the signature of the preparer.

24.22(8) For boats in which fills are manually prepared, the following procedures and requirements shall be observed:

a. Each fill form shall be a three-part form, and shall be inserted in a locked dispenser that will discharge the original and duplicate while the triplicate remains in a continuous, unbroken form in the dispenser.

b. Access to the triplicates shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of fills, placing fills in the dispenser, and removing from the dispenser, each day, the triplicates remaining therein. These employees shall have no incompatible functions.

24.22(9) For boats in which fills are computer-prepared, each series of fills shall be a two-part form, and shall be inserted in a printer that will simultaneously print an original and a duplicate and store, in machine-readable form, all information printed on the original and duplicate. The stored data shall not be susceptible to change or removal by any personnel after preparation of a fill.

24.22(10) On original, duplicate, and triplicate copies of the fill, or in stored data, the preparer shall record the following information:

a. The denomination of the gaming chips being distributed.

b. The total amount of each denomination of gaming chips being distributed.

c. The total amount of all denominations of gaming chips being distributed.

d. The game and table number to which the gaming chips are being distributed.

e. The date and shift during which the distribution of gaming chips occurs.

f. The signature of the preparer or, if computer-prepared, the identification code of the preparer.

24.31(6) Immediately prior to the commencement of the count, one count team member shall notify the person assigned to the surveillance room that the count is about to begin, after which such person shall make a video recording with the time and date inserted thereon of the entire counting process.

24.31(7) Coin shall not be removed from the slot count room after commencement of the count until the coin has been recounted and accepted by a cashier.

24.31(8) Procedures and requirements at the conclusion of the count shall be the following:

a. The wrapped tokens removed from the drop bucket shall be counted in the count room in the presence of a count team member by a cashier prior to the recording of information on the slot drop sheet. The cashier shall attest by signature on the slot drop sheet to the accuracy of the amount of tokens received from the slot machines; after which a count team member shall sign the slot drop sheet evidencing the fact that both the cashier and count team have agreed on the total amount of tokens counted. The tokens thereafter shall remain in the custody of cashiers.

b. The slot drop sheet and supporting documents shall be transported directly to the accounting department or to locked storage until accounting representatives are available and shall not be available except for signing to any cashier's cage or slot personnel.

c. The preparation of the slot drop sheet shall be completed by accounting department employees as follows:

(1) Compare for agreement for each slot machine the dollar value of tokens counted to the drop meter reading.

(2) Record for each machine the hopper fills to each slot machine.

(3) Record for each slot machine the payouts and compare for agreement payouts to the manual jackpot meter reading recorded on the slot meter sheet.

(4) Calculate and record the win or loss for each slot machine.

(5) Explain and report for corrections of apparent meter malfunctions to the slot department all significant differences between meter readings and amounts recorded.

(6) Calculate statistics by slot machine.

d. The slot drop sheet, the slot meter sheet, payouts and hopper fills shall be:

(1) Compared for agreement with each other and to triplicates or stored data on a test basis.

(2) Reviewed for the appropriate number and propriety of signatures on a test basis.

(3) Accounted for by series numbers.

(4) Tested for proper calculation, summarization and recording.

(5) Subsequently recorded.

(6) Maintained and controlled by accounting department employees.

491—24.32(99F) Computer recording requirements and monitoring of slot machines.

24.32(1) A licensee will have a computer connected to slot machines in the casino to record and monitor the activities of such machine.

24.32(2) The computer required by 24.32(1) shall be designed and operated to automatically perform the function relating to slot machine meters in the casino as follows:

a. Record the number and total value of tokens placed in the slot machine for the purpose of activating play.

b. Record the number and total value of tokens in the drop bucket of the slot machines.

c. Record the number and total value of slot tokens, cash or chips to be paid manually as the result of a jackpot.

24.32(3) The computer shall store in machine-readable form all information required by 24.32(2) and such stored data shall not be susceptible to change or removal by any personnel prior to submission to the central commission office.

These rules are intended to implement Iowa Code chapter 99D and chapter 99F as amended by 1994 Iowa Acts, House File 2179.

[Filed 11/28/90, Notice 10/17/90—published 12/26/90, effective 1/30/91]
[Filed 12/6/91, Notice 10/16/91—published 12/25/91, effective 1/29/92]
[Filed emergency 9/25/92—published 10/14/92, effective 9/25/92]
[Filed 12/18/92, Notice 10/14/92—published 1/6/93, effective 2/10/93]
[Filed emergency 3/22/93—published 4/14/93, effective 3/22/93]
[Filed 4/19/93, Notice 3/3/93—published 5/12/93, effective 6/16/93]
[Filed emergency 5/20/94—published 6/8/94, effective 5/20/94]
[Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]◊
[Filed 1/17/97, Notice 11/6/96—published 2/12/97, effective 3/19/97]
[Filed 5/22/98, Notice 3/25/98—published 6/17/98, effective 7/22/98]
[Filed 1/20/00, Notice 11/17/99—published 2/9/00, effective 3/15/00]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

CHAPTER 25
RIVERBOAT OPERATION

[491—Chapters 20 to 25, relating to Games of Skill, Chance, Raffles and Bingo, transferred to 481—Chapters 100 to 105, 6/14/89 IAB]

Rescinded IAB 8/9/00, effective 9/13/00

◊Two ARCs

CHAPTER 26
RULES OF THE GAMES

491—26.1 to **26.8** Reserved.

491—26.9(99F) Gambling games authorized.

26.9(1) Dice, roulette, twenty-one, big-six (roulette), red dog, baccarat, and poker are authorized as table games.

26.9(2) Slot machines, progressive slot machines, video poker, and all other video games of chance will be allowed as machine games, subject to the approval of individual game prototypes. For racetrack enclosures, video machine as used in Iowa Code section 99F.1(9) shall mean video keno and any video machine game version of a table or card game including but not limited to those listed in subrule 26.9(1). A weighted average of the theoretical payout percentage as defined in subrule 26.15(6) on all machine games shall be posted at the main casino entrance, cashier cages, and slot booths.

491—26.10(99F) Rules concerning all games.

26.10(1) *Commission policy.* It is the policy of the commission to require that all riverboats and racetrack enclosures and the gaming conducted therein be operated in a manner suitable to protect the public health, safety, morals, good order and general welfare of the state of Iowa. Responsibility for the employment and maintenance of suitable methods of operation rests with the licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable in the sole discretion of the commission will constitute grounds for disciplinary action, up to and including license revocation.

26.10(2) *Activities prohibited.* The licensee is expressly prohibited from the following activities:

a. Permitting persons who are visibly intoxicated to participate in gaming activity.

b. Failure to conduct advertising and public relations activities in accordance with decency, dignity, good taste and honesty.

c. Failure to comply with or make provision for compliance with all federal, state and local laws and rules pertaining to the operation of a license including payment of license fees, withholding payroll taxes and violations of alcoholic beverage laws or regulations.

d. Possessing or permitting to remain in or upon any licensed premises any associated gambling equipment (primarily, but not limited to, cards or dice), which may have in any manner been marked, tampered with or otherwise placed in a condition or operated in a manner which might affect the game and its payouts.

e. Permitting, if the licensee was aware or should have been aware of, any cheating whatsoever.

f. Possessing or permitting to remain in or upon any licensed premises, if the licensee was aware or should have been aware of, any cheating device whatsoever; or conducting, carrying on, operating or dealing any cheating or thieving game or device on the premises.

g. Possessing or permitting to remain in or upon any licensed premises, if the licensee was aware or should have been aware of, any gambling device which tends to alter the normal random selection of criteria which determines the results of the game or deceives the public in any way.

h. Failure to conduct gaming operations in accordance with proper standards of custom, decorum and decency; or to permit any type of conduct which reflects negatively on the state of Iowa or acts as a detriment to the gaming industry.

i. Denying a commissioner or commission staff member, upon proper and lawful demand, access to, for inspection purposes, any portion or aspect of the gaming operation.

j. Denying a commissioner or commission staff member, upon proper and lawful demand, information concerning any aspect of the gaming operation.

26.10(3) *Gambling aids.* No person shall use, or possess with the intent to use, any calculator, computer or other electronic, electrical or mechanical device at any table game that:

a. Assists in projecting the outcome of a game, or

b. Keeps track of cards that have been dealt, or

c. Keeps track of changing probabilities, or

d. Keeps track of playing strategies being utilized.

26.10(4) *Wagering.* Rescinded IAB 6/8/94, effective 5/20/94.

26.10(5) *Maximum loss.* Rescinded IAB 6/8/94, effective 5/20/94.

26.10(6) *Wagers.* Wagers may only be made:

a. By a person present on a licensed excursion gambling boat.

b. In the form of chips, wagering debit cards or coins. The term coin or coins as used in this chapter shall refer to tokens or nickels and quarters of legal tender.

c. By persons 21 years of age or older.

491—26.11(99F) Craps.

26.11(1) *Rules, permissible wagers and payout odds—craps.* Proposals for permissible rules, wagers and payout odds must be submitted in writing and approved by the administrator prior to the operator conducting any craps games. Changes in permissible rules, wagers or payout odds must be submitted in writing and approved by the administrator prior to implementation.

26.11(2) *Call bets.* Wagers must be made before the dice are thrown. "Call bets," or the calling out of bets between the time the dice leave the shooter's hand and the time the dice come to rest, not accompanied by the placement of gaming chips, are not allowed.

26.11(3) *Placement of bets.* All wagers at craps shall be made by placing gaming chips on the appropriate areas of the craps layout.

491—26.12(99F) Twenty-one.

26.12(1) *Rules, permissible wagers, shuffling, dealing and cutting procedures and payout odds.* Proposals for rules, permissible wagers, shuffling, cutting procedures and payout odds must be submitted in writing and approved by the administrator prior to the operator conducting any games of twenty-one. Changes in rules, permissible wagers and payout odds must be submitted in writing and approved by the administrator prior to implementation.

26.12(2) *Wagers—twenty-one.* Prior to the first card being dealt from each round of play, each player at the game of blackjack shall make a wager against the dealer by placing gaming chips on the appropriate areas of the blackjack layout. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager on the insurance line, a wager to double down or a wager to split pairs has been made and confirmed by the dealer, no player shall handle, remove or alter such wagers until a decision has been rendered and implemented with respect to that wager except as explicitly permitted by these rules. No dealer or other casino employee or casino key employee shall permit any player to engage in conduct violative of this rule.

26.12(3) *Dealing—twenty-one.* At the conclusion of a round of play, all cards still remaining on the layout shall be picked up by the dealer in order and in such a way that they can be readily arranged to indicate each player's hand in case of question or dispute. The dealer shall pick up the cards beginning with those of the player to the far right and moving counterclockwise around the table. The dealer's hand will be the last hand collected. The cards will then be placed on top of the discard pile. No player or spectator shall handle, remove or alter any cards used to game at twenty-one and no dealer or other casino employee or casino key employee shall permit a player or spectator to engage in such activity.

Each player at the table shall be responsible for correctly computing the point count of their hand and no player shall rely on the point counts announced by the dealer without checking the accuracy of such announcement.

491—26.19(99F) Poker.

26.19(1) *Rules and limits—poker.* Proposals for rules for each poker game, minimum buy-in and table limits, table rake and rental charges must be submitted in writing and approved by the administrator prior to the operator's conducting any poker games. Rules must be clear and legible and placed at each poker table or in a conspicuous location so that a player may easily read the rules.

26.19(2) *Imprest dealer banks.* When the operator conducts poker with a dealer chip bank at an imprest amount, the administrative rules in 491—Chapter 24 for closing and distributing/removing gaming chips to/from gaming tables are not required. The entire amount of the table rake is subject to the wagering tax pursuant to Iowa Code section 99F.11. Proposals for imprest dealer chip banks must be submitted in writing and approved by the administrator prior to conducting poker under this rule.

26.19(3) *Table stakes.* All games shall be played according to table stakes rules as follows:

a. All bets must be made with coins or chips issued by the operator.

b. Only chips on the table at the start of a deal shall be in play for that pot.

c. Concealed chips do not play.

d. A player with chips may add additional chips between deals, provided that the player complies with the minimum buy-in requirement.

e. A player is never obliged to drop out of contention because of insufficient chips to call the full amount of a bet, but may call for the amount of chips the player has on the table. The excess part of the bet made by other players is either returned to the players or used to form a side pot.

26.19(4) *Collusion.* Each player in a poker game is required to act only in their own best interest. The operator has the responsibility to ensure that any behavior designed to assist one player over another is prohibited and may prohibit any two players from playing in the same game.

26.19(5) *Operator funded payouts.* Poker games where winning wagers are paid according to specific payout odds or pay tables are permitted. Proposals for rules, permissible wagers, shuffling and cutting procedures, payout odds, and pay tables must be submitted in writing and approved by the administrator prior to the operator's conducting any game. Changes in rules, wagers, payout odds, or pay tables must be submitted in writing and approved by the administrator prior to implementation.

491—26.20(99F) Red dog.

26.20(1) *Rules, permissible wagers, shuffling, dealing and cutting procedures, and payout odds.* Proposals for rules, permissible wagers, shuffling and cutting procedures, and payout odds must be submitted in writing and approved by the administrator prior to the operator conducting any games of red dog. Changes in rules, permissible wagers, shuffling, dealing and cutting procedures, and payout odds must be submitted in writing and approved by the administrator prior to implementation.

26.20(2) *Placement of wagers.* Prior to the first card being dealt from each round of play, each player at the game of red dog shall make a wager against the dealer by placing gaming chips on the appropriate areas of the layout. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager to double down has been made and confirmed by the dealer, no player shall handle, remove or alter such wagers until a decision has been rendered and implemented with respect to that wager except as explicitly permitted by these rules. No dealer or other casino employee or casino key employee shall permit any player to engage in conduct violative of this rule.

26.20(3) *Wagers—amount—red dog.* Rescinded IAB 6/8/94, effective 5/20/94.

491—26.21(99F) Tournaments and contests.

26.21(1) *Rules.* Proposals for rules, entry fee and prize accounting and procedures must be submitted in writing and approved by the administrator prior to the operator's conducting any tournament or contest. Rules, fees, and a schedule of prizes must be made available to the player prior to entry.

26.21(2) *Limits.* Tournaments and contests must be based on gambling games authorized by the commission. Entry fees, less the operator's cash equivalent cost of prizes paid out not to exceed total entry fees, are subject to the wagering tax pursuant to Iowa Code section 99F.11.

491—26.22(99F) Keno.

26.22(1) *Requirements.*

a. Keno shall be conducted using an automated ticket writing and redemption system where a game's winning numbers are selected by a random number generator.

b. Each game shall consist of the selection of 20 numbers out of 80 possible numbers, 1 through 80.

c. For any type of wager offered, the payout must be at least 80 percent.

d. Multigame tickets shall be limited to 20 games.

e. Writing or voiding tickets for a game after that game has closed is prohibited.

f. All winning tickets shall be valid up to a maximum of one year. The dollar amount of all expired and unclaimed winning tickets shall be added to existing keno jackpots in a manner approved by the administrator.

26.22(2) *Rules, procedures, permissible wagers and payout odds.* Proposals for permissible rules, wagers, procedures, payout odds, ticket contents, and progressive jackpots must be submitted in writing and approved by the administrator prior to the operator's conducting any keno games. Changes in conduct or operation of keno games must be submitted in writing and approved by the administrator prior to implementation.

26.22(3) *Equipment.* The administrator shall determine minimum hardware and software requirements to ensure the integrity of play. An automated keno system must be proven to accurately account for adjusted gross receipts to the satisfaction of the administrator.

26.22(4) *Wagering tax.* Adjusted gross receipts from keno games shall be the difference between dollar amount of tickets written and dollar amount of winning tickets as determined from the automated keno system. The wagering tax pursuant to Iowa Code section 99F.11 shall apply to adjusted gross receipts of keno games.

These rules are intended to implement Iowa Code chapters 99D and 99F.

[Filed 11/28/90, Notice 10/17/90—published 12/26/90, effective 1/30/91]
[Filed 12/6/91, Notice 10/16/91—published 12/25/91, effective 1/29/92]
[Filed 5/22/92, Notice 4/15/92—published 6/10/92, effective 7/15/92]
[Filed emergency 7/6/92—published 7/22/92, effective 7/6/92]
[Filed 9/11/92, Notice 7/22/92—published 9/30/92, effective 11/4/92]
[Filed emergency 9/25/92—published 10/14/92, effective 9/25/92]
[Filed 10/30/92, Notice 9/16/92—published 11/25/92, effective 1/6/93]
[Filed emergency 5/20/94—published 6/8/94, effective 5/20/94]
[Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
[Filed 5/18/95, Notice 3/29/95—published 6/7/95, effective 7/12/95]
[Filed 3/6/98, Notice 12/17/97—published 3/25/98, effective 4/29/98]
[Filed 10/26/98, Notice 9/9/98—published 11/18/98, effective 12/23/98]
[Filed emergency 1/21/99—published 2/10/99, effective 1/22/99]
[Filed 4/16/99, Notice 2/10/99—published 5/5/99, effective 6/9/99]
[Filed 1/20/00, Notice 12/15/99—published 2/9/00, effective 3/15/00]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

c. Part V, RETENTION OF RECORDS, provision B of General Permit No. 2 is amended to read as follows:

B. If there is a construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final stabilization. If there is no construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the plan at a readily available alternative site approved by the Department and provide it for inspection upon request. If the plan is maintained at an off-site location such as a corporate office, it shall be provided for inspection no later than two business days after being requested.

64.15(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective October 1, 1997, to October 1, 2002. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classifications 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities which are classified under Standard Industrial Classification 1442. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

64.15(4) "Discharge from On-Site Wastewater Treatment and Disposal Systems," NPDES Permit No. 4, effective July 1, 1998, to July 1, 2003.

567—64.16(455B) Fees.

64.16(1) A person who applies for an individual permit or coverage under a general permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee and a permit fee as specified in 64.16(3). Fees shall be assessed based on the type of permit coverage the applicant requests, either as general permit coverage or as an individual permit. At the time the application is submitted, the applicant has the option of paying an annual permit fee or a multi-year permit fee.

Fees are nontransferable. If the application is returned to the applicant by the department, the permit fee will be returned. No fees will be returned if the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued. Failure to submit the appropriate permit fee renders the application incomplete and the department shall suspend processing of the application until the fee is received.

64.16(2) Payment of fees. Fees shall be paid by check or money order made payable to the "Iowa Department of Natural Resources."

64.16(3) Fee schedule. The following fees have been adopted:

a. For coverage under the NPDES General Permit the following fees apply:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1.

Annual Permit Fee ..... $150 (per year)

or

Five-year Permit Fee $600
Four-year Permit Fee $450
Three-year Permit Fee $300

(Coverage provided by the five-year, four-year, and three-year permit fees expires no later than the expiration date of the general permit. Maximum coverage is five years, four years, and three years, respectively.)

(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(4) "Discharge from On-Site Wastewater Treatment and Disposal Systems," NPDES Permit No. 4. No fees shall be assessed.

b. Individual NPDES permit fees. The following fees are applicable for the described individual NPDES permit:

(1) For storm water discharge associated with industrial activity, submitted on Form 2F, where the storm water is composed entirely of storm water or combined with process wastewater or other non-storm water wastewater.

Annual Permit Fee ..... $300 (per year)

or

Five-year Permit Fee $1,250

(2) For storm water discharge from large and medium municipal separate storm sewers (systems serving a population of 100,000 or more).

Annual Permit Fee ..... $300 (per year)

or

Five-year Permit Fee $1,250

(3) For participants in an approved group application and EPA has issued a model general permit and no industry-specific general permit is available or being developed.

Annual Permit Fee ..... $300 (per year)

or

Five-year Permit Fee $1,250

64.16(4) Fee refunds for storm water general permit coverage—pilot project.

a. If, upon submittal of a complete Notice of Intent to discharge under a storm water general permit as required in 64.6(1), an applicant is not sent a written notice of general permit coverage by the department within 30 days of receipt by the department of a correctly completed Notice of Intent, the permit fee paid by the applicant shall be refunded to the applicant. The department shall determine if the criteria for submitting a correctly completed Notice of Intent have been met and shall notify an applicant within 30 days of receipt regarding deficiencies of the Notice of Intent. Fees for the renewal of prior authorizations under storm water general permits shall be refunded in the same manner and using the same criteria as for initial applications.

b. The decision of the department not to issue a refund under this subrule is final and not subject to further agency review.

c. This subrule expires June 30, 2001.

567—64.17(455B) Validity of rules. If any section, paragraph, sentence, clause, phrase or word of these rules, or any part thereof, be declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect.

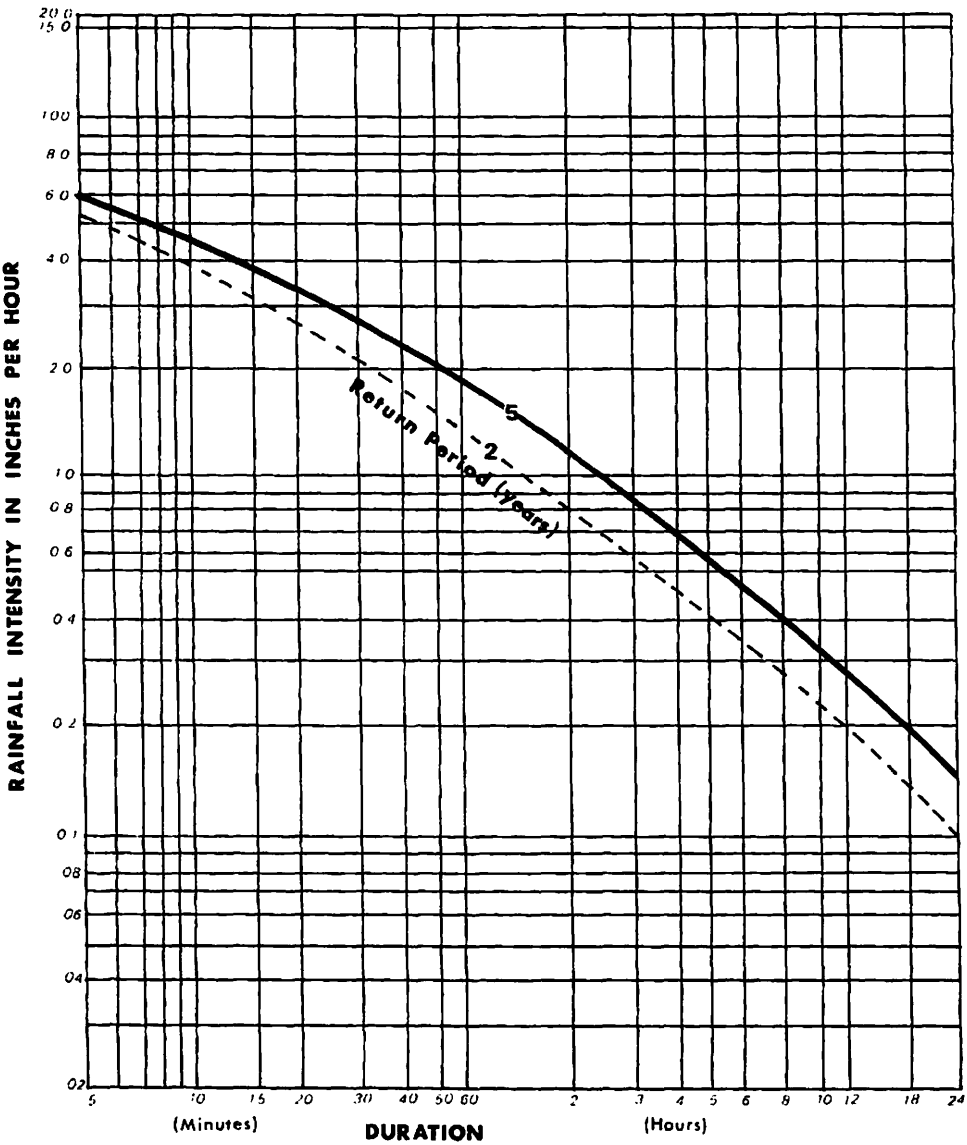
567—64.18(455B) Applicability. This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in Chapter 65. However, if an animal feeding operation is required to apply for and obtain an NPDES permit, the provisions of this chapter relating to notice and public participation, to the terms and conditions of the permit, to the reissuance of the permit and to monitoring, reporting and record-keeping activities shall apply.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

[Filed August 21, 1973]
[Filed 6/28/76, Notice 5/3/76—published 7/12/76, effective 8/16/76]
[Filed 7/1/77, Notice 3/23/77—published 7/27/77, effective 8/31/77]
[Filed emergency 7/28/77—published 8/24/77, effective 8/31/77]
[Filed emergency 2/3/78—published 2/22/78, effective 3/1/78]
[Filed 10/13/78, Notice 5/3/78—published 11/1/78, effective 12/6/78]
[Filed 3/30/79, Notice 2/7/79—published 4/18/79, effective 5/23/79]
[Filed 5/11/79, Notice 2/7/79—published 5/30/79, effective 7/5/79]
[Filed 8/3/79, Notice 5/2/79—published 8/22/79, effective 9/26/79]
[Filed 8/31/79, Notice 4/4/79—published 9/19/79, effective 10/24/79]
[Filed 4/10/80, Notice 12/26/79—published 4/30/80, effective 6/4/80]
[Filed 11/3/80, Notices 6/25/80, 8/20/80—published 11/26/80, effective 12/31/80, 7/1/81]
[Filed 10/23/81, Notice 5/13/81—published 11/11/81, effective 12/16/81]
[Filed 9/24/82, Notice 7/21/82—published 10/13/82, effective 11/17/82]
[Filed 2/24/83, Notice 11/10/82—published 3/16/83, effective 4/20/83]
[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed 9/23/83, Notice 7/20/83—published 10/12/83, effective 11/16/83]
Filed 12/2/83, Notice 6/22/83—published 12/21/83, effective 1/25/84]
[Filed 5/31/84, Notice 1/4/84—published 6/20/84, effective 7/25/84]
[Filed 12/28/84, Notice 11/7/84—published 1/16/85, effective 2/20/85]
[Filed 3/22/85, Notice 1/16/85—published 4/10/85, effective 5/15/85]
[Filed 11/1/85, Notice 6/19/85—published 11/20/85, effective 12/25/85]
[Filed 2/21/86, Notices 9/11/85, 11/20/85—published 3/12/86, effective 4/16/86]
[Filed 5/30/86, Notice 11/20/85—published 6/18/86, effective 7/23/86]
[Filed 5/30/86, Notice 3/12/86—published 6/18/86, effective 7/23/86]*
[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]
Filed 11/14/86, Notice 5/21/86—published 12/3/86, effective 1/7/87]
[Filed 5/29/87, Notice 3/11/87—published 6/17/87, effective 7/22/87]
[Filed 6/19/92, Notice 12/11/91—published 7/8/92, effective 8/12/92]
[Filed 10/24/97, Notice 7/16/97—published 11/19/97, effective 12/24/97]
[Filed 3/19/98, Notice 11/19/97—published 4/8/98, effective 5/13/98]
[Filed 10/28/99, Notice 5/19/99—published 11/17/99, effective 12/22/99]
[Filed emergency 7/21/00—published 8/9/00, effective 7/21/00]

*Effective date of 64.2(9)"*c*" delayed 70 days by the Administrative Rules Review Committee. The 70-day delay of effective date of 64.2(9)"*c*" was lifted by the Administrative Rules Review Committee on 7/31/86.

RAINFALL INTENSITY - DURATION - FREQUENCY CURVES
Appendix A



CHAPTER 15
GENERAL LICENSE REGULATIONS

[Prior to 12/31/86, see Conservation Commission[290] Chs 17, 66, 67, and 75]

571—15.1(483A) Hunter safety and ethics education program. This rule clarifies the term hunting license as used in Iowa Code section 483A.27 in relation to the hunter safety and ethics education course requirement, clarifies the need for exhibiting a hunter safety and ethics education course certificate when applying for a deer or wild turkey license, and explains the requirements for individuals who wish to demonstrate their knowledge of hunter safety and ethics to qualify for purchase of an Iowa hunting license.

15.1(1) *Definitions.*

For the purpose of clarifying the term hunting license as used in Iowa Code section 483A.27, the following definition is used:

Hunting license. A hunting license is defined as the following licenses in Iowa Code section 483A.1.

a. Hunting licenses—legal residents except as otherwise provided. (Section 483A.1(2)*"a"*)

b. Hunting licenses—nonresidents' hunting license. (Section 483A.1(2)*"d"*)

c. Hunting and fishing combined licenses—legal residents except as otherwise provided. (Section 483A.1(3)*"a"*)

d. Hunting and fishing combined licenses—lifetime license for residents permanently disabled or 65 years of age or older. (Section 483A.1(3)*"b"*)

e. Annual fur, fish and game license for residents. (483A.1, 483A.3, 483A.5)

License seller. License seller means a retail business establishment, an office of a government entity, or a nonprofit corporation designated by the director to issue licenses to the public. For the purposes of Chapter 15, "license sellers" shall be synonymous with "depositaries" as used in Iowa Code chapter 483A.

15.1(2) *General testing procedure.* Upon completion of the required curriculum, each person shall score a minimum of 75 percent on the written or oral test provided by the department and demonstrate safe handling of a firearm. Based on the results of the written or oral test and demonstrated firearm safe handling techniques as prescribed by the department, the volunteer instructor shall determine the persons who shall be issued a certificate of completion.

15.1(3) *Special testing out provisions.* Any person born after January 1, 1967, who does not complete the required ten-hour hunter safety and ethics course (as described in Iowa Code section 483A.27, subsection (1)), must meet the following requirements to be eligible to purchase an Iowa hunting license:

a. To comply with Iowa Code section 483A.27, subsection (5), an individual must pass a written examination compiled by the department of natural resources under the direct supervision of a state conservation officer or certified hunter safety instructor.

b. If the applicant does not pass the examination by a score of 95 percent or more, the applicant must then wait seven days to take the examination again.

c. If the applicant does not pass the second examination with a score of 95 percent or more, the applicant must successfully complete the ten-hour safety and ethics course to obtain a certificate of completion (as described in Iowa Code section 483A.27, subsection (2)).

15.1(4) *Exemptions.* The following groups of individuals do not need hunting licenses and therefore do not need to satisfactorily complete a hunter safety and ethics education course:

a. *Landowners and tenants.* Owners or tenants of land and their children when hunting on the land which they own or on which they are tenants.

b. *Residents under 16.* Residents of the state under 16 years of age accompanied by their parent or guardian or in the company of any other competent adult if the adult accompanying said minor possesses a valid hunting license, providing, however, there is one licensed adult accompanying each person under 16 years of age.

15.1(5) *Deer and wild turkey license applications.* Individuals are not required to exhibit a certificate showing satisfactory completion of a hunter safety and ethics education course only when applying for a deer or wild turkey license.

15.1(6) *Form of licenses.* All licenses shall contain a general description of the licensee. Individual license applicants must also provide their date of birth and either their social security number or a valid Iowa driver's license number at the time of application. The license shall be signed by the applicant. The license shall clearly indicate the privilege granted.

571—15.2(483A) License depositaries.

15.2(1) *Depositary designation.* The director may designate a retail business establishment, an office of a government entity, or a nonprofit corporation as a depositary for the sale of hunting and fishing licenses in accordance with the provisions of this rule.

15.2(2) *Application.* Application forms may be secured by a written or verbal request to the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319; telephone (515)281-8688. Requests for forms may be made through department field staff or field officers. The applicant must provide the following information on the form:

a. The name of the retail business establishment, government entity, or nonprofit corporation, and location(s) and telephone numbers.

b. A general description of the type of retail business establishment, government entity, or nonprofit corporation.

c. The form of ownership if a retail business establishment. If a partnership, the full names and addresses of all partners must be provided. If a corporation, the date and state of incorporation must be provided.

d. If a government entity, the name and title of the responsible official.

e. If a nonprofit corporation, the date and state of incorporation.

f. The hours and days open to the public.

g. The office and residence telephone number of the person signing the application.

h. The name, address, and telephone number of three credit references, including the bank used by the retail business establishment, government entity, or nonprofit corporation.

The application forms contain a statement to be signed agreeing to the terms and conditions as set forth in this rule. The application must be signed by the owner if a sole proprietorship; by a partner if a partnership; if a corporation, by an authorized corporate official; or by the elected or appointed official administratively in charge of the government entity. The signature must be attested to by a notary public.

15.2(3) *Security.* The applicant must provide security, either a surety bond from an association or corporation which does the business of assuring the fidelity of others, and which has the authority by law to do business in this state, a collateral assignment of a certificate of deposit, or a letter of credit.

a. *Condition of security.* A surety bond shall generally provide that the applicant render a true account of, and turn over all moneys, license blanks, and duplicates when requested to do so by the director or an authorized representative, and to comply with all applicable provisions of the application, the Iowa Administrative Code, and the Iowa Code.

b. *Amount of security.* All forms of security shall be in the amount of $5,000 each, or a larger amount as jointly agreed to by the agency and the depositary.

c. *Term of bond.* The bond shall run continuously from the date the application is approved.

d. *Termination of bond.* The surety or principal may terminate the bond at any time by sending written notice by certified mail, return receipt requested, to the Director, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. The termination shall become effective 30 days after the receipt of the notice by the director.

e. Collateral assignment of a certificate of deposit and letters of credit. Collateral assignments of certificates of deposit and letters of credit shall be subject to the following terms and conditions:

(1) Certificates of deposit shall be assigned to the department, in writing, and the assignment shall be recorded on the books of the bank issuing the certificate.

(2) Banks issuing these certificates shall waive all rights of setoff or liens which they have or might have against these certificates.

(3) Certificates of deposit shall be automatically renewed unless the director approves release of the funds in writing. Letters of credit shall be without reservation and shall remain in effect continuously, or as otherwise agreed to by the director.

(4) The director will release the certificates of deposit or approve the cancellation of a letter of credit upon termination of a license depositary agreement if all licenses and moneys have been accounted for satisfactorily, or if the depositary provides a satisfactory surety bond in lieu thereof.

15.2(4) *Approval of application and security.* The director will approve the application upon the receipt of a satisfactory bond, a collateral assignment of deposit, or a letter of credit and a determination that the credit references are satisfactory. However, the director reserves the right not to approve any application received from a party whose depositary agreement has previously been terminated by the department for cause. Upon approval by the director, the agency will provide the depositary with license blanks, reporting forms, and instructions.

15.2(5) *Depositary reporting standards.* All depositaries shall comply with the following reporting standards:

a. Monthly reports. A full and complete monthly sales report, including duplicate copies of the licenses sold and a check or other monetary instrument in the amount due shall be remitted to the department on a prescheduled due date of the following month. A depositary which does not provide the monthly report to the department within 10 days after the due date shall be considered seriously delinquent. However, if the office or business is operated on a seasonal basis, a monthly report is not required for any month that the office or business is not open to the public.

b. Annual report. The annual report for all sales for the calendar year and including the return of all unused license blanks shall be remitted to the department by January 31 of each year. An annual report shall also be submitted at the time a depositary is terminated for any reason during the calendar year. This report must be received within 15 days after the director receives the notice of termination. A depositary will be considered seriously delinquent if the annual report is not received by February 15.

c. Accountability. The depositary shall be fully accountable to the state for all proceeds collected from the sale of licenses. This accountability shall not be diminished by reason of bankruptcy, fire loss, theft loss, or other similar reason.

d. Probation. A depositary shall be placed on probation by a notice sent by certified mail, return receipt requested, when any of the following circumstances occur:

(1) A depositary is seriously delinquent for the second time during any consecutive six-month period.

(2) A depositary fails to correct a serious delinquency within ten days.

(3) A check is returned by the bank by reason of insufficient funds.

The probation will be automatically canceled after six months of satisfactory performance.

e. Termination of depositary. A depositary may terminate the agreement at any time by notifying the director by certified mail, return receipt requested. The termination shall be effective 30 days after the receipt of the notice by the director, and after the depositary has fully accounted for all moneys and unused license blanks. The director may terminate the depositary agreement and require an immediate and full accounting of all moneys and unused license blanks under any of the following circumstances:

(1) The occurrence of a third serious delinquency during any consecutive six-month period.

(2) Not making an insufficient funds check good within 10 days after proper notice by the director.
(3) Failure to correct a serious delinquency within 15 calendar days.
(4) Knowingly placing a date, other than the correct date, on any license.
(5) Knowingly selling a resident license to a nonresident, or selling a senior citizen or disabled license to a person not qualified for such license.
(6) Charging more than the statutory writing fee.
(7) Refusal to sell a license to any individual by reason of race, creed, nationality, or religion.
(8) Expiration or cancellation of bond, certificate of deposit, or letter of credit.
(9) A depositary fails to make a full and complete monthly sales report and monthly remittance.
(10) A depositary, or employee of a depositary, knowingly makes a false entry on any license being sold, or knowingly issues any license to a person to whom issuance of that license is improper.

15.2(6) *Multiple establishment locations.* An application and security may be submitted for retail business establishments with multiple locations. For purposes of reporting and for determining the amount of the security, each application will be considered on a case-by-case basis and as mutually agreed upon by the depositary and the director.

15.2(7) *Forms for application, bond, monthly report and collateral as assignment.* Copies of required forms which shall be used may be obtained by writing the License Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319; or by calling (515)281-8688.

571—15.3(483A) Lost or destroyed license blanks.

15.3(1) *Accountability for license blanks.* Whenever a depositary appointed by the director or a county recorder requests to be relieved from accountability for license blanks that have been lost or destroyed, the depositary or recorder shall file a bond for the face value of such lost or destroyed license blanks and provide an explanation to the director.

15.3(2) *Explanation.* The depositary or recorder must submit a written statement in the form of an affidavit regarding the facts and circumstances surrounding the alleged loss or destruction. Pictures, drawings, or other pertinent information may be attached and referenced in the statement. The loss or destruction must relate to one or a combination of the following reasons:

a. Loss or destruction by fire.
b. Loss from theft.
c. Loss while in transit.
d. Loss from natural causes, including but not limited to floods, tornadoes, and severe storms.
e. Loss or accidental destruction in a course of normal business operations or facility maintenance and repair.

The statement must also include a specific description of the precautions and procedures normally utilized by the recorder or depositary to prevent or to guard against the loss or destruction described, and a further statement as to why the precautions or procedures failed in this particular instance.

15.3(3) *Review and determination by director.* The director shall consider the written explanation as provided. The director shall also consider the past record of the depositary or recorder regarding losses and destructions; the past record of the depositary or recorder regarding prompt and accurate reporting; and may direct further investigations into the circumstances and facts by department staff.

15.6(7) *Dates of suspension or revocation.* The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in 15.6(6) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

15.6(8) *Magistrate authority.* This chapter does not limit the magistrate authority as described in Iowa Code section 483A.21.

15.6(9) *Suspension for failure to comply with a child support order.* The department is required to suspend or deny all licenses of an individual upon receipt of a certificate of noncompliance with child support obligation from the Iowa child support recovery unit pursuant to Iowa Code section 252J.8(4).

a. The receipt by the department of the certificate of noncompliance shall be conclusive evidence. Pursuant to Iowa Code section 252J.8(4), the person does not have a right to a hearing before the department to contest the denial or suspension action taken due to the department's receipt of a certificate of noncompliance with a child support obligation but may seek a hearing in district court in accordance with Iowa Code section 252J.9.

b. Suspensions for noncompliance with a child support obligation shall continue until the department receives a withdrawal of the certificate of noncompliance from the Iowa child support recovery unit.

c. After the department receives a withdrawal of the certificate of noncompliance, an individual may obtain a new license upon application and the payment of all applicable fees.

571—15.7(483A) Free hunting and fishing license for low-income persons 65 years of age and older, or low-income persons who are permanently disabled.

15.7(1) *Purpose.* Pursuant to Iowa Code subsection 483A.24(14), the department of natural resources will issue a free annual combination hunting and fishing license to low-income persons who meet the age status or permanently disabled status as defined.

15.7(2) *Definitions.*

"Age status" means a person who has achieved the sixty-fifth birthday.

"Low-income person" means a person who is a recipient of a program administered by the state department of human services for persons who meet low-income guidelines.

"Permanently disabled" means a person who meets the definition in Iowa Code section 483A.4.

15.7(3) *Procedure.* Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, address, height, weight, color of eyes and hair, date of birth, and gender of the applicant. In addition, applicants shall include a copy of an official document such as a birth certificate if claiming age status, or a copy of an award letter from the Social Security Administration or private pension plan if claiming permanent disabled status. The applicant shall indicate on the application which low-income assistance program the applicant is receiving. The application shall include an authorization allowing the department of human services to verify that the applicant is a recipient of the low-income assistance program checked on the application.

b. The free annual combination license will be issued by the department upon receipt of a properly completed application. The license will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain a free license.

c. A person whose income falls below the federal poverty guidelines, but is not a recipient of a state assistance program, may apply for this license by providing the following:

(1) A statement listing income from all sources (i.e., social security, retirement income, wages, dividends and interest, cash gifts, rents and royalties, and other cash income).

(2) A copy of any available document that verifies income (i.e., income tax return, bank statement, social security statement, or other document the applicant considers supportive of income status).

(3) A signed statement by the applicant that the applicant's annual cash income does not exceed the federal poverty limit for the current year.

Federal poverty guidelines are published in February of each year and will be the income standard for applicants from that time until the new limits are available in the subsequent year. The income limit will be shown on the application and will be available upon request from the department.

This rule is intended to implement Iowa Code section 483A.24(17).

571—15.8(483A) Free lifetime fishing license for persons who have severe physical or mental disabilities.

15.8(1) *Purpose.* Pursuant to Iowa Code subsection 483A.24(9), the department of natural resources will issue a free lifetime fishing license to Iowa residents 16 or more years of age who have severe mental or physical disabilities who meet the definitions of "Severe mental disability" and "Severe physical disability" in 15.8(2).

15.8(2) *Definitions.* For the purposes of this rule, the following definitions apply:

"Severe mental disability" means a person who has severe, chronic conditions in all of the following areas which:

1. Are attributable to a mental impairment or combination of mental and physical impairments;
2. Are likely to continue indefinitely;
3. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
4. Reflect the person's need for a combination and sequence of services which are of lifelong or an extended duration and are individually planned and coordinated.

"Severe physical disability" means a disability that limits or impairs the person's ability to walk under any of the following circumstances:

1. The person cannot walk 200 feet without stopping to rest.
2. The person cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device.
3. The person is restricted by lung disease to such an extent that the person's forced expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest.
4. The person must use portable oxygen.
5. The person has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class 3 or Class 4 according to standards set by the American Heart Association.

- Class 3—Persons with cardiac disease resulting in marked limitation of physical activity. The person is comfortable at rest, but less than ordinary activity causes fatigue, palpitation, dyspnea, or angina pain.
- Class 4—Persons with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of heart failure or the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.

6. The person is severely limited in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.

15.8(3) *Procedure.* Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, address, home telephone number, height, weight, eye and hair color, date of birth, and gender of the applicant.

b. The application shall be signed and certified by the applicant's attending physician and, based upon the criteria listed in this rule, declare that the applicant has a severe mental or physical disability.

571—15.10(483A) Transportation tags for military personnel on leave from active duty.

15.10(1) *Military transportation tags for deer and turkey.* The military transportation tag shall include the following information: name, birth date, current address of military person; species and sex of animal taken; date of kill; and weapon used. Only conservation officers of the department shall be authorized to issue military transportation tags.

15.10(2) *Annual limit for military transportation tags.* A person receiving a military transportation tag shall be limited to one military deer tag and one military turkey tag annually.

15.10(3) *Regulations apply to military personnel.* With the exception of the license requirement exemption set forth in Iowa Code section 483A.24(6), all hunting and fishing regulations shall apply to active duty military personnel.

This rule is intended to implement Iowa Code section 483A.24.

571—15.11(483A) Refunds or changes for special deer and turkey permits and general licenses.

15.11(1) *Invalid applications.* Deer and turkey permit applications that are received too late for processing after the closing date for acceptance of applications or applications that are invalid on their face will be returned unopened to the applicant. Permit fees related to applications which are determined to be invalid by a computer analysis or other analysis after the applications have been processed will be refunded to the applicant, less a $10 invalid application fee to compensate for the additional processing cost related to an invalid application.

15.11(2) *Death of applicant.* Deer or turkey permit fees will be refunded to the applicant's estate when the permittee's death predates the season for which the permit was issued and a written request is received from the permittee's spouse, executor or estate administrator within 90 days of the last date for which the permit was issued.

15.11(3) *National or state emergency.* Deer or turkey permit fees will be refunded if the permittee is a member of the National Guard or a reserve unit and is activated for a national or state emergency which occurs during the season for which the permit was issued. A written refund request must be received by the DNR within 90 days of the last date of the season for which the permit was issued.

15.11(4) *Permit changes.* The agency will attempt to change an applicant's choice of season or type of permit if a written or telephonic request is received by the license bureau in sufficient time, usually 20 days, prior to printing the permit, and if the requested change does not result in disadvantage to another applicant. Telephonic change requests must be verified in writing by the requester before a change request will be honored. The agency's ability to accommodate requests to change season or permit type is dependent on workload and processing considerations. If the agency cannot accommodate a request to change a season or type choice, the permit will be issued as originally requested by the applicant. No refund will be allowed. The agency will not change the name on the permit from that submitted on the application.

15.11(5) *General hunting and fishing licenses duplicate purchase.* Upon a showing of sufficient documentation, usually a photocopy of the licenses, that more than one hunting or fishing license was purchased by or for a single person, the agency will refund the amount related to the duplicate purchase. A written refund request, with supporting documentation, must be received by the license bureau within 90 days of the date on the face of the duplicate licenses.

15.11(6) *Other refund requests.* Except as previously described, the agency will not issue refunds for any licenses, stamps or permits related to fishing and hunting.

This rule is intended to implement Iowa Code section 483A.24.

571—15.12(483A) Electronic license sales.

15.12(1) The director may designate a retail business establishment, an office of a government entity, or a nonprofit corporation as a seller of electronically issued licenses in accordance with the provisions of this rule. The provisions of 571—15.2(483A) shall not apply to a license seller engaging in, or applying to engage in, the electronic sale and issuance of licenses.

15.12(2) Application. Application forms may be secured by a written or in-person request to the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. The following information must be provided on the application form:

a. The legal name, address, and telephone number of the entity applying for designation;

b. The hours open for business and general service to the public;

c. A brief statement of the nature of the business or service provided by the applicant;

d. The potential volume of license sales;

e. The current financial status of the proposed license seller with respect to future viability and longevity;

f. A brief statement in regard to the need for license sellers in the geographic area in which the applicant is located; and

g. A notarized signature by an owner, partner, authorized corporate official, or public official of the entity applying for designation.

15.12(3) Designation. The director shall approve or deny the application to sell electronically issued licenses based upon the following criteria:

a. The need for a license seller in the area;

b. The hours the applicant is open for business or general service to the public;

c. The potential volume of license sales;

d. The apparent financial stability and longevity of the license seller; and

e. The number of point-of-sale (POS) terminals available to the department.

15.12(4) Issuance of electronic licensing equipment. Upon the director's approval of an application and designation of a license seller for electronic license sales, the equipment necessary to conduct such sales will be issued to the license seller by the department subject to the following terms and conditions:

a. Prior to the issuance of the electronic licensing equipment, the approved electronic license seller shall furnish to the department an equipment security deposit in an amount to be determined by the department.

b. Prior to the issuance of the electronic licensing equipment, the approved electronic license seller shall enter into an electronic license sales agreement with the department which sets forth the terms and conditions of such sales including the authorized amounts to be retained by the license seller.

c. Prior to the issuance of the electronic licensing equipment, the approved electronic license seller shall furnish to the department a signed authorization agreement for electronic funds transfer pursuant to subrule 15.12(5).

d. Permit-issuing equipment and supplies must be securely stored to protect them from fire, theft, or unauthorized access. Any loss of equipment or moneys derived from license sales is the responsibility of the electronic license seller.

e. Upon termination of the agreement by either party, all equipment and supplies, including unused paper stock, ribbon, user's guides, and training videos must be returned to the department. Failure to return equipment and supplies in a usable condition, excluding normal wear and tear, will result in the forfeiture of deposit in addition to any other remedies available by law to the department.

15.12(5) License fees. All moneys received from the sale of permits, less and except the agreed-upon service fee, must be immediately deposited and held in trust for the department of natural resources.

a. All approved applicants must furnish to the department a signed authorization agreement for electronic funds transfer authorizing access by the department to a bank account for electronic transfer of permit fees received by the license seller.

b. The amount of money due for accumulated sales will be drawn electronically by the department on a weekly basis. The license seller shall be given notice of the amount to be withdrawn at least two business days before the actual transfer of funds occurs. The license seller is responsible for ensuring that enough money is in the account to cover the amount due for accumulated sales.

c. License sellers may accept or decline payment in any manner other than cash, such as personal checks or credit cards, at their discretion. Checks or credit payments must be made payable to the license seller and not to the department. The license seller shall be responsible for ensuring that the license fee is deposited in the electronic transfer account, regardless of the payment or nonpayment status of any check accepted by the license seller.

15.12(6) Equipment shut down. The department reserves the right to disconnect or block the license seller's access to the electronic license sales system under the following conditions:

a. Upon the first incident in which there are insufficient funds in the electronic transfer account to cover accumulated sales at the time of the electronic transfer, the license seller has seven days from the date of the first attempted transfer to correct this deficiency. If the deficiency is not corrected within seven days from the date of the first attempted transfer, the license seller's access to the electronic license sales system may be disconnected or blocked until the deficiency is corrected.

b. Upon the second incident in which there are insufficient funds in the electronic transfer account to cover accumulated sales at the time of the electronic transfer, the department may immediately disconnect or otherwise block the license seller's access to the electronic license sales system until the deficiency is corrected.

c. Upon the termination of the electronic license sales agreement pursuant to subrule 15.12(7) or 15.12(8), the department may disconnect or otherwise block the license seller's access to the electronic license sales system.

15.12(7) Termination. The department reserves the right to terminate the electronic license sales agreement and disconnect the electronic license issuing equipment for cause. Cause shall include, but is not limited to, the following:

a. Failure by the license seller to deposit license fees into the electronic transfer account in a sum sufficient to cover the amount due for accumulated sales;

b. Charging or collecting any fees in excess of those authorized by law;

c. Discriminating in the sale of a license in violation of state or federal law;

d. Knowingly making a false entry concerning any license sold or knowingly issuing a license to a person who is not eligible for the license issued;

e. The personal, including business, use of license sale proceeds other than the service fee by the license seller;

f. The disconnecting or blocking of access to the electronic license sales system for a period of 30 days or more pursuant to subrule 15.12(6); or

g. Repeated violations of these rules or the terms of the electronic license sales agreement.

15.12(8) Voluntary termination. A license seller may terminate its designation and the electronic license sales agreement at its discretion by providing written notice to the department by certified mail, return receipt requested. Voluntary termination shall become effective 30 days after the department's receipt of notice.

These rules are intended to implement Iowa Code sections 321.23(2), 481A.38 and 481A.134 and Iowa Code chapter 483A.

[Filed 10/8/80, Notice 7/23/80—published 10/29/80, effective 12/3/80]
[Filed 10/7/81, Notice 9/2/81—published 10/28/81, effective 12/2/81]
[Filed 8/9/83, Notice 6/22/83—published 8/31/83, effective 10/6/83]
[Filed 12/22/83, Notice 10/26/83—published 12/21/83, effective 1/26/84]
[Filed 8/8/85, Notice 6/5/85—published 8/28/85, effective 10/2/85]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 4/13/89, Notice 1/25/89—published 5/3/89, effective 6/7/89]
[Filed 7/19/90, Notice 5/30/90—published 8/8/90, effective 9/12/90]
[Filed emergency 11/9/90, after Notice 9/5/90—published 11/28/90, effective 11/9/90]
[Filed emergency 1/18/91—published 2/6/91, effective 1/18/91]
[Filed 2/15/91, Notice 11/28/90—published 3/6/91, effective 4/10/91]
[Filed 11/8/91, Notice 10/2/91—published 11/27/91, effective 1/2/92]
[Filed emergency 1/10/92—published 2/5/92, effective 1/10/92]
[Filed 5/8/92, Notice 3/4/92—published 5/27/92, effective 7/1/92]
[Filed 6/5/92, Notice 4/29/92—published 6/24/92, effective 7/29/92]
[Filed 8/13/93, Notice 5/26/93—published 9/1/93, effective 10/6/93]
[Filed 5/15/95, Notice 3/1/95—published 6/7/95, effective 7/12/95]
[Filed 9/8/95, Notice 7/5/95—published 9/27/95, effective 11/1/95]
[Filed 11/17/95, Notice 9/27/95—published 12/6/95, effective 1/10/96]
[Filed 8/9/96, Notice 6/5/96—published 8/28/96, effective 10/2/96]
[Filed 9/19/97, Notice 7/16/97—published 10/8/97, effective 11/12/97]
[Filed 11/14/97, Notice 9/10/97—published 12/3/97, effective 1/7/98]
[Filed 6/12/98, Notice 4/8/98—published 7/1/98, effective 8/5/98]
[Filed 11/13/98, Notice 10/7/98—published 12/2/98, effective 1/6/99]
[Filed 2/19/99, Notice 12/2/98—published 3/10/99, effective 4/14/99]
[Filed 6/9/00, Notice 4/5/00—published 6/28/00, effective 8/2/00]
[Filed emergency 7/21/00—published 8/9/00, effective 7/21/00]

CHAPTER 78
GINSENG HARVESTING AND SALE
[Prior to 12/31/86, Conservation Commission[290] Ch 21]

571—78.1(456A) Definitions. As used in this rule:

"Cultivated ginseng" means ginseng that is artificially propagated and maintained under controlled conditions, for example, in intensively or intermittently prepared or managed gardens or patches, under artificial or natural shade.

"Dealer" means anyone who purchases and sells wild or cultivated ginseng.

"Department" means the Iowa department of natural resources.

"Director" means the director of the Iowa department of natural resources or a designee.

"Ginseng" means dry root, live root, seeds, or other parts of American ginseng (Panax quinquefolius) that is cultivated or wild.

"Grower" means a person who grows cultivated ginseng and who sells cultivated ginseng to a dealer.

"Harvester" means any person who harvests wild ginseng and sells it, but does not purchase ginseng.

"Wild ginseng" means ginseng that is not grown or nurtured by a person beyond planting of local seed at the site of collection.

"Woods-grown ginseng" means ginseng that has been nurtured in any way by humans, including but not limited to watering, weeding, use of pesticides, soil tillage and fertilization; considered to be cultivated ginseng.

571—78.2(456A) Season for legal harvest. Persons may dig American ginseng, either wild or cultivated, for the purposes of marketing from September 1 through October 31 of each year.

571—78.3(456A) Ginseng permits. Ginseng growers' permits, wild ginseng harvesters' permits and ginseng dealers' permits shall be issued upon filing of an application provided by the department and accompanied by the appropriate permit fee.

78.3(1) *Free grower permit.* Growers of cultivated ginseng are required to obtain a permit, for which there is no charge, from the department. This permit shall be valid for five years from the date of issuance. Applications for permit renewal must be filed with the department within 60 days of expiration.

78.3(2) *Wild ginseng harvester's permit.*

a. Every harvester of wild ginseng must have in possession a valid permit to harvest wild ginseng for the current harvest season when harvesting, possessing or transporting wild ginseng. No person, while harvesting, shall carry or have in possession any wild ginseng harvester's permit issued to another person.

b. Wild ginseng harvesters' permits shall be issued upon filing of an application accompanied by a $10 permit fee with the department of natural resources. The application period shall be from May 15 through October 31 of each year.

c. The wild ginseng harvester's permit shall be valid from September 1 through March 15 of the following year, both dates inclusive.

d. Harvesters with valid Iowa ginseng harvesters' permits may sell wild ginseng from September 1 through March 15 of the following year.

e. The wild ginseng harvester's permit shall include the applicant's signature, address, and other facts as may be required by the department.

f. Harvesters with valid Iowa ginseng harvesters' permits may retain no more than four ounces of dry wild ginseng for personal consumption for one year beyond the expiration date of the permit.

78.3(3) *Ginseng dealer's permit and registration.*

a. All persons who buy and sell wild or cultivated ginseng in Iowa shall have a valid dealer's ginseng permit in their own name, except for paid employees or family members of a licensed dealer who are working at that dealer's primary place of business as indicated on the dealer's permit. The dealer's permit is used to register the dealer with the department.

b. Ginseng dealers' permits shall be issued upon filing of an application accompanied by a $100 permit fee with the department.

c. The ginseng dealer's permit shall be valid from September 1 until August 31 of the following year.

d. The ginseng dealer's permit application must be filed with the department at least 15 days prior to the beginning of the legal harvest season in Iowa.

571—78.4(456A) Dealer's records. Each permitted ginseng dealer shall keep an accurate and complete record of each cultivated or wild ginseng purchase or sale. Forms for these records shall be provided by the department. A copy of each record shall be kept for a period of three years after the expiration of the dealer's permit.

78.4(1) The dealer's record of each ginseng purchase shall include:

a. Date of purchase;

b. Harvester's permit number or dealer's permit number of seller;

c. Dry weight of ginseng root purchased;

d. Name of county where ginseng was harvested if purchased from a harvester;

e. Additional information as may be requested by the department.

78.4(2) The dealer's record of each ginseng sale of cultivated or wild ginseng shall include:

a. Date of sale;

b. Name and address of buyer;

c. Dry weight of ginseng root sold;

d. Year in which the ginseng sold was harvested;

e. Additional information as may be requested by the department.

78.4(3) Each permitted dealer shall submit to the department copies of all purchase and sales records for cultivated and wild ginseng. These records shall be submitted to the department by April 15 and shall cover all sales and purchases from September 1 of the year of the harvest through March 31 of the following year.

78.4(4) Each dealer must submit a report to the department which inventories all cultivated and wild ginseng remaining in the dealer's possession after March 31. Any roots remaining with the dealer shall be weighed and certified by the dealer. The report shall be submitted to the department by April 15 of each year even if the dealer no longer has any ginseng roots in possession. The dealer shall keep a copy of the inventory report and record all future sales of the roots listed in the report. The dealer shall submit an amended annual report to the department within 30 days of the sale of all ginseng roots listed in the inventory report.

571—78.5(456A) Certification of shipments.

78.5(1) Shipments of cultivated and wild ginseng to points outside the state of Iowa by growers, harvesters and dealers shall be accompanied by a certificate of origin (shipping certificate). Shipping certificates are the certification of legal taking. Shipping certificate for cultivated ginseng will be issued to growers or dealers and will be based upon the permit holders' cultivation, purchase, and sales records and completed by the permit holder on forms provided by the department. Shipping certificates for wild ginseng will be issued by state personnel or their agents after the root has been weighed and certified at one of the locations designated by the department.

78.5(2) Shipping certificates shall be issued free to grower and dealer permit holders and for a fee of $5 for each certificate to holders of harvester permits.

78.5(3) Rescinded IAB 8/9/00, effective 9/13/00.

78.5(4) Rescinded IAB 8/9/00, effective 9/13/00.

571—78.6(456A) Inspection.

78.6(1) Any permit issued under this chapter shall be shown to employees of the department upon request.

78.6(2) Any records required by this chapter to be maintained or submitted shall be produced for inspection upon request of employees of the department.

78.6(3) Failure to maintain records or to submit reports as required may result in the denial of the issuance of future permits.

78.6(4) Any violation of Iowa Code section 456A.24 or these rules is cause for revocation of any permit issued under authority of these rules.

571—78.7(456A) Restrictions. Wild ginseng plants shall be harvested only if they possess three or more true leaves ("prongs"). When harvesting wild ginseng, harvesters shall plant all seeds from harvested plants within 100 feet of the parent plants. Seed from wild ginseng may not be sold or transplanted away from the site of the parent plant.

These rules are intended to implement Iowa Code section 456A.24(11).

[Filed 3/6/81, Notice 9/17/80—published 4/1/81, effective 5/6/81]
[Filed emergency 8/9/83—published 8/31/83, effective 8/15/83]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 5/7/93, Notice 12/23/92—published 5/26/93, effective 7/16/93]
[Filed emergency 5/15/95—published 6/7/95, effective 5/15/95]
[Filed 5/29/98, Notice 4/8/98—published 6/17/98, effective 7/22/98]
[Filed 7/21/00, Notice 5/31/00—published 8/9/00, effective 9/13/00]

CHAPTER 79
Reserved

EMERGENCY MANAGEMENT DIVISION[605]

[Created within the Department of Defense[601] by 1992 Iowa Acts, chapter 1139, section 21]
[Prior to 12/23/92, see Disaster Services Division[607]]

CHAPTER 1
ORGANIZATION

[Prior to 4/18/90, Public Defense Department[650], Ch 5]
[Prior to 5/12/93, Disaster Services Division[607], Ch 1]

605—1.1(29C) Description. The emergency management division is a division within the department of public defense.

1.1(1) *Director.* The adjutant general, as the director of the department of public defense under the direction and control of the governor, shall have supervisory direction and control of the emergency management division and shall be responsible to the governor for the carrying out of the provisions of Iowa Code chapter 29C. In the event of disaster beyond local control, the adjutant general may assume direct operational control over all or any part of the emergency management functions within this state.

1.1(2) *Administrator.* The emergency management division shall be under the management of an administrator appointed by the governor. The administrator shall be vested with the authority to administer emergency management affairs in this state and shall be responsible for preparing and executing the emergency management programs of this state subject to the direction of the adjutant general. The administrator, upon the direction of the governor and supervisory control of the director of the department of public defense, shall: prepare a comprehensive plan and emergency management program for disaster preparedness, response, mitigation, recovery, emergency operation, and emergency resource management of this state; make such studies and surveys of the industries, resources and facilities in this state as may be necessary to ascertain the capabilities of the state for disaster recovery, disaster planning and operations, and emergency resource management, and to plan for the most efficient emergency use thereof; provide technical assistance to any local emergency management commission or joint commission requiring such assistance in the development of an emergency management program; implement planning and training for emergency response teams as mandated by the federal government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 42 U.S.C. § 9601 et seq.; the administrator, with the approval of the governor and upon recommendation of the adjutant general, may employ a deputy administrator and such technical, clerical, stenographic and other personnel and make such expenditures within the appropriation or from other funds made available to the department of public defense for purposes of emergency management, as may be necessary to administer the purposes of Iowa Code chapters 29C, 30, and 34A.

605—1.2(29C) Definitions. The following definitions are applicable to the emergency management division:

"Administrator" means the administrator of the emergency management division of the department of public defense.

"Comprehensive countywide emergency operations plan" means documents which describe the actions to be taken to lessen the effects of, prepare for, respond to and recover from a disaster by county and city governments, quasi-government agencies, and private organizations which have emergency operations responsibility. The plan is multihazard in scope (covers all hazards for the county) and provides for a coordinated effort. It references authority, assigns functional responsibilities, provides for direction and control, and the effective use of resources.

"Disaster" means human-caused, technological or natural occurrences, such as fire, flood, drought, earthquake, tornado, windstorm, hazardous substance or nuclear power plant accident or incident, which threaten the public peace, health and safety of the people or which damage or destroy public or private property. The term includes terrorism, enemy attack, sabotage, or other hostile action from without the state.

"Division" means the emergency management division of the department of public defense.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action to protect life or property. Such actions are normally handled in a routine manner by law enforcement, fire protection, public works, utilities, and emergency medical services.

"Emergency management" means lessening the effects of, preparations for, operations during, and recovery from natural, technological or human-caused disasters. These actions are broad in scope and include, but are not limited to: disaster plans, mitigation, preparedness, response, warning, emergency operations, training, exercising, research, rehabilitation, and recovery activities.

"Emergency management performance grant program" means a program by which federal funds are utilized to pay no more than 50 percent of the salaries, benefits, travel, and office expenses incurred in the administration of the state and local emergency management program.

"Joint commissions" means two or more local emergency management commissions acting as a joint commission for the coordination and administration of emergency management.

"Local commission" means the local emergency management commission.

"Mitigation" means any action taken to reduce or eliminate the long-term risk to human life and property from hazards. Examples of mitigation activities include building codes, land use management, floodplain management, building of protective structures such as flood walls, public education, research, risk mapping, safety codes, and statutes and ordinances.

"Preparedness" means any activity taken in advance of an emergency or disaster that improves emergency readiness posture and develops or expands operational capabilities. Examples of preparedness activities include, but are not limited to, continuity of government, emergency alert and warning systems, emergency communications, emergency operations centers, comprehensive countywide emergency operations plans, emergency public information materials, exercise of plans and systems, hazard analysis, mutual aid agreements, resource management, and the training and equipping of personnel.

"Recovery" means short-term activity to return vital life support systems to minimum operating standards and long-term activity designed to return the affected people and areas to their predisaster conditions. Examples of recovery activity are crisis counseling, damage assessment, debris clearance, decontamination, disaster insurance payments, disaster loans and grants, disaster unemployment assistance, public information, community outreach, temporary housing, and reconstruction.

"Response" means any action taken immediately before, during, or directly after an emergency or disaster occurs, which is intended to save lives, minimize injuries, lessen property and environmental damage and enhance the effectiveness of recovery. Examples of response activity include rendering of assistance by emergency responders, activation of the emergency operations center, emergency alert system activation, emergency instructions to the public, emergency plan implementation, public official alerting, evacuation, sheltering of victims, search and rescue, resource mobilization, and warning system activation.

These rules are intended to implement Iowa Code chapters 29C, 30 and 34A.

[Filed 4/29/77, Notice 1/12/77—published 5/18/77, effective 6/22/77]
[Filed 3/20/90, Notice 2/7/90—published 4/18/90, effective 5/23/90]
[Filed 4/22/93, Notice 3/17/93—published 5/12/93, effective 6/16/93]
[Filed 7/18/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

CHAPTER 2
PETITIONS FOR RULE MAKING

[Prior to 5/12/93, Disaster Services Division[607], Ch 2]

605—2.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the division at the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

EMERGENCY MANAGEMENT DIVISION

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the division's authority to take the action urged or to the desirability of that action.
3. A brief summary of the petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided by rule 2.4(17A).

2.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

2.1(2) The emergency management division may deny a petition because it does not substantially conform to the required form.

605—2.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The emergency management division may request a brief from the petitioner or from any other person concerning the substance of the petition.

605—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

605—2.4(17A) Consideration.

2.4(1) Within 14 days after the filing of a petition, the division must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the emergency management division must schedule a brief and informal meeting between the petitioner and the division, a member of the division, or a member of the staff of the division, to discuss the petition. The emergency management division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the emergency management division by any person.

2.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the emergency management division must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to petitioner.

2.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the division's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 7/18/90, Notice 6/13/90—published 8/8/90, effective 9/12/90]
[Filed 4/22/93, Notice 3/17/93—published 5/12/93, effective 6/16/93]
[Filed 7/18/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

CHAPTER 3
DECLARATORY ORDERS

[Prior to 5/12/93, Disaster Services Division[607], Ch 3]

605—3.1(17A) Petition for declaratory order. Any person may file a petition with the emergency management division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division at Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

EMERGENCY MANAGEMENT DIVISION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

605—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the emergency management division shall give notice of the petition to all persons not served by the petitioner pursuant to 3.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

605—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the emergency management division.

3.3(3) A petition for intervention shall be filed at the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

EMERGENCY MANAGEMENT DIVISION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

605—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The emergency management division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

605—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

605—3.6(17A) Service and filing of petitions and other papers.

3.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

3.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

3.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 605—6.12(17A).

605—3.7(17A) Consideration. Upon request by petitioner, the emergency management division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division, a member of the division, or a member of the staff of the division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division by any person.

605—3.8(17A) Action on petition.

3.8(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 605—6.2(17A).

605—3.9(17A) Refusal to issue order.

3.9(1) The emergency management division shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3 The division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the emergency management division to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final division action on the petition.

3.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

605—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

605—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

605—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the emergency management division, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the emergency management division. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 7/18/90, Notice 6/13/90—published 8/8/90, effective 9/12/90]
[Filed 4/22/93, notice 3/17/93—published 5/12/93, effective 6/16/93]
[Filed 7/18/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

[Prior to 5/12/93, Disaster Services Division[607], Ch 4]

605—4.1(17A) Adoption by reference. The emergency management division hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)" insert "administrator".
2. In lieu of the words "(specify time period)" insert "one year".
3. In lieu of the words "(identify office and address)" insert "Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)" insert "the administrator at (515)281-3231".
5. In lieu of the words "(designate office)" insert "Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)" insert "Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)" insert "administrator".

These rules are intended to implement Iowa Code chapter 17A.

[Filed 4/29/77, Notice 1/12/77—published 5/18/77, effective 6/22/77]
[Filed 7/18/90, Notice 6/13/90—published 8/8/90, effective 9/12/90]
[Filed 4/22/93, Notice 3/17/93—published 5/12/93, effective 6/16/93]
[Filed 7/18/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

CHAPTER 5
FAIR INFORMATION PRACTICES

[Prior to 4/18/90, see Public Defense Department[650], Ch 9]
[Prior to 5/12/93, Disaster Services Division[607], Ch 5]

605—5.1(17A) Adoption by reference. The emergency management division hereby adopts the fair information practices segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(official or body issuing these rules)" insert "Emergency Management Division".
2. In lieu of the words "(insert agency head)" insert "administrator".
3. In lieu of the words "(insert agency name and address)" insert "Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)" insert the words "at any time from 9 a.m. to 12 noon and from 1 to 4 p.m., Monday through Friday, excluding legal holidays, unless the person exercising such right and the lawful custodian agree on a different time".
5. In lieu of the words "(specify time period)" insert the words "30 minutes".
6. In lieu of the words "(designate office)" insert the words "Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".
7. Delete the words "(and, where applicable, the time period during which the record may be disclosed)".
8. Delete the words "(Additional requirements may be necessary for special classes of records.)".
9. Insert at the end of rule 605—5.7(17A,22) the following new sentence: "For federal records maintained by the emergency management division, a subject will provide a Privacy Act release in accordance with the requirements of Title 5 United States Code, Section 552, in writing, and signed by the subject of the record."
10. Delete the words "(Each agency should revise its forms to provide this information.)".
11. Insert at the end of rule 605—5.8(17A,22) the following new sentence: "For federal records and forms, the United States government's determination of routine use and the consequences of failure to provide required or optional information as requested shall be provided to the supplier of the information."
12. Insert the following new rule:

605—5.9(17A,22) Federal records. Pursuant to Iowa Code section 22.9, the division finds that maintenance, use, or disclosure of federal records described in this rule, except as allowed by federal law and regulation, would result in denial of United States government funds, services and essential information that would otherwise definitely be available and that have been available to the division in the past. The division has authority to enter into agreements and contracts to obtain funds pursuant to Iowa Code chapter 29C. The division makes such agreements and contracts with the Federal Emergency Management Agency (FEMA) under the authority of Public Law 93-288 (the Robert T. Stafford Disaster Relief and Emergency Assistance Act) and an Emergency Management Performance Grant Agreement which specify categories of records and information that must be kept confidential. In addition, 44 CFR 5.71 specifies categories of records that are exempt from disclosure under 5 U.S.C. 552. These records include those containing personally identifiable information concerning applicants to individual assistance and mitigation assistance programs that are administered by the state under a presidentially declared disaster. Nuclear Regulatory Commission Title 10 CFR 73.21 relates to the physical protection of nuclear power plants and materials. This regulation requires that certain information contained in plans and documents on file with the division be kept confidential and include information concerning the physical protection at fixed sites; physical protection in transit; inspections, audits and evaluations; and correspondence insofar as it contains safeguards information.

[Filed 4/29/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]
[Filed 3/20/90, Notice 2/7/90—published 4/18/90, effective 5/23/90]
[Filed 4/22/93, Notice 3/17/93—published 5/12/93, effective 6/16/93]
[Filed 7/18/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

CHAPTER 6
CONTESTED CASES

605—6.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the emergency management division.

605—6.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

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

"Presiding officer" means the administrator of the emergency management division or the administrator's designee.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the administrator did not preside.

605—6.3(17A) Time requirements.

6.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

6.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

605—6.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

605—6.5(17A) Notice of hearing.

6.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

6.5(2) *Contents.* The notice of hearing shall contain the following information:

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

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

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

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

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule 6.6(17A), that the presiding officer be an administrative law judge.

605—6.6(17A) Presiding officer.

6.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the agency head or members of the agency.

6.6(2) The agency may deny the request only upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

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

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

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

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

6.6(3) The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

6.6(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

6.6(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

605—6.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

605—6.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

605—6.9(17A) Disqualification.

6.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.9(3) and 6.23(9).

6.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

6.9(4) If a party asserts disqualification on any appropriate grounds, including those listed in subrule 6.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 6.25(17A) and seek a stay under rule 6.29(17A).

605—6.10(17A) Consolidation—severance.

6.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

605—6.11(17A) Pleadings.

6.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

6.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

6.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

605—6.12(17A) Service and filing of pleadings and other papers.

6.12(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

6.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

6.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer as identified in the notice of hearing. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

6.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the emergency management division, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

6.12(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

605—6.13(17A) Discovery.

6.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

6.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 6.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

6.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

605—6.14(17A) Subpoenas.

6.14(1) *Issuance.*

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

6.14(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

605—6.15(17A) Motions.

6.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.15(3) The presiding officer may schedule oral argument on any motion.

6.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

6.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 6.28(17A) and appeal pursuant to 6.27(17A).

605—6.16(17A) Prehearing conference.

6.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

6.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

6.16(3) In addition to the requirements of subrule 6.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

6.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

605—6.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

6.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

605—6.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

605—6.19(17A) Intervention.

6.19(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

6.19(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

6.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

605—6.20(17A) Hearing procedures.

6.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

6.20(2) All objections shall be timely made and stated on the record.

6.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

6.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

6.20(6) Witnesses may be sequestered during the hearing.

6.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

605—6.21(17A) Evidence.

6.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

6.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

6.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

6.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

605—6.22(17A) Default.

6.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 6.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

6.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 6.25(17A).

6.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

6.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 6.29(17A).

605—6.23(17A) Ex parte communication.

6.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

6.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 6.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

6.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.23(1).

6.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 6.17(17A).

6.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

605—6.24(17A) Recording costs. Upon request, the emergency management division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

605—6.25(17A) Interlocutory appeals. Upon written request of a party or on the administrator's own motion, the administrator may review an interlocutory order of the presiding officer. In determining whether to do so, the administrator shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

605—6.26(17A) Final decision.

6.26(1) When the emergency management division administrator presides over the reception of evidence at the hearing, the administrator's decision is a final decision.

6.26(2) When the emergency management division administrator does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the emergency management division administrator within the time provided in rule 6.27(17A).

605—6.27(17A) Appeals and review.

6.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the emergency management division administrator within 30 days after issuance of the proposed decision.

6.27(2) *Review.* The administrator may initiate review of a proposed decision on the administrator's own motion at any time within 30 days following the issuance of such a decision.

6.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the emergency management division administrator. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

6.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The administrator may remand a case to the presiding officer for further hearing, or the administrator may preside at the taking of additional evidence.

6.27(5) *Scheduling.* The emergency management division administrator shall issue a schedule for consideration of the appeal.

6.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The administrator may resolve the appeal on the briefs or provide an opportunity for oral argument. The administrator may shorten or extend the briefing period as appropriate.

605—6.28(17A) Applications for rehearing.

6.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

6.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.27(4), the applicant requests an opportunity to submit additional evidence.

6.28(3) *Time of filing.* The application shall be filed with the emergency management division administrator within 20 days after issuance of the final decision.

6.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the emergency management division shall serve copies on all parties.

6.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

605—6.29(17A) Stays of agency actions.

6.29(1) *When available.*

a. Any party to a contested case proceeding may petition the emergency management division administrator for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The administrator may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the emergency management division administrator for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

6.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or administrator shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

6.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the emergency management division or any other party.

605—6.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

605—6.31(17A) Emergency adjudicative proceedings.

6.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety, or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

6.31(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the agency's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the agency;

(3) Certified mail to the last address on file with the agency;

(4) First-class mail to the last address on file with the agency; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

6.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 7/18/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

CHAPTER 7
LOCAL EMERGENCY MANAGEMENT

[Prior to 4/18/90, Public Defense Department[650], Ch 7]
[Prior to 5/12/93, Disaster Services Division[607], Ch 7]

605—7.1(29C) Scope and purpose. These rules apply to each local emergency management commission as provided for in Iowa Code section 29C.9. These rules are intended to establish standards for emergency management and to provide local emergency management commissions with the criteria to assess and measure their capability to mitigate against, prepare for, respond to, and recover from emergencies or disasters.

605—7.2(29C) Definitions. For purposes of this chapter, the following definitions will apply:

"Shall" indicates a mandatory requirement.

"Should" indicates a recommendation or that which is advised but not required.

605—7.3(29C) Local emergency management commission.

7.3(1) The county board of supervisors, city councils, and school district boards of directors in each county shall cooperate with the emergency management division to establish a local emergency management commission to carry out the provisions of Iowa Code chapter 29C.

a. The local commission shall be named the (county name) county emergency management commission.

b. The commission shall be comprised of the following members:

(1) A member of the county board of supervisors or its appointed representative.

(2) The county sheriff or the sheriff's appointed representative.

(3) The mayor or the mayor's appointed representative from each city within the county.

c. The commission is a municipality as defined in Iowa Code section 670.1.

7.3(2) Local commission bylaws. The commission shall develop bylaws to specify, at a minimum, the following information:

a. The name of the commission.

b. The list of members.

c. The date for the commencement of operations.

d. The commission's mission.

e. The commission's powers and duties.

f. The manner for financing the commission and its activities and maintaining a budget therefor.

g. The manner for acquiring, holding and disposing of property.

h. The manner for electing or appointing officers and the terms of office.

i. The manner by which members may vote.

j. The manner for appointing, hiring, disciplining and terminating employees.

k. The rules for conducting meetings of the commission.

l. Any other necessary and proper rules or procedures.

The bylaws, as adopted, shall be signed by each member of the commission. The commission shall record the signed bylaws with the county recorder and shall forward a copy of the bylaws to the administrator of the state emergency management division.

7.3(3) Commission business. Commission business shall be conducted in compliance with Iowa Code chapter 21, "Official Meetings Open to Public," and Iowa Code chapter 22, "Examination of Public Records."

7.3(4) The commission shall have the following minimum duties and responsibilities:

a. Administration and finance.

(1) Establish and maintain an agency responsible for the local emergency management program. The primary responsibility of this agency is to develop and maintain a comprehensive emergency management capability in cooperation with other governmental agencies, volunteer organizations, and private sector organizations. The name of this agency shall be the (county name) county emergency management agency.

(2) Determine the mission of the agency and its program.

(3) Develop and adopt a budget in accordance with the provisions of Iowa Code chapter 24 and Iowa Code section 29C.17 in support of the commission and its programs. The commission shall be the fiscal authority and the chairperson or vice chairperson shall be the certifying official for the budget.

(4) Appoint an emergency management coordinator who meets the qualifications established in subrule 7.4(3).

(5) Develop and adopt policies defining the rights and liabilities of commission employees, emergency workers and volunteers.

(6) Provide direction for the delivery of the emergency management services of planning, administration, coordination, training, exercising, and support for local governments and their departments.

(7) Coordinate emergency management activities and services among county and city governments and the private sector agencies within the county.

b. Hazard identification, risk assessment, and capability assessment.

(1) The commission should continually identify credible hazards that may affect their jurisdiction, the likelihood of occurrence, and the vulnerability of the jurisdiction to such hazards. Hazards to be considered should include natural, technological, and human-caused.

(2) The commission should conduct an analysis to determine the consequences and impact of identified hazards on the health and safety of the public, the health and safety of responders, property and infrastructure, critical and essential facilities, public services, the environment, the economy of the jurisdiction, and government operations and obligations.

(3) The hazard analysis should include identification of vital personnel, systems, operations, equipment, and facilities at risk.

(4) The commission should identify mitigation and preparedness considerations based upon the hazard analysis.

(5) A comprehensive assessment of the emergency management program elements should be conducted periodically to determine the operational capability and readiness of the jurisdiction to address the identified hazards and risks.

c. Resource management.

(1) The commission should develop a method to effectively identify, acquire, distribute, account for, and utilize resources essential to emergency functions.

(2) The commission shall utilize, to the maximum extent practicable, the services, equipment, supplies and facilities of the political subdivisions that are members of the commission.

(3) The commission should identify resource shortfalls and develop the steps and procedures necessary to overcome such shortfalls.

(4) The commission shall, in collaboration with other public and private agencies within this state, develop written mutual aid agreements. Such agreements shall provide reciprocal disaster services and recovery aid and assistance in case of disaster too great to be dealt with by the jurisdiction unassisted. Mutual aid agreements shall be in compliance with the appropriate requirements contained in Iowa Code chapter 28E.

d. Planning.

(1) The commission shall develop comprehensive countywide emergency operations plans which are multihazard and multifunctional in nature and which shall include, but not be limited to, a part "A" operations plan, part "B" mitigation plan, and part "C" recovery plan that may be contained in a single document or multiple documents.

1. An operations plan assigns responsibilities to organizations and individuals for carrying out specific actions at projected times and places in an emergency or disaster.

2. The mitigation plan shall establish interim and long-term strategies to eliminate hazards or to reduce the impact of those hazards that cannot be eliminated. This requirement notwithstanding, to qualify for federal funding for mitigation assistance, the eligible applicant must comply with the mitigation planning requirements set forth in 44 CFR 206, Subpart M, and the Iowa Hazard Mitigation Grant Program Administrative Plan, as appropriate.

3. A recovery plan shall identify the short-term and long-term strategic priorities, processes, vital resources, and acceptable time frames and procedures for restoration.

(2) Plans shall contain the following common elements.

1. The functional roles and responsibilities of internal and external agencies, organizations, departments, and individuals during mitigation, preparedness, response and recovery shall be identified.

2. Lines of authority for those agencies, organizations, departments, and individuals shall be established and identified.

(3) Plans shall be regularly reviewed and amended as appropriate in accordance with schedules established by the commission, to include at a minimum:

1. A complete review, and amendment as appropriate, of the operations plan at a minimum of every five years. However, a review, and amendment as appropriate, of the hazardous materials portion of the plan shall be conducted on a yearly basis.

2. A complete review, and amendment as appropriate, of the mitigation plan at a minimum of every five years and in conjunction with any presidentially declared disaster for which mitigation assistance is requested.

3. A complete review, and amendment as appropriate, of the recovery plan at a minimum of every five years and in conjunction with any presidentially declared disaster for which individual or public assistance is requested.

(4) In addition to the standards heretofore established in paragraph 7.3(4)*"d,"* the operations plan shall include provisions for damage assessment.

(5) Hazardous materials plans shall meet the minimum requirements of federal law, 42 U.S.C., Sec. 11003.

(6) Counties designated as risk or host counties for a nuclear facility emergency planning zone shall meet the standards and requirements as published by the United States Nuclear Regulatory Commission and the Federal Emergency Management Agency in NUREG-0654, FEMA-REP-1, Rev. 1, March 1987.

(7) Required plans, submitted for approval to the division by a local or joint emergency management commission, shall be reviewed within 60 calendar days from the receipt of the plan. The division shall notify the local emergency management coordinator in writing of the approval or nonapproval of the plan. If the plan is not approved, the division shall state the specific standard or standards that are not being met and offer guidance on how the plan may be brought into compliance.

(8) A comprehensive countywide emergency operations plan shall not be considered approved by the emergency management division as required in Iowa Code subsection 29C.9(8) unless such plan adheres to and meets the minimum standards as established in subrule 7.3(4), paragraph *"d."*

(9) Iowa Code section 29C.6 provides that state participation in funding financial assistance in a presidentially declared disaster is contingent upon the local government's having on file a state-approved, comprehensive, countywide plan as provided in Iowa Code subsection 29C.9(8). Required plans must be received and approved by the division by the time the first public or private, nonprofit entity within the county otherwise becomes eligible to receive state assistance or within one year from the date of presidential declaration, whichever is earlier.

e. Direction, control and coordination.

(1) The commission shall execute and enforce the orders or rules made by the governor, or under the governor's authority.

(2) The commission shall establish and maintain the capability to effectively direct, control and coordinate emergency and disaster response and recovery efforts.

(3) The commission shall establish a means of interfacing on-scene management with direction and control personnel and facilities.

(4) The commission should actively support use of the Incident Command System (ICS) model by all emergency and disaster response agencies within the jurisdiction.

f. Damage assessment.

(1) The commission shall develop and maintain a damage assessment capability consistent with local, state and federal requirements and shall designate individuals responsible for the function of damage assessment.

(2) Individuals identified by the commission to perform the function of damage assessment shall be trained through a course of instruction approved by the division.

g. Communications and warning.

(1) The commission should identify a means of disseminating a warning to the public, key officials, emergency response personnel and those other persons within the jurisdiction that may be potentially affected.

(2) The commission should identify the primary and secondary means of communications to support direction, control, and coordination of emergency management activities.

h. Operations and procedures. The commission should encourage public and private agencies, having defined responsibilities in the countywide emergency operations plan, to develop standard operating procedures, policies, and directives in support of the plan.

i. Training.

(1) The commission shall require the local emergency management coordinator to meet the minimum training requirements as established by the division and identified in subrule 7.4(4).

(2) The commission should, in conjunction with the local emergency management coordinator, arrange for and actively support ongoing emergency management related training for local public officials, emergency responders, volunteers, and support staff.

(3) Persons responsible for emergency plan development or implementation should receive training specific to, or related to, hazards identified in the local hazard analysis.

(4) The commission should encourage individuals, other than the emergency management coordinator, with emergency management responsibilities as defined in the countywide emergency operations plan, to complete, within two years of appointment, training consistent with their emergency management responsibilities.

(5) The commission should encourage all individuals with emergency management responsibilities to maintain current and adequate training consistent with their responsibilities.

j. Exercises.

(1) The commission shall ensure that exercise activities are conducted annually in accordance with local, state and federal requirements.

(2) Exercise activities should follow a progressive five-year plan that is designed to meet the needs of the jurisdiction.

(3) Local entities assigned to an exercise should actively participate and support the role of the entity in the exercise.

(4) Local entities assigned to an exercise should actively participate in the design, development, implementation, and evaluation of the exercise activity.

k. Public education and information.

(1) The commission should designate the individual or individuals who are responsible for public education and information functions.

(2) The commission should ensure a public information capability, to include:

1. Designated public information personnel trained to meet local requirements.
2. A system of receiving and disseminating emergency public information.
3. A method to develop, coordinate, and authorize the release of information.
4. The capability to communicate with special needs populations.

(3) The commission should actively support the development of capabilities to electronically collect, compile, report, receive, and transmit emergency public information.

7.3(5) Two or more commissions. Two or more local commissions may, upon review by the state administrator and with the approval of their respective boards of supervisors and cities, enter into agreements pursuant to Iowa Code chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

605—7.4(29C) Emergency management coordinator.

7.4(1) Each county emergency management commission or joint commission shall appoint an emergency management coordinator who shall serve at the pleasure of the commission. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission's and coordinator's duties as provided in Iowa Code sections 29C.9 and 29C.10, as further described in subrule 7.3(4), and as otherwise assigned and authorized by the commission.

7.4(2) Political activity.

a. A member of a local or joint commission shall not be appointed as the emergency management coordinator.

b. An individual serving in a full-time or part-time governmental position incompatible with the position of coordinator shall not be appointed as the emergency management coordinator.

c. Any employee of an organization for emergency management shall not become a candidate for any partisan elective office. However, the employee is not precluded from holding any nonpartisan elective office for which no pay or only token payment is received.

7.4(3) Emergency management coordinator qualifications. Each person appointed after July 1, 1990, as an emergency management coordinator shall meet the following requirements with regard to education, abilities, experience, knowledge and skills:

a. Demonstrate a knowledge of local, state, and federal laws and regulations pertaining to emergency management.

b. Demonstrate an understanding of communications systems, frequencies, and equipment capabilities.

c. Demonstrate a knowledge of basic accounting principles and practices.

d. Express oneself clearly and concisely, both orally and in writing.

e. Establish and maintain effective working relationships with employees, public officials, and the general public.

f. Prepare accurate reports.

g. Write plans, direct the use of resources, and coordinate emergency operations under extraordinary circumstances.

h. Exercise good judgment in evaluating situations and making decisions.

i. Coordinate with agencies at all levels of government.

j. Have graduated from an accredited four-year college or university and have two years of responsible experience in emergency management, public or business administration, public relations, military preparedness or related work; or have an equivalent combination of experience and education, substituting 30 semester hours of graduate study for each year of the required work experience to a maximum of two years; or have an equivalent combination of experience and education, substituting one year of experience in the aforementioned areas for each year of college to a maximum of four years; or be an employee with current continuous experience in the state classified service that includes the equivalent of 18 months of full-time experience as an emergency management operations officer; or be an employee with current continuous experience in the state classified service that includes the equivalent of 36 months of full-time experience as a local emergency management assistant.

7.4(4) Emergency management coordinator continuing education requirements. Each local coordinator shall meet the following educational development requirements. The administrator may extend the time frame for meeting these continuing education requirements upon request from the local or joint commission.

a. By July 1, 2002, or within five years of appointment as an emergency management coordinator, whichever is later, completion of the following independent study courses:

(1) Citizens Guide to Disaster Assistance.

(2) Emergency Operations Center Role in Community Preparedness Response and Recovery Operations.

(3) Emergency Program Manager: An Orientation to the Position.

(4) Emergency Preparedness U.S.A.

(5) Hazardous Materials: A Citizen's Guide.

(6) An Orientation to Community Disaster Exercise.

(7) The Professional in Emergency Management.

(8) Radiological Emergency Management.

(9) Introduction to Hazard Mitigation.

(10) Basic Incident Command System.

b. By July 1, 2002, or within five years of appointment as an emergency management coordinator, whichever is later, completion of the professional development series of courses as prescribed by the Federal Emergency Management Agency.

c. Upon completion of the requirements established in subrule 7.4(4), paragraphs "*a*" and "*b,*" annual completion of a minimum of 24 hours of state-approved emergency management training.

d. The local emergency management coordinator must document completion of courses by submitting a copy of the certificate of completion, a letter indicating satisfactory completion, or other appropriate documentation.

605—7.5(29C) Local commission or joint commission personnel.

7.5(1) Personnel for the local commission or joint commission shall be considered as employees of that local commission to include the coordinator, operations officers, and emergency management assistants.

7.5(2) The local or joint commission shall determine the personnel policies of the agency to include holidays, rate of pay, sick leave, vacation, and health benefits. The local commission may adopt existing county or city policies in lieu of writing their own policies.

605—7.6(29C) Damage assessment and financial assistance for disaster recovery. Disaster-related expenditures and damages incurred by local governments, private nonprofit entities, individuals, and businesses may be reimbursable and covered under certain state and federal disaster assistance programs. Preliminary damage assessments shall be provided to the emergency management division prior to the governor's making a determination that the magnitude and impact are sufficient to warrant a request for a presidential disaster declaration.

7.6(1) *Local preliminary damage assessment and impact statement.* The county emergency management coordinator shall be responsible for the coordination and collection of damage assessment and impact statement information immediately following a disaster that affects the county or any municipality within the county.

7.6(2) *Damage assessment guidance and forms to be provided.* The state emergency management division will provide guidance regarding the methodologies to be used in collecting damage assessment and impact statement information and shall provide the forms and format by which this information shall be recorded.

7.6(3) *Joint preliminary damage assessment.* Once the governor has determined that a request for a presidential disaster declaration is appropriate, joint preliminary damage assessment teams, consisting of local, state, and federal inspectors, will assess the uninsured damages and costs incurred or to be incurred in responding to and recovering from the disaster. All affected city, municipality, or county governments shall be required to provide assistance to the joint preliminary damage assessment teams for conducting damage assessments. The jurisdiction may be required to develop maps to show the damaged areas and to compile lists of names and telephone numbers of individuals, businesses, private nonprofit entities, and governmental agencies sustaining disaster response and recovery costs or damages. This joint preliminary damage assessment may be required before the request for presidential declaration is formally transmitted to the Federal Emergency Management Agency.

7.6(4) *Public assistance and hazard mitigation briefing.* In the event that a presidential disaster declaration is received, affected jurisdictions and eligible private nonprofit entities should be prepared to attend a public assistance and hazard mitigation briefing to acquire the information and documents necessary to make their formal applications for public and hazard mitigation assistance. Failure to comply with the deadlines for making application for public and mitigation assistance as established in 44 CFR Part 206 and the Stafford Act (PL 923-288) may jeopardize or eliminate the jurisdiction's or private nonprofit entity's ability to receive assistance.

7.6(5) *Forfeiture of assistance funding.* Failure to provide timely and accurate damage assessment and impact statement information may jeopardize or eliminate an applicant's ability to receive federal and state disaster assistance funds that may otherwise be available.

State participation in funding of disaster financial assistance in a presidentially declared disaster shall be contingent upon the local or joint emergency management commission's having on file a state-approved, comprehensive, countywide emergency operations plan which meets the standards as provided in subrule 7.3(4), paragraph *"d."*

605—7.7(29C) Emergency management performance grant program. Emergency management is a joint responsibility of the federal government, the states, and their political subdivisions. Emergency management means all those activities and measures designed or undertaken to mitigate against, prepare for, respond to, or recover from the effects of a human-caused, technological, or natural hazard. The purpose of the emergency management performance grant program is to provide the necessary assistance to local governments to ensure that a comprehensive emergency preparedness system exists for all hazards.

7.7(1) *Eligibility.* Local or joint emergency management commissions may be eligible for funding under the state and emergency management performance grant program by meeting the requirements, conditions, duties and responsibilities for emergency management commissions and county emergency management coordinators established in rules 7.3(29C) and 7.4(29C). In addition, the local commission shall ensure that the coordinator works an average of 20 hours per week or more toward the emergency management effort. Joint commissions shall ensure that the coordinator works an average of 40 hours per week toward the emergency management effort.

7.7(2) *Application for funding.* Local or joint commissions may apply for funding under the emergency management performance grant program by entering into an agreement with the division and by completing the necessary application and forms, as published and distributed yearly to each commission by the division.

7.7(3) *Allocation and distribution of funds.* The emergency management division shall allocate funds to eligible local or joint commissions within 45 days of receipt of notice from the Federal Emergency Management Agency that such funds are available. The division shall use a formula for the allocation of funds based upon the number of eligible applicants, the coordinator's salary and benefits and an equal distribution of remaining funds, not to exceed an individual applicant's request. Funds will be reimbursed to local and joint commissions on a federal fiscal year, quarterly basis; and such reimbursement will be based on eligible claims made against the local or joint commission's allocation. In no case will the allocation or reimbursement of funds be greater than one-half of the total cost of eligible emergency management related expenses.

7.7(4) *Compliance.* The administrator may withhold or recover emergency management performance grant funds from any local or joint commission for its failure or its coordinator's failure to meet any of the following conditions:

a. Appoint a qualified coordinator.

b. Comply with continuing education requirements.

c. Adopt a comprehensive countywide emergency operations plan that meets current standards.

d. Determine the mission of its agency.

e. Show continuing progress in fulfilling the commission's duties and obligations.

f. Conduct commission business according to the guidelines and rules established in this chapter.

g. Enter into and file a cooperative agreement with the division by the stipulated filing date.

h. Abide by state and federal regulations governing the proper disbursement and accountability for federal funds, equal employment opportunity and merit system standards.

i. Accomplish work specified in one or more program areas, as agreed upon in the cooperative agreement, or applicable state or federal rule or statute.

j. Provide the required matching financial contribution.

k. Expend funds for authorized purposes or in accordance with applicable laws, regulations, terms and conditions.

l. Respond to, or cooperate with, state efforts to determine the extent and nature of compliance with the cooperative agreement.

7.7(5) *Serious nonperformance problems.* If a local or joint commission cannot demonstrate achievement of agreed-upon work products, the division is empowered to withhold reimbursement or to recover funds from the local or joint commission. Corrective action procedures are designed to focus the commission's attention on nonperformance problems and to bring about compliance with the cooperative agreement. Corrective action procedures, which could lead to sanction, may be enacted as soon as the administrator becomes aware of present or future serious nonperformance or noncompliance. This realization may arise from staff visits or other contacts with the local agency or commission, from indications in the commission's or coordinator's quarterly reports that indicate a significant shortfall from planned accomplishments, or from the commission's or coordinator's failure to report. Financial sanctions are to be applied only after corrective action remedies fail to result in accomplishment of agreed-upon work product.

7.7(6) *Corrective actions.*

a. *Informal corrective action.* As a first and basic step to correcting nonperformance, a designated member of the state emergency management division staff will visit, call or write the local coordinator to determine the reason for nonperformance and seek an agreeable resolution.

b. *Formal corrective action.* On those occasions when there is considerable discrepancy between agreed-upon and actual performance and response to informal corrective action is not sufficient or agreeable, the division will take the following steps:

(1) Emergency management staff will review the scope of work, as agreed to in the cooperative agreement, to determine the extent of nonperformance. To focus attention on the total nonperformance issue, all instances of nonperformance will be addressed together in a single correspondence to the local or joint commission.

(2) The administrator will prepare a letter to the local or joint commission which will contain, at a minimum, the following information:

1. The reasons why the division believes the local or joint commission may be in noncompliance, including the specified provisions in question.

2. A description of the efforts made by the division to resolve the matter and the reasons these efforts were unsuccessful.

3. A declaration of the local or joint commission's commitment to accomplishing the work agreed upon and specified in the comprehensive cooperative agreement and its importance to the emergency management capability of the local jurisdiction.

4. A description of the exact actions or alternative actions required of the local or joint commission to bring the problem to an agreed resolution.

5. A statement that this letter constitutes the final no-penalty effort to achieve a resolution and that financial sanctions provided for in these rules will be undertaken if a satisfactory response is not received by the division within 30 days.

7.7(7) *Financial sanctions.* If the corrective actions heretofore described fail to produce a satisfactory resolution to cases of serious nonperformance, the administrator may invoke the following financial sanction procedures:

a. Send a "Notice of Intention to Withhold Payment" to the chairperson of the local or joint commission. This notice shall also contain notice of a reasonable time and place for a hearing, should the local or joint commission request a hearing before the administrator.

b. Any request by a local or joint commission for a hearing must be made in writing, to the division, within 15 days of receipt of the notice of intention to withhold payment.

c. Any hearing under the notice of intention to withhold payment shall be held before the administrator. However, the administrator may designate an administrative law judge to take evidence and certify to the administrator the entire record, including findings and recommended actions.

d. The local or joint commission shall be given full opportunity to present its position orally and in writing.

e. If, after a hearing, the administrator finds sufficient evidence that the local or joint commission has violated established rules and regulations or the terms and conditions of the cooperative agreement, the administrator may withhold such contributions and payments as may be considered advisable, until the failure to expend funds in accordance with said rules, regulations, terms and conditions has been corrected or the administrator is satisfied that there will no longer be any such failure.

f. If upon the expiration of the 15-day period stated for a hearing, a hearing has not been requested, the administrator may issue the findings and take appropriate action as described in the preceding paragraph.

g. If the administrator finds there is serious nonperformance by the commission or its coordinator and issues an order to withhold payments to the local or joint commission as described in this rule, the commission shall not receive funds under the emergency management performance grant program for the remainder of the federal fiscal year in which the order is issued and one additional year or until such time that all issues of nonperformance have been agreeably addressed by the division and the commission.

h. Any emergency management perforce grant program funds withheld or recovered by the division as a result of this process shall be reallocated at the end of the federal fiscal year to the remaining participating counties.

These rules are intended to implement Iowa Code sections 29C.6 and 29C.8.

[Filed 4/29/77, Notice 1/12/77—published 5/18/77, effective 6/22/77]
[Filed 3/20/90, Notice 2/7/90—published 4/18/90, effective 5/23/90]
[Filed 4/22/93, Notice 3/17/93—published 5/12/93, effective 6/16/93]
[Filed emergency 4/24/00—published 5/17/00, effective 5/17/00]
[Filed 7/18/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

CHAPTER 8
CRITERIA FOR AWARDS OR GRANTS

605—8.1(29C,17A) Purpose. The emergency management division receives and distributes funds to a variety of entities throughout the state for support of emergency management planning, training, and other initiatives. Unless otherwise prohibited by state or federal law, rule or regulation, the administrator may make such funds subject to competition. Where such funds are designated by the administrator to be competitive, the division shall ensure equal access, objective evaluation of applications for these funds, and that grant application material shall contain, at a minimum, specific content.

605—8.2(29C,17A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Administrator" means the administrator of the emergency management division within the Iowa department of public defense.

"Competitive grant" means the competitive grant application process to determine the grant award for a specified project period.

"Division" means the emergency management division of the Iowa department of public defense.

"Project" means the activity(ies) or program(s) funded by the division.

"Project period" means the period of time for which the division intends to support the project without requiring the recompetition of funds.

"Service delivery area" means the defined geographic area for delivery of project services.

605—8.3(29C,17A) Exceptions. The division considers funds subject to competition except in those cases where:

1. State or federal law, rule or regulation prohibits such competition.
2. The state, federal or private funding source specifies a sole source for the receipt of funds.
3. There is mutual agreement among the division and contract organizations.
4. The administrator designates such funds to be noncompetitive.

605—8.4(29C,17A) Public notice of available competitive grants. When making funds available through a competitive grant application process, the division shall, at least 60 days prior to the application due date, issue a public notice in the Iowa Administrative Bulletin that identifies the availability of funds and states how interested parties may request an application packet. A written request for the packet shall serve as the letter of intent. Services, delivery areas, and eligible applicants shall be described in the public notice.

If the receipt of a grantor's official notice of award to the division precludes a full 60-day notice in the Iowa Administrative Bulletin, the division shall nonetheless issue the public notice in the Iowa Administrative Bulletin at the earliest publication date.

In the event the publication date would not allow at least 30 days for interested parties to request and submit an application packet, the division shall notify current contractors and other interested parties of the availability of funds through press releases and other announcements.

605—8.5(29C,17A) Requirements. Where funds are designated as competitive, the following shall be included in all grant application materials made available by the division:

1. Funding source;
2. Project period;
3. Services to be delivered;
4. Service delivery area;
5. Funding purpose;
6. Funding restrictions;

7. Funding formula (if any);
8. Matching requirements (if any);
9. Reporting requirements;
10. Performance criteria;
11. Description of eligible applicants;
12. Need for letters of support or other materials (if applicable);
13. Application due date;
14. Anticipated date of award;
15. Eligibility guidelines for those receiving the service or product and the source of those guidelines, including fees or sliding fee scales (if applicable);
16. Target population to be served (if applicable); and
17. Appeal process in the event an application is denied.

605—8.6(29C,17A) Review process (competitive applications only). The review process to be followed in determining the amount of funds to be approved for award of a contract shall be described in the application material. The review criteria and point allocation for each element shall also be described in the grant application material.

The competitive grant application review committee shall be determined by the division bureau chief administering the grant or award, with oversight from the administrator. The review committee members shall apply points according to the established review criteria in conducting the review.

In the event competitive applications for a project receive an equal number of points, a second review shall be conducted by the administrator and the bureau chief administering the grant or award.

605—8.7(29C,17A) Opportunity for review and comment. Program advisory committees or related task forces of the program may be provided with an opportunity to review and comment on the criteria and point allocation prior to implementation. Exceptions may occur when the funding source to the division has already included such criteria and point allocation within the award or the time frame allowed is insufficient for such review and comment.

605—8.8(29C,17A) Awards. Once applications have been scored and ranked, the division shall award all available funds to eligible applicants based on the ranking of their applications. Should there be more eligible applications than funds available, those remaining eligible applications shall be kept on file by the division.

In those cases in which applicants have received an award but actual project costs are less than anticipated or established in the application, remaining funds shall become deobligated funds. The division shall award deobligated funds to remaining eligible applications on file with the division. Should deobligated funds remain after satisfying all eligible applications, the division shall republish the availability of funds.

These rules are intended to implement Iowa Code chapter 17A and section 29C.13.

[Filed emergency 5/4/93—published 5/26/93, effective 5/7/93]
[Filed 7/18/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

CHAPTER 9
IOWA EMERGENCY PLAN

[Prior to 4/18/90, Public Defense Department[650], Ch 6]
[Prior to 5/12/93, Disaster Services Division[607], Ch 6]
[Prior to 8/9/00, see 605—Chapter 6]

605—9.1(29C) State emergency plan. The Iowa Emergency Plan, as promulgated by Governor's proclamation July 7, 1999, has been adopted and is published and maintained by the division. The plan details the state government response to, and recovery from, a wide range of natural and human-caused disasters.

1. The plan shall be distributed to state agencies and departments that have been assigned emergency functions and to all county sheriffs and emergency management coordinators.
2. The Iowa emergency plan serves as the state emergency response and recovery document.
3. The division updates the plan by amendments promulgated by rule according to Iowa Code chapter 17A and distributes amendments to all plan holders on the division distribution list.
4. The plan shall be available for public view at the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa.

EXCERPTS
BASIC PLAN
IOWA EMERGENCY PLAN

II. MISSION

To maximize survival and preservation of life, property, and environment in the event of any natural or human-caused disaster, or major accident affecting any city or rural areas by making the best use of available personnel, equipment, facilities, and supplies or other resources.

III. CONCEPT OF OPERATION

This plan is intended to facilitate a coordinated response to, and recovery from, disasters in Iowa. It addresses activities that should take place predisaster, in response to an emergency and for recovery from the emergency. Barring special circumstances of state or federal preemption, local government has primary responsibility to arrange for personnel and equipment for emergency response to, and recovery from, disasters. Local and state government is encouraged to use a structured approach and standard terminology to coordinate activities. Industry, as well as state and federal agencies, should be involved with local government in the local planning process. State involvement in disaster response and recovery will occur on request or may be self-initiated in those instances where the problem exceeds local capability.

Preparation for coping with a disaster requires cooperative efforts of numerous agencies (local, state, and federal) and the private sector. Each level of government and state agencies should prepare plans consistent with this plan, train its people, and take such other steps as are required to ensure that it can carry out its responsibilities during a disaster in an efficient and effective manner.

The state organization which will respond to a disaster is structured to alter its capabilities in response to the type of hazard which triggers activation. Thus, for a disaster the state would provide a multiagency response within the context of the emergency responsibilities assigned in Tab G to Enclosure #2, page 40. For local emergency situations, the state could respond with routine day-to-day emergency response actions of one or two state agencies.

The scale of the response, skills brought to bear on the problem, and agencies participating in the emergency organization will be geared to the nature of each specific incident or disaster. The organizational structure of state government designed to provide this flexibility is shown in this Basic Plan, page 23.

State response is in support of local government response. Coordination with the federal government will be accomplished through a state coordinating officer.

In relation to other plans, this Basic Plan is part of the Iowa Emergency Plan and is consistent with Iowa Code chapter 29C. This plan as Part I, Iowa Emergency Plan, is a generic plan and responsibilities as listed in this plan apply to most disaster situations. Other parts of the Iowa Emergency Plan augment Part I. The information in other parts of the Iowa Emergency Plan will pertain specifically to the hazard for which that plan has been developed and should provide appropriate actions in the event that disaster occurs.

IV. OPERATIONAL POLICIES

A. In any emergency or disaster, local governments will utilize all their resources first before requesting state assistance. If the scope of the disaster is beyond the obvious capabilities of local government resources, state resources may be immediately provided.

B. If local governments require state assistance, the various state departments/agencies will perform the necessary emergency functions as assigned by this plan and directed by the Governor.

C. The Governor will exercise direction and control of state emergency operations through the Director of Public Defense and the state Emergency Management Division Administrator.

D. The Governor will exercise direction and control of state emergency operations for civil disorders through the Commissioner of Public Safety and prison riots through the Director, Department of Corrections.

E. The Commissioner of Public Safety will coordinate the state's resources in any civil disorder emergency and the Director of Department of Corrections will coordinate state resources for prison riots or relocating and housing prisoners in an emergency.

F. The Director of Information Technology Services will coordinate the restoration of data systems and network services.

G. The state Emergency Management Division Administrator shall provide for coordination between all state departments to ensure efficient and maximum emergency function response to a natural or human-caused disaster, except for civil disorder or prison riots.

H. The state Emergency Management Division Administrator is responsible for preparing, distributing, and keeping the Iowa Emergency Plan up to date.

I. Interdepartmental coordination of disaster preparedness planning and operational matters will be effected by a designated agency coordinator for planning and operational matters.

J. Public information is generally provided to the news media by the respective department or agency head during normal operations. When this plan is activated, all emergency public information will be released by the Governor's Office or the Emergency Management Division Administrator acting for the Governor's Office. All news or public information contacts to state government personnel will be referred to the Governor's Office for action.

K. All state departments and agencies will retain their identities and autonomy throughout all levels of emergency coordination.

L. While evacuations will normally be the responsibility of the local government that is involved, the state Emergency Management Division Administrator may coordinate such movements. Decisions for evacuations will be made by the Governor or the local government involved. Except when immediate evacuation is imperative, or loss of life could result, the decision may be made by the local public official on scene.

M. Decisions for reentry of areas contaminated by hazardous substances will be made by the Incident Commander. When terrorist activities or biological contamination is suspected, supporting data and recommendations will be provided by the Department of Public Health, Department of Natural Resources, Emergency Management Division, University Hygienic Laboratory, nuclear facilities, or other responsible party, as appropriate.

N. Personnel monitoring and decontamination will be coordinated by the Incident Commander and supported by the state Department of Public Health. Contaminated clothing or other materials will be disposed of, if necessary, as directed by the Department of Natural Resources in coordination with nuclear facilities and the Nuclear Regulatory Commission. In a suspected biological terrorist incident, procedures for decontamination shall be coordinated with the Iowa Department of Public Health, Iowa National Guard, FBI and the CDC for transportation of cultures. Monitoring and decontamination will be coordinated by the Incident Command System.

O. Centralized coordination of support to local government and lead state agencies, as requested, of all phases of emergency operations will be effected through the state Emergency Operations Center (EOC).

P. Some situations may require the state to establish a forward command post in or near the disaster area. Once this decision is made, the Department of Public Safety, in cooperation with the Emergency Management Division, shall provide its mobile communication and command-post van and operations personnel. State departments and agencies with emergency responsibilities will send a liaison officer to operate from this location if necessary. Reports and information will be sent to the state EOC for evaluation and supportive actions. Established county or municipal EOCs may also be used for this purpose or other fixed facilities if available and properly equipped.

Q. State departments and agencies will coordinate and liaison will be established with their counterparts in the bordering states and supporting federal agencies to ensure effective responses and possible aid in emergencies.

R. State departments and agencies should enter into mutual aid and other written agreements with federal, state, local, and volunteer organizations, as appropriate, to provide for implementation of this plan.

V. RESPONSIBILITIES

A. The state Emergency Management Division Administrator, at the direction of the Governor, is responsible for:

1. Advising the Governor, state departments or agencies, and officials of local government of the nature, magnitude and effects of the emergency or disaster.

2. Coordinating all the elements of state government involved in an emergency operation.

3. Providing advice and assistance to state departments and agencies and local governments in developing and revising emergency operation plans.

4. Orienting and training the state emergency operations staff and conducting periodic exercises to test and evaluate this plan as required.

5. Coordinating with the Federal Emergency Management Agency, Region VII.

6. Maintaining a current list of state department and agency disaster coordinators.

7. Keeping this plan current and making distribution of the plan and changes thereto to appropriate state and federal departments and agencies and local governments.

8. Maintaining a file of Memorandums of Understanding.

9. Coordinating interstate emergency operations and planning.

10. Initiating such other actions deemed necessary to effectively implement this plan.

B. The head of each state department or agency with an assigned primary or support emergency function(s) as indicated in Tab F to Enclosure #2 to Basic Plan, page 39, shall:

1. Develop internal Emergency Operating Procedures (EOPs) for carrying out assigned primary and support functions on a current basis.

2. Review this plan annually and upgrade the department's or agency's EOP as necessary. One copy of the revised EOP shall be submitted to the state Emergency Management Division Administrator prior to the end of March of each year. During review, recommended plan revisions should be forwarded to the Emergency Management Division.

3. Assign and train operations personnel required to support agency assigned functions.

4. Designate appropriate personnel for the Emergency Operations Center staff as shown in this Basic Plan, pages 39 and 40, provide a list of names and position assignments to the state Emergency Management Division Administrator, and annually review the list in January and submit changes prior to the end of March.

5. Provide for procurement and management of resources necessary for emergency operations, except in a nuclear attack or terrorist incident. In exception, the Resources Priorities Board, under direction of the Governor, will manage resources in accordance with national policy.

6. Maintain a state agency contact for planning and operational matters who shall keep the agency aware of the current overall emergency management program of the state.

C. Assignment of emergency operation functional responsibilities. See Tab F to Enclosure #2, pages 39 and 40.

VI. EMERGENCY SUPPORT

A. National Guard services should be requested by the sheriff or local government chief executive through the Emergency Management Division to the Governor. Military assistance, when provided, will complement and not be a substitute for state, county, or local government participation in emergency operations. Military forces will remain under military command at all times.

B. Local governments should have intracounty and intercounty mutual aid agreements for mutual assistance.

C. Volunteer agency support may be available through the state Emergency Management Division.

D. Fire Control

Department of Public Safety

State Fire Marshal coordinates the state's firefighting resources under disaster conditions.

E. State Emergency Response Team (SERT)

1. Department of Public Defense

Provide personnel to serve as the Forward Coordinator of state response resources when requested by the Administrator, Emergency Management Division.

2. Department of Public Safety

Provide personnel to serve as the Forward Coordinator of state response resources when requested by the Administrator, Emergency Management Division.

3. All State Agencies

Provide operating personnel for state EOC and State Emergency Response Team as requested by the Administrator, Emergency Management Division.

605—9.2(29C) State resources management system. A resource management system shall be maintained by the division. The system contains an inventory of emergency-use resources from the private sector and state and local governments.

1. The division surveys private, state and local agencies for emergency-use resources.

2. In the event of a disaster or emergency, the division, upon request, provides information regarding the location and availability of needed resources.

605—9.3(29C) Cooperation with and support of the civil air patrol. The division shall cooperate with and support the civil air patrol in accordance with a memorandum of agreement between the division and the commander of the Iowa wing, civil air patrol.

These rules are intended to implement Iowa Code chapter 29C.

[Filed 4/29/77, Notice 1/12/77—published 5/18/77, effective 6/22/77*]
[Filed without Notice 12/8/78—published 12/27/78, effective 2/1/79]
[Filed emergency 6/5/81—published 6/24/81, effective 6/5/81]
[Filed emergency 1/28/82—published 2/17/82, effective 1/29/82]
[Filed 3/20/90, Notice 2/7/90—published 4/18/90, effective 5/23/90]
[Filed 4/22/93, Notice 3/17/93—published 5/12/93, effective 6/16/93]
[Filed 7/18/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

*Effective date of Chapter 6 delayed by the Administrative Rules Review Committee for 70 days pursuant to Iowa Code section 17A.4.

CHAPTER 10
ENHANCED 911 TELEPHONE SYSTEMS

[Prior to 4/18/90, see Public Defense[601]Ch 10]
[Prior to 5/12/93, Disaster Services Division[607]Ch 10]

605—10.1(34A) Program description. The purpose of this program is to provide for the orderly development, installation, and operation of enhanced 911 emergency telephone systems and to provide a mechanism for the funding of these systems, either in whole or in part. These systems shall be operated under governmental management and control for the public benefit. These rules shall apply to each joint E911 service board or alternative 28E entity as provided in Iowa Code chapter 34A and to each provider of enhanced 911 service.

605—10.2(34A) Definitions. As used in this chapter, unless context otherwise requires:

"Access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the telephone company's switching office.

"Administrator," unless otherwise noted, means the administrator of the emergency management division.

"Automatic location identification (ALI)" means a system capability that enables an automatic display of information defining a geographical location of the telephone used to place the 911 call.

"Automatic number identification (ANI)" means a capability that enables the automatic display of the number of the telephone used to place the 911 call.

"Call attendant" means the person who initially answers a 911 call.

"Call detail recording" means a means of establishing chronological and operational accountability for each 911 call processed, consisting minimally of the caller's telephone number, the date and time the 911 telephone equipment established initial connection (trunk seizure), the time the call was answered, the time the call was transferred (if applicable), the time the call was disconnected, the trunk line used, and the identity of the call attendant's position, also known as an ANI printout.

"Call relay method" means the 911 call is answered at the PSAP, where the pertinent information is gathered, and the call attendant relays the caller's information to the appropriate public or private safety agency for further action.

"Call transfer method" means the call attendant determines the appropriate responding agency and transfers the 911 caller to that agency.

"Central office (CO)" means a telephone company facility that houses the switching and trunking equipment serving telephones in a defined area.

"Coin-free access (CFA)" means coin-free dialing or no-coin dial tone which enables a caller to dial 911 or "0" for operator without depositing money or incurring a charge.

"Conference transfer" means the capability of transferring a 911 call to the action agency and allowing the call attendant to monitor or participate in the call after it has been transferred to the action agency.

"Direct dispatch method" means 911 call answering and radio-dispatching functions, for a particular agency, are both performed at the PSAP.

"E911 communications council" means the council as established under the provisions of Iowa Code section 34A.15.

"E911 program manager" means that person appointed by the administrator of the emergency management division, and working with the E911 communications council, to perform the duties specifically set forth in Iowa Code chapter 34A and this chapter.

"Emergency call" means a telephone request for service which requires immediate action to prevent loss of life, reduce bodily injury, prevent or reduce loss of property and respond to other emergency situations determined by local policy.

"Enhanced 911 (E911)" means the general term referring to emergency telephone systems with specific electronically controlled features, such as ALI, ANI, and selective routing.

"Enhanced 911 (E911) operating authority" means the public entity, which operates an E911 telephone system for the public benefit, within a defined enhanced 911 service area.

"Enhanced 911 (E911) service area" means the geographic area to be served, or currently served under an enhanced 911 service plan, provided that any enhanced 911 service area shall at a minimum encompass one entire county. The enhanced 911 service area may encompass more than one county and need not be restricted to county boundaries. This definition applies only to wire-line enhanced 911 service.

"Enhanced 911 (E911) service plan (wire-line)" means a plan, produced by a joint E911 service board, which includes the information required by Iowa Code subsection 34A.2(6).

"Enhanced 911 service surcharge" means a charge set by the joint E911 service board, approved by local referendum, and assessed on each access line which physically terminates within the E911 service area.

"Enhanced wireless 911 service area" means the geographic area to be served, or currently served, by a PSAP under an enhanced wireless 911 service plan.

"Enhanced wireless 911 service, phase I" means an emergency wireless telephone system with specific electronically controlled features such as ANI, specific indication of wireless communications tower site location, selective routing by geographic location of the tower site.

"Enhanced wireless 911 service, phase II" means an emergency wireless telephone system with specific electronically controlled features such as ANI and ALI and selective routing by geographic location of the 911 caller.

"Exchange" means a defined geographic area served by one or more central offices in which the telephone company furnishes services.

"Implementation" means the activity between formal approval of an E911 service plan and a given system design, and commencement of operations.

"Joint E911 service board" means those entities created under the provisions of Iowa Code section 34A.3, which include the legal entities created pursuant to Iowa Code chapter 28E referenced in Iowa Code subsection 34A.3(3).

"911 call" means any telephone call that is made by dialing the digits 911.

"911 system" means a telephone system that automatically connects a caller, dialing the digits 911, to a PSAP.

"Nonrecurring costs" means one-time charges incurred by a joint E911 service board or operating authority including, but not limited to, expenditures for E911 service plan preparation, surcharge referendum, capital outlay, installation, and initial license to use subscriber names, addresses and telephone information.

"One-button transfer" means another term for a (fixed) transfer which allows the call attendant to transfer an incoming call by pressing a single button. For example, one button would transfer voice and data to a fire agency, and another button would be used for police, also known as "selective transfer."

CHAPTER 27
STANDARDS OF PRACTICE AND PRINCIPLES OF PROFESSIONAL ETHICS

650—27.1(153) General.

27.1(1) *Dental ethics.* The following principles relating to dental ethics are compatible with the Code of Professional Ethics and advisory opinions published in August 1998 by the American Dental Association. These principles are not intended to provide a limitation on the ability of the board to address problems in the area of ethics but rather to provide a basis for board review of questions concerning professional ethics. The dentist's primary professional obligation shall be service to the public with the most important aspect of that obligation being the competent delivery of appropriate care within the bounds of the clinical circumstances presented by the patient, with due consideration being given to the needs and desires of the patient. Unprofessional conduct includes, but is not limited, to any violation of these rules.

27.1(2) *Dental hygiene ethics.* The following principles relating to dental hygiene ethics are compatible with the Code of Ethics of the American Dental Hygienists' Association published in 1995. Standards of practice for dental hygienists are compatible with the Iowa dental hygienists' association dental hygiene standards of practice adopted in May 1993. These principles and standards are not intended to provide a limitation on the ability of the dental hygiene committee to address problems in the area of ethics and professional standards for dental hygienists but rather to provide a basis for committee review of questions regarding the same. The dental hygienist's primary responsibility is to provide quality care and service to the public according to the clinical circumstances presented by the patient, with due consideration of responsibilities to the patient and the supervising dentist according to the laws and rules governing the practice of dental hygiene.

650—27.2(153,272C) Patient acceptance. Dentists, in serving the public, may exercise reasonable discretion in accepting patients in their practices; however, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, sex or national origin.

650—27.3(153) Emergency service. Emergency services in dentistry are deemed to be those services necessary for the relief of pain or to thwart infection and prevent its spread.

27.3(1) Dentists shall make reasonable arrangements for the emergency care of their patients of record.

27.3(2) Dentists shall, when consulted in an emergency by patients not of record, make reasonable arrangements for emergency care.

650—27.4(153) Consultation and referral.

27.4(1) Dentists shall seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those practitioners who have special skills, knowledge and experience.

27.4(2) The specialist or consulting dentist upon completion of their care shall return the patient, unless the patient expressly states a different preference, to the referring dentist or, if none, to the dentist of record for future care.

27.4(3) The specialist shall be obliged, when there is no referring dentist and upon completion of the treatment, to inform the patient when there is a need for further dental care.

27.4(4) A dentist who has a patient referred for a second opinion regarding a diagnosis or treatment plan recommended by the patient's treating dentist, should render the requested second opinion in accordance with these rules. In the interest of the patient being afforded quality care, the dentist rendering the second opinion should not have a vested interest in the ensuing recommendation.

650—27.5(153) Use of auxiliary personnel. Dentists shall protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall supervise the work of all auxiliary personnel working under their direction and control.

650—27.6(153) Evidence of incompetent treatment.

27.6(1) Dentists shall report to the board instances of gross or continual faulty treatment by other dentists.

27.6(2) Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

650—27.7(153) Representation of care and fees.

27.7(1) Dentists shall not represent the care being rendered to their patients or the fees being charged for providing the care in a false or misleading manner.

27.7(2) A dentist who accepts a third-party payment under a copayment plan as payment in full without disclosing to the third-party payer that the patient's payment portion will not be collected is engaging in deception and misrepresentation by this overbilling practice.

27.7(3) A dentist shall not increase a fee to a patient solely because the patient has insurance.

27.7(4) Payments accepted by a dentist under a governmentally funded program, a component or constituent dental society sponsored access program, or a participating agreement entered into under a program of a third party shall not be considered as evidence of overbilling in determining whether a charge to a patient or to another third party on behalf of a patient not covered under any of these programs, constitutes overbilling under this rule.

27.7(5) A dentist who submits a claim form to a third party reporting incorrect treatment dates is engaged in making unethical, false or misleading representations.

27.7(6) A dentist who incorrectly describes a dental procedure on a third party claim form in order to receive a greater payment or incorrectly makes a noncovered procedure appear to be a covered procedure is engaged in making an unethical, false or misleading representation to the third party.

27.7(7) A dentist who recommends or performs unnecessary dental services or procedures is engaged in unprofessional conduct.

27.7(8) Recommending removal of restorations or removing said restorations from the nonallergic patient for the alleged purpose of removing toxic substances from the body, when such activity is initiated by the dentist, is an improper and unacceptable treatment regimen.

650—27.8(153) General practitioner announcement of services. General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communications that express or imply specialization. General dentists shall also state that the services are being provided by a general dentist.

650—27.9(153) Unethical and unprofessional conduct.

27.9(1) Licensee actions determined by the board to be verbally abusive, coercive, intimidating, harassing, untruthful or threatening in connection with the practice of dentistry shall constitute unethical or unprofessional conduct.

27.9(2) A treatment regimen shall be fully explained and patient authorization obtained before treatment is begun.

27.9(3) A dentist or dental hygienist determined to be infected with HIV or HBV shall not perform an exposure-prone procedure except as approved by the expert review panel as defined in Iowa Code section 139C.1, established by the Iowa department of public health under subsection 139C.2(3), or if the dentist or dental hygienist works in a hospital setting, the licensee may elect either the expert review panel established by the hospital or the expert review panel established by the Iowa department of public health for the purpose of making a determination of the circumstances under which the dentist or dental hygienist may perform exposure-prone procedures. The licensee shall comply with the recommendations of the expert review panel. Failure to do so shall constitute unethical and unprofessional conduct and is grounds for disciplinary action by the board.

650—27.10(153) Retirement or discontinuance of practice.

27.10(1) A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon leaving or moving from a community, shall notify all active patients in writing, or by publication once a week for three consecutive weeks in a newspaper of general circulation in the community, that the licensee intends to discontinue the practice of dentistry in the community, and shall encourage patients to seek the services of another licensee. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies thereof, to the succeeding licensee. "Active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to retirement, discontinuation of the practice of dentistry, or leaving or moving from a community.

27.10(2) Nothing herein provided shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed dentist who is assuming a practice, provided that written notice is furnished to all patients as hereinbefore specified.

650—27.11(153,272C) Record keeping. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Records shall be permanent, timely, accurate, legible, and easily understandable.

27.11(1) *Dental records.* Dentists shall maintain dental records for each patient. The records shall contain all of the following:

a. *Personal data.*

(1) Name, date of birth, address and, if a minor, name of parent or guardian.

(2) Name and telephone number of person to contact in case of emergency.

b. *Dental and medical history.* Dental records shall include information from the patient or the patient's parent or guardian regarding the patient's dental and medical history. The information shall include sufficient data to support the recommended treatment plan.

c. *Patient's reason for visit.* When a patient presents with a chief complaint, dental records shall include the patient's stated oral health care reasons for visiting the dentist.

d. Clinical examination progress notes. Dental records shall include chronological dates and descriptions of the following:

(1) Clinical examination findings, tests conducted, and a summary of all pertinent diagnoses;

(2) Plan of intended treatment and treatment sequence;

(3) Services rendered and any treatment complications;

(4) All radiographs, study models, and periodontal charting, if applicable;

(5) Name, quantity, and strength of all drugs dispensed, administered, or prescribed; and

(6) Name of dentist, dental hygienist, or any other auxiliary, who performs any treatment or service or who may have contact with a patient regarding the patient's dental health.

e. Informed consent. Dental records shall include, at a minimum, documentation of informed consent that includes discussion of procedure(s), treatment options, potential complications and known risks, and patient's consent to proceed with treatment.

27.11(2) *Retention of records.* A dentist shall maintain a patient's dental record for a minimum of five years after the date of last examination, prescription, or treatment. Records for minors shall be maintained for a minimum of either (a) one year after the patient reaches the age of majority (18), or (b) five years, whichever is longer. Proper safeguards shall be maintained to ensure safety of records from destructive elements.

27.11(3) *Electronic record keeping.* The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, a dentist shall keep either a duplicate hard copy record or use an unalterable electronic record.

27.11(4) *Correction of records.* Notations shall be legible, written in ink, and contain no erasures or white-outs. If incorrect information is placed in the record, it must be crossed out with a single non-deleting line and be initialed by a dental health care worker.

27.11(5) *Confidentiality and transfer of records.* Dentists shall preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's new dentist, the dentist shall furnish the dental records or copies or summaries of the records, including dental radiographs or copies of the radiographs, as will be beneficial for the future treatment of that patient. The dentist may charge a nominal fee for duplication of records, but may not refuse to transfer records for nonpayment of any fees.

These rules are intended to implement Iowa Code sections 153.34(7), 153.34(9), 272C.3, 272C.4(1f) and 272C.4(6).

[Filed 9/1/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]
[Filed 2/1/91, Notice 12/12/90—published 2/20/91, effective 3/27/91]
[Filed 1/29/93, Notice 11/25/92—published 2/17/93, effective 3/24/93]
[Filed 7/30/93, Notice 6/9/93—published 8/18/93, effective 9/22/93]
[Filed 7/28/94, Notice 3/30/94—published 8/17/94, effective 9/21/94]
[Filed 1/27/95, Notice 12/7/94—published 2/15/95, effective 3/22/95]
[Filed 1/22/99, Notice 11/18/98—published 2/10/99, effective 3/17/99]
[Filed 7/21/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

657—10.19(124) Excluded substances. The following substances are classified as products exempted from classification as controlled substances:

Company	Trade name	NDC code	Form	Controlled substance	(mg or mg/ml)
Bioline Laboratories	Theophed	00719-1945	TB	Phenobarbital	8.00
Goldline Laboratories	Guiaphed Elixir	00182-1377	EL	Phenobarbital	4.00
Goldline Laboratories	Tedrigen Tablets	00182-0134	TB	Phenobarbital	8.00
Hawthorne Products Inc.	Choate's Leg Freeze		LQ	Chloral hydrate	246.67
Parke-Davis & Co.	Tedral	00071-0230	TB	Phenobarbital	8.00
Parke-Davis & Co.	Tedral Elixir	00071-0242	EX	Phenobarbital	40.00
Parke-Davis & Co.	Tedral S.A.	00071-0231	TB	Phenobarbital	8.00
Parke-Davis & Co.	Tedral Suspension	00071-0237	SU	Phenobarbital	80.00
Parmed Pharmacy	Asma-Ese	00349-2018	TB	Phenobarbital	8.10
Rondex Labs	Azma-Aids	00367-3153	TB	Phenobarbital	8.00
Smith Kline Consumer	Benzedrex	49692-0928	IN	Propylhexedrine	250.00
Sterling Drug, Inc.	Bronkolixir	00057-1004	EL	Phenobarbital	0.80
Sterling Drug, Inc.	Bronkotabs	00057-1005	TB	Phenobarbital	8.00
Vicks Chemical Co.	Vicks Inhaler	23900-0010	IN	l-Desoxyephedrine	113.00
White Hall Labs	Primatene (P-tablets)	00573-2940	TB	Phenobarbital	8.00

This rule is intended to implement Iowa Code sections 124.210(4) and 124.211.

657—10.20(124) Temporary designation of controlled substances.

10.20(1) Amend Iowa Code subsection 124.204(5) by adopting the following new paragraph "*c*":

c. Gamma-hydroxybutyric acid (some other names include GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, sodium oxybutyrate).

10.20(2) Amend Iowa Code subsection 124.208(3) by adopting the following new paragraph "*l*":

l. Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under Section 505 of the Federal Food, Drug, and Cosmetic Act.

This rule is intended to implement Iowa Code sections 124.201 and 124.301.

657—10.21(205) Purpose of issue of prescription. Any order purporting to be a prescription for a Schedule III dronabinol product not issued for indications approved by the Food and Drug Administration is not a prescription within the meaning and intent of the federal law (21 U.S.C. 829) or of Iowa Code section 205.3. Any person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances. Nothing in this rule shall be deemed to prohibit the prescribing of dronabinol products approved by the Food and Drug Administration for other than indications for use approved by the Food and Drug Administration by a researcher or registered practitioner conducting research, provided that the research is conducted in accordance with research protocol provisions approved by the board or federal law (21 CFR 1301.18 as of April 1, 1999).

This rule is intended to implement Iowa Code section 205.3.

657—10.22(205) Requirement of prescription. An individual practitioner as defined in Iowa Code subsection 124.101(23) may not administer or dispense Schedule III dronabinol products unless such administering or dispensing is for indications for use approved by the Food and Drug Administration. Any person knowingly administering or dispensing Schedule III dronabinol products contrary to this rule shall be subject to the penalties provided for violation of the provisions of law relating to controlled substances. Nothing in this rule shall be deemed to prohibit the administering or dispensing of Schedule III dronabinol products for other indications for use approved by the Food and Drug Administration by a researcher or registered practitioner conducting research provided that the research is conducted in accordance with research protocol provisions approved by the board or federal law (21 CFR 1301.18 as of April 1, 1999).

This rule is intended to implement Iowa Code section 205.3.

657—10.23(124) Exempt anabolic steroid products. The Iowa board of pharmacy examiners hereby adopts the table of "Exempt Anabolic Steroid Products" contained in Title 21 CFR, Part 1308, Section 34, as published in the Federal Register dated November 24, 1992, Vol. 57, No. 227, page 55091, and as amended by the addition of two new entries to the table as published in the Federal Register dated June 29, 1993, Vol. 58, No. 123, page 34707. Copies of the table may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

These rules are intended to implement Iowa Code sections 124.201, 124.202, 124.208, 124.306, 124.501, 124.506, and 205.3.

[Filed 9/29/71; amended 8/9/72, 12/15/72, 11/14/73, 8/14/74, 4/8/75]
[Filed 11/24/76, Notice 10/20/76—published 12/15/76, effective 1/19/77]
[Filed 11/9/77, Notice 8/24/77—published 11/30/77, effective 1/4/78]
[Filed 10/20/78, Notices 8/9/78, 9/6/78—published 11/15/78, effective 1/9/79]
[Filed 8/28/79, Notice 5/30/79—published 9/19/79, effective 10/24/79]
[Filed 2/12/81, Notice 12/24/80—published 3/4/81, effective 7/1/81]
[Filed 7/24/81, Notice 5/13/81—published 8/19/81, effective 9/23/81]
[Filed emergency 12/14/81—published 1/6/82, effective 1/6/82]
[Filed emergency 10/6/82—published 10/27/82, effective 10/27/82]
[Filed 6/16/83, Notice 5/11/83—published 7/6/83, effective 8/10/83]
[Filed 2/23/84, Notice 11/23/83—published 3/14/84, effective 4/18/84]
[Filed emergency 8/10/84—published 8/29/84, effective 8/10/84]
[Filed emergency 6/14/85—published 7/3/85, effective 6/14/85]
[Filed emergency 8/30/85—published 9/25/85, effective 9/6/85]
[Filed emergency 12/4/85—published 1/1/86, effective 12/5/85]
[Filed emergency 5/14/86—published 6/4/86, effective 5/16/86]
[Filed 5/14/86, Notice 4/9/86—published 6/4/86, effective 7/9/86]◊
[Filed 1/28/87, Notice 11/19/86—published 2/25/87, effective 4/1/87]
[Filed emergency 7/24/87—published 8/12/87, effective 7/24/87]
[Filed 8/5/87, Notice 6/3/87—published 8/26/87, effective 9/30/87]
[Filed emergency 1/21/88—published 2/10/88, effective 1/22/88]
[Filed 3/29/88, Notice 2/10/88—published 4/20/88, effective 5/25/88]
[Filed emergency 8/5/88—published 8/24/88, effective 8/5/88]
[Filed emergency 10/13/88—published 11/2/88, effective 10/13/88]
[Filed emergency 5/16/89—published 6/14/89, effective 5/17/89]
[Filed emergency 9/12/89—published 10/4/89, effective 9/13/89]

◊Two ARCs

[Filed 1/19/90, Notice 11/29/89—published 2/7/90, effective 3/14/90]
[Filed 8/31/90, Notice 6/13/90—published 9/19/90, effective 10/24/90]
[Filed emergency 1/29/91—published 2/20/91, effective 2/27/91]
[Filed 1/29/91, Notice 9/19/90—published 2/20/91, effective 3/27/91]
[Filed emergency 2/27/91—published 3/20/91, effective 2/27/91]
[Filed 4/26/91, Notice 2/20/91—published 5/15/91, effective 6/19/91]
[Filed emergency 5/10/91—published 5/29/91, effective 5/10/91]
[Filed 7/30/91, Notice 5/29/91—published 8/21/91, effective 9/25/91*]
[Filed emergency 9/23/91—published 10/16/91, effective 9/23/91]
[Filed emergency 10/18/91—published 11/13/91, effective 10/21/91]
[Filed 3/12/92, Notice 1/8/92—published 4/1/92, effective 5/6/92]
[Filed 5/21/92, Notice 4/1/92—published 6/10/92, effective 7/15/92]
[Filed emergency 8/10/92—published 9/2/92, effective 8/10/92]
[Filed 10/22/92, Notice 9/2/92—published 11/11/92, effective 1/1/93]
[Filed 9/23/93, Notice 5/26/93—published 10/13/93, effective 11/17/93]
[Filed emergency 3/21/94—published 4/13/94, effective 3/23/94]
[Filed 3/21/94, Notice 10/13/93—published 4/13/94, effective 5/18/94]
[Filed 4/22/94, Notice 11/10/93—published 5/11/94, effective 6/15/94]
[Filed 6/24/94, Notice 4/13/94—published 7/20/94, effective 8/24/94]
[Filed 3/22/95, Notice 11/9/94—published 4/12/95, effective 5/31/95]
[Filed 12/6/95, Notice 8/16/95—published 1/3/96, effective 2/7/96]
[Filed 11/19/97, Notice 10/8/97—published 12/17/97, effective 1/21/98]
[Filed 4/24/98, Notice 3/11/98—published 5/20/98, effective 6/24/98]
[Filed 7/31/98, Notice 5/20/98—published 8/26/98, effective 9/30/98]
[Filed emergency 8/18/99—published 9/8/99, effective 8/18/99]
[Filed emergency 10/6/99—published 11/3/99, effective 10/11/99]
[Filed emergency 7/18/00—published 8/9/00, effective 7/18/00]

*Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held September 11, 1991.

CHAPTER 603
Reserved

CHAPTER 604
LICENSE EXAMINATION

604.1(321) Authority and scope
604.2(321) Definition
604.3(17A) Information and forms
604.4 to 604.6 Reserved
604.7(321) Examination
604.8 and 604.9 Reserved
604.10(321) Vision screening
604.11(321) Vision standards
604.12(321) Vision referrals
604.13(321) Vision screening results
604.14 to 604.19 Reserved
604.20(321) Knowledge test
604.21(321) Knowledge test requirements and waivers
604.22(321) Knowledge test results
604.23 to 604.29 Reserved
604.30(321) Driving test
604.31(321) Driving test requirements and waivers for noncommercial licenses
604.32 to 604.34 Reserved
604.35(321) Determination of gross vehicle weight rating
604.36 to 604.39 Reserved
604.40(321) Failure to pass examination
604.41 to 604.44 Reserved
604.45(321) Reinstatement
604.46 to 604.49 Reserved
604.50(321) Special reexaminations

CHAPTER 605
LICENSE ISSUANCE

605.1(321) Scope
605.2(321) Contents of license
605.3(321) License class
605.4(321) Endorsements
605.5(321) Restrictions
605.6 to 605.8 Reserved
605.9(321) Fees for driver's licenses
605.10(321) Waiver or refund of license fees—pilot project
605.11(321) Duplicate license
605.12 to 605.14 Reserved
605.15(321) License extension
605.16(321) Military extension
605.17 to 605.19 Reserved
605.20(321) Fee adjustment for upgrading license
605.21 to 605.24 Reserved
605.25(321) License renewal
605.26(321) License renewal by mail

CHAPTER 606
Reserved

CHAPTER 607
COMMERCIAL DRIVER LICENSING

607.1(321) Scope
607.2(17A) Information
607.3(321) Definitions
607.4 and 607.5 Reserved
607.6(321) Exemptions
607.7(321) Records
607.8 and 607.9 Reserved
607.10(321) Adoption of federal regulations
607.11 to 607.14 Reserved
607.15(321) Application
607.16(321) Commercial driver's license (CDL)
607.17(321) Endorsements
607.18(321) Restrictions
607.19 Reserved
607.20(321) Commercial driver's instruction permit
607.21 to 607.24 Reserved
607.25(321) Examination for a commercial driver's license
607.26(321) Vision screening
607.27(321) Knowledge tests
607.28(321) Skills test
607.29 and 607.30 Reserved
607.31(321) Test results
607.32 to 607.34 Reserved
607.35(321) Issuance of commercial driver's license

CHAPTER 142
SPEED ZONING ON PRIMARY HIGHWAYS
[Prior to 6/3/87, Transportation Department[820]—(06,K) Ch 7]

761—142.1(321) Adjustment of speed zones on primary highways. The purpose of these rules is to establish the procedure for adjusting the basic speed limits stated in Iowa Code chapter 321.

142.1(1) *Procedure.*

a. All requests for raising or lowering the posted speed limits on primary highways shall be made to the appropriate district engineer.

b. The department of transportation will conduct an engineering and traffic investigation and if the speed limit is found to be greater or less than is reasonable or safe under the conditions found to exist, the department of transportation will declare a reasonable and proper speed limit and post appropriate signs.

c. The person or agency submitting the request for the engineering and traffic investigation shall be advised of the conclusions of the study and the action to be taken by the department of transportation.

This rule is intended to implement Iowa Code sections 321.285 and 321.290.

[Filed 7/1/75]

[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]

CHAPTER 143
TRAFFIC SIGNAL SYNCHRONIZATION

761—143.1(364) Definitions. The following definitions apply to these rules:

"Arterial street" means any U.S. or state numbered route, controlled access highway, or other major street or highway designated by the city within its respective jurisdiction as a part of a major arterial system of streets or highways.

"Controller" means a supervisory device that controls the sequence and duration of indications displayed by traffic signals. Types of controllers:

1. *"Actuated controller"* means a controller for supervising the operation of traffic signals in accordance with the varying demands of traffic as registered with the controller by detectors or push buttons. Types of actuated controller operations:

- *"Full-actuated operation"* means traffic demands are registered with the controller by detectors placed on all approaches to the intersection.
- *"Pedestrian-actuated operation"* means pedestrian timings or phases may be added to or included in the cycle by actuation of pedestrian detectors (push buttons).
- *"Semiactuated operation"* means traffic demands are registered with the controller by detectors placed on one or more, but not all, approaches to the intersection.
- *"Volume-density operation"* means full-actuated operation with the ability to reduce the right-of-way time assigned to each vehicle on the basis of the waiting time of opposing vehicles (gap reduction).

2. *"Pretimed controller"* means a controller for supervising the operation of traffic signals that uses preset, fixed cycle lengths; all preset phases are displayed during each cycle.

"Coordination" means the establishment of a definite timing relationship between adjacent traffic signals.

"Cycle" means any complete sequence of traffic signal indications (phases).

"Cycle length" means the time required for one complete cycle.

"Detector" means a device that senses vehicular or pedestrian demand and transmits an impulse to a controller.

"Isolated intersection" means a signalized intersection with a controller whose operation is unaffected by any other controller or supervisory device.

"Local controller" means a controller supervising the operation of traffic signals at a single or two closely spaced intersections.

"Master controller" means a controller supervising the operation of several local controllers.

"Phase" means a portion of the cycle during which an assignment of right-of-way is made to a traffic movement or combination of traffic movements.

"Traffic signal" means any permanently installed, electrically powered traffic control device by which traffic is alternately directed to stop and to proceed.

"Traffic signal system" means two or more traffic signals operating in a coordinated manner. Types of coordinated systems:

1. *"Computerized system"* means a system in which controllers are supervised by a computer.
2. *"Interconnected master-controlled system"* means a system in which local controllers are supervised by a master controller through a communications link (wire/radio). The master establishes a base line condition; the local then operates its intersection in a predetermined relationship with the base line.
3. *"Noninterconnected system"* means a system in which timing relationships between individual local controllers are coordinated by manual settings, without physical interconnection between the controllers.

4. *"Time-based coordinated system"* means a noninterconnected system in which the local controllers use a very accurate programmable digital timing and control device (time-based coordinator) to maintain coordination.

5. *"Traffic responsive system"* means a system in which a master controller specifies cycle timings based on the real time demands of traffic as sensed by vehicle detectors.

761—143.2(364) Applicability. This chapter applies to all cities with more than three traffic signals within the corporate limits.

761—143.3(364) Traffic signal inventory. By July 1, 1991, the cities to which this chapter applies shall submit the following to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010:

143.3(1) A map or listing indicating the location of each traffic signal installation within the corporate limits.

143.3(2) Information about the type of controller operation at each location: full-actuated, pedestrian-actuated, semiactuated, volume-density, or pretimed. For inventory purposes, "pedestrian-actuated" includes only those signals installed to accommodate pedestrians at school or pedestrian crossings.

143.3(3) A listing of locations included in each traffic signal system or subsystem and the classification of the system: computerized, interconnected master-controlled, noninterconnected, time-based coordinated, traffic responsive or, if none of the preceding apply, a description of the classification being used.

761—143.4(364) Required synchronization.

143.4(1) Unless a traffic engineering study documents that it is not practical, traffic signals within one-half mile of each other along an arterial street or in a network of intersecting arterial streets shall be operated in coordination; preferably in a computerized, interconnected master-controlled, time-based coordinated, or traffic responsive system.

143.4(2) Reserved.

143.4(3) Timing and operational plans developed for traffic signals shall be developed by application of traffic engineering principles to provide maximum traffic flow efficiencies and safety.

143.4(4) All traffic signal installations and operations shall meet the requirements of the "Manual on Uniform Traffic Control Devices for Streets and Highways," as adopted in 761—Chapter 130, Iowa Administrative Code.

761—143.5(364) Reporting requirements.

143.5(1) *Cities.* By July 1, 1992, each city to which this chapter applies shall furnish to the office of local systems, at the address listed in rule 143.3(364), an affidavit certifying one of the following:

a. The city is in compliance with the requirements of this chapter and Iowa Code section 364.24.

b. The city has adopted a program to achieve compliance with the requirements of this chapter and Iowa Code section 364.24.

143.5(2) *Department.* By September 1, 1992, the department shall report to the governor and the general assembly those cities that have submitted affidavits and the types of certifications made.

This chapter is intended to implement Iowa Code section 364.24.

[Filed 3/12/90, Notice 1/24/90—published 4/4/90, effective 5/9/90]

CHAPTERS 144 to 149
Reserved

PRIMARY ROAD EXTENSIONS

CHAPTER 150
IMPROVEMENTS AND MAINTENANCE ON PRIMARY ROAD EXTENSIONS

[Prior to 6/3/87, Transportation Department[820]—(06,L) Ch 1]

761—150.1(307,321,362) Definitions.

"City" means a municipal corporation as defined in Iowa Code section 362.2.

"Department" means the Iowa department of transportation.

"Right-of-way" means the land for any public road, street or highway, including the entire area between the property lines.

This rule is intended to implement Iowa Code sections 307.1, 321.1, and 362.2.

761—150.2(306,306A,313,314) Improvements and maintenance on extensions of freeways.

150.2(1) *Construction.* Except as otherwise provided, the department shall be responsible for all right-of-way and construction costs associated with the construction of freeways and their extensions.

a. The department shall expect the city to be responsible for providing, without cost to the department, all necessary right-of-way which involves:

(1) Dedicated streets or alleys, and

(2) Other city-owned lands, except parklands, subject to the condition that the department may reimburse the city for the functional replacement value of improved property and advanced purchases negotiated by the city for project purposes.

b. The department shall be responsible for the costs of construction of longitudinal and outlet storm sewers made necessary by highway construction in the proportion that the street right-of-way of the primary road extension bears to the total drainage area to be served by the proposed sewers. The city shall be expected to be responsible for the remaining portion of storm sewer costs not paid for by the department.

150.2(2) *Maintenance.* The department shall have an agreement with a city regarding the maintenance of primary roads within the corporate city limits. This is intended to include corporate line roads, when appropriate. Unless otherwise mutually agreed to and specified in the agreement, maintenance responsibilities shall be as follows:

a. The department shall be responsible for all maintenance costs on the through roadway, the on and off ramps, and the roadside features from right-of-way line to right-of-way line.

b. Where city streets cross the freeway, the department shall be responsible for:

(1) Roadside maintenance within the limits of the freeway fence.

(2) Surface drainage of the right-of-way.

(3) Traffic signs and pavement markings required for freeway operation.

(4) Guardrail at piers and bridge approaches.

(5) Expansion relief joints in approach pavement and leveling of bridge approach panel(s).

(6) All maintenance of bridges including deck repair, structural repair, berm slope protection, painting, and inspection, except as noted in paragraph *"c"* of this subrule.

c. Where city streets cross the freeway, the department shall expect the city to be responsible for:

(1) All roadside maintenance outside the freeway fence.

(2) All pavement, subgrade and shoulder maintenance on the cross street except expansion relief joints and bridge approach panel leveling.

(3) All traffic lane markings on the cross street.

(4) Snow removal on the cross street including bridges over the freeway.

(5) Cleaning and sweeping bridge decks on streets crossing over the freeway.

d. The department shall expect the city to be responsible for maintenance and repair of pedestrian overpasses and underpasses including snow removal, painting, lighting and structural repairs.

e. Should local service roads or streets be constructed as a part of a project, upon completion they shall become a part of the city street system. The department shall not be responsible for the maintenance of these roads or streets and corresponding drainage structures.

150.2(3) *Lighting.*

a. For the purpose of highway lighting, "freeway" means a roadway constructed with Priority I access control for a length of five miles or greater.

b. The department shall be responsible for the cost of installation of lighting on the main-traveled-way lanes and the on and off ramps including the terminals with cross streets when the department determines that lighting is required under established warrants.

c. The department shall be responsible for the energy and maintenance costs of lighting on the main-traveled-way lanes.

d. The department shall be responsible for the energy and maintenance costs of lighting through interchange areas and ramps thereto at interchanges between freeways which do not provide service to local streets.

e. The department shall be responsible for the energy and maintenance costs of lighting in interchange areas at interchanges between freeways and primary roads which are on corporate lines.

f. At interchanges with city cross streets, the department shall be responsible for the energy and maintenance costs of lighting on the main-traveled-way lanes, on and off ramps, ramp terminals, and, when the department determines full interchange lighting is required, the cross street between the outermost ramp terminals.

g. The department shall not be responsible for the installation, energy, and maintenance costs of any lighting on cross streets in advance of interchanges and between the outermost ramp terminals at interchanges where the department determines partial interchange lighting or no lighting is required.

h. Warrants for the lighting of freeways shall be according to the 1984 "AASHTO Information Guide for Roadway Lighting."

150.2(4) *Traffic signals at ramp terminals with cross streets.*

a. Unless otherwise agreed, it is the intent of the department to share with the city the installation costs of traffic signals at ramp terminals with cross streets when these signals are warranted according to the "Manual on Uniform Traffic Control Devices for Streets and Highways" as adopted in rule 761—130.1(321). Unless otherwise agreed, the installation costs of traffic signals shall be shared between the department and the city on the basis of the current U-STEP (Urban-State Traffic Engineering Program) cost apportionment.

b. The department shall not assume ownership and shall not be responsible for the energy and maintenance costs involved in the operation of these signals.

c. Signal phasing, initial and future, as well as timing and coordination between intersections shall be coordinated between the department and the city.

This rule is intended to implement Iowa Code sections 306.4, 306.5, 313.4, 313.21 to 313.24, 313.27, 313.36, 314.5 and 314.6 and chapter 306A.

761—150.3(306,306A,313,314,321E) Improvements and maintenance on extensions of expressway, arterial and arterial connector highways.

150.3(1) *Construction.*

a. The department shall be responsible for all right-of-way and construction costs to construct expressway, arterial and arterial connector highways and their extensions to the minimum design criteria as established by the department. Construction improvement costs beyond minimum design criteria shall be the responsibility of the city, as specified in the project agreement. Minimum design criteria shall be in accordance with 1984 AASHTO design standards.

b. The department shall expect the city to be responsible for providing, without cost to the department, all necessary right-of-way which involves:

(1) Dedicated streets or alleys, and

(2) Other city-owned lands, except parklands, subject to the condition that the department may reimburse the city for the functional replacement value of improved property and advanced purchases negotiated by the city for project purposes.

c. The city shall be expected to take all necessary legal action to discontinue and prohibit any past or present use of project right-of-way for private purposes. The city shall be expected to prevent any future encroachment or obstruction within the limits of project right-of-way.

d. The department shall be responsible for the costs of construction of longitudinal and outlet storm sewers made necessary by highway construction in the proportion that the street right-of-way of the primary road extension bears to the total drainage area to be served by the proposed sewers. The city shall be expected to be responsible for the remaining portion of storm sewer costs not paid for by the department.

e. Unless otherwise mutually agreed to and specified in the agreement:

(1) The department shall be responsible for one-half of the right-of-way and construction costs of local service roads or streets only when these local service roads or streets are developed as a part of the initial construction of the through traffic lanes. The city shall be expected to be responsible for the remainder of the right-of-way and construction costs.

(2) The storm sewer construction costs for local service roads or streets shall be shared equally between the department and the city.

150.3(2) *Maintenance.* The department shall enter into an agreement with a city regarding the maintenance of primary roads within the corporate city limits. This is intended to include corporate line roads, when appropriate. Unless otherwise mutually agreed to and specified in the agreement, maintenance responsibilities shall be as follows:

a. On primary roads constructed with a curbed cross section, the department shall be responsible for:

(1) Maintenance and repairs to pavement and subgrade from face of curb to face of curb exclusive of parking lanes, culverts, intakes, manholes, public or private utilities, sanitary sewers and storm sewers.

(2) Primary road signing for moving traffic as set out in subrule 150.4(1), pavement markings for traffic lanes, guardrail and stop signs at intersecting streets.

(3) Surface drainage only, within the limits of pavement maintenance.

(4) Plowing of snow from the traffic lanes of pavement and bridges and treatment of traffic lanes with abrasives and chemicals.

(5) Inspection, painting and structural maintenance of bridges as defined in Iowa Code section 309.75.

b. On primary roads constructed with a rural cross section (no curb), the department shall be responsible for all maintenance, except that tree removal, sidewalks, retaining walls and repairs due to utility construction and maintenance shall be the city's responsibility.

c. On primary roads constructed with a curbed cross section, the city shall be responsible for:

(1) Maintenance and repairs to pavement in parking lanes, intersections beyond the limits of department pavement maintenance, curbs used to contain drainage, and repairs to all pavement due to utility construction, maintenance and repair.

(2) Painting of parking stalls, stop lines and crosswalks, and the installation and maintenance of flashing lights. Pavement markings shall be in conformance with the "Manual on Uniform Traffic Control Devices for Streets and Highways."

(3) Maintenance of all storm sewers, manholes, intakes, catch basins and culverts used for collection and disposal of surface drainage.

(4) Removal of snow windrowed by departmental plowing operations, removal of snow and ice from all areas outside the traffic lanes, loading or hauling of snow which the city considers necessary and removal of snow and ice from sidewalks on bridges used for pedestrian traffic.

(5) Maintenance of sidewalks, retaining walls and all areas between curb and right-of-way line.

(6) Cleaning, sweeping and washing of streets.

(7) Maintenance and repair of pedestrian overpasses and underpasses including snow removal, painting and structural repairs.

d. The department shall expect the city to comply with the access control policy of the department as adopted in 761—Chapter 112, and to obtain prior approval from the department for any changes to existing entrances or for the construction of new entrances.

e. Drainage district assessments levied against the primary road within the corporate limits of the city shall be shared equally by the department and the city.

f. Should local service roads or streets be constructed as a part of a project, upon completion they shall become a part of the city street system. The department shall not be responsible for the maintenance of these roads or streets and corresponding drainage structures.

g. Expressways constructed to freeway standards shall be maintained in accordance with subrule 150.2(2).

150.3(3) *Lighting.*

a. The department shall not be responsible for the installation, energy, and maintenance costs of lighting on extensions of expressway, arterial and arterial connector highways. The city may elect to provide lighting at its own expense. However:

(1) For a smaller city, the department may elect to install interchange lighting and to be responsible for or to participate in the energy and maintenance costs of this lighting.

(2) On a new construction project that results in a predominately fully controlled access highway, but incorporates some expressway or arterial segments, the department may elect to participate in the installation of lighting at conflict points if the city agrees to be responsible for the energy and maintenance costs of this lighting.

b. At corporate line primary road junctions, the lighting shall be installed where necessary by the department in accordance with department warrants. The department shall be responsible for the installation costs. Unless otherwise agreed, the energy and maintenance costs shall be shared by the city and department in proportion to the number of luminaires in each jurisdiction as established by the corporate line. When and if the corporate line is extended to include any part of the lighting installation or a greater proportion of luminaires, the proportionate costs for maintenance and energy shall be redetermined on the basis of the number of luminaires in each jurisdiction as established by the new location of the corporate line.

150.3(4) *Traffic signals.*

a. All traffic signal installations shall meet standards and traffic volume warrants as established in the "Manual on Uniform Traffic Control Devices for Streets and Highways."

b. On projects initiated by the department, the department may install, at no cost to the city, traffic signals warranted when replacing the existing pavement or adding new lanes in conjunction with any existing or new pavement. In conjunction with these projects, the department may also participate in the cost of signals for pedestrian use only. If the department participates, the department's share of the installation costs shall be based on the current U-STEP cost apportionment.

c. When new pavement construction or additional lanes are not involved, the department may participate in the installation costs of new and modernized traffic signals or signals for pedestrian use only. If the department participates, the department's share of the installation costs shall be based on the current U-STEP cost apportionment; the city shall prepare plans, award the contract, supervise the installation, and be responsible for the remaining installation costs.

d. Modifications made to the traffic signal system to coordinate it with other city signal systems (not on the primary road extension system) shall be the sole financial responsibility of the city.

e. The department shall not participate in the cost of signals for commercial use only.

f. The department shall not participate in the signalization of primary road stub routes which terminate within the city.

g. The department shall not assume ownership and shall not be responsible for any energy or maintenance costs for traffic signals.

h. Signal phasing, initial and future, as well as timing and coordination between intersections shall be coordinated between the department and the city.

150.3(5) *Overdimensional and overweight vehicles.* The city shall comply with all current statutes, rules and regulations pertaining to overdimensional and overweight vehicles using primary roads when issuing special permits for overdimensional and overweight vehicles.

This rule is intended to implement Iowa Code sections 306.4, 306.5, 313.5, 313.21 to 313.24, 313.27, 313.36, 314.5, 314.6 and 321E.2, and chapter 306A.

761—150.4(306,306A,313,314,319) General requirements for primary road extensions.

150.4(1) *Signing.*

a. The department shall be responsible for permanent traffic control signing on primary road extensions.

b. The department shall not be responsible for construction and maintenance work zone signing unless the work is being done by the department.

c. The department shall not be responsible for street name signs, any regulatory parking signs which denote special regulations as may be determined by the city in cooperation with the department, and those signs which regulate parking as to time, hours and days of the week.

d. The department shall not be responsible for signs facing traffic on primary road extensions which regulate traffic movements on city cross streets (one-way traffic).

e. Overhead "Business District" signs on primary road extensions may be permitted upon application by the city to the department if minimum clearance and mounting standards are provided for.

f. All signing within the right-of-way shall be in conformance with the "Manual on Uniform Traffic Control Devices for Streets and Highways."

150.4(2) *Encroachments or obstructions.*

a. The department shall expect the city to remove any existing encroachment or obstruction and prevent any further encroachment or obstruction within the right-of-way. This includes private signs within the right-of-way.

b. The department shall expect the city to prevent the erection on private property of any private sign, awning, marquee, etc., which will overhang the right-of-way and obstruct the view of any portion of the road or the traffic signs or traffic control devices located thereon in such a manner as to render it dangerous within the meaning of Iowa Code section 319.10.

c. No overhanging sign shall be permitted within two feet of the inside edge of the curb.

150.4(3) *Pedestrian, equestrian, and bicycle routes (sidewalks).*

a. The department shall remove and replace portions of existing routes as required by construction. Unnecessary routes shall be removed and not replaced.

b. Initial construction of new sidewalks shall be the responsibility of the city.

c. The department may participate in the cost of constructing curb ramps on existing sidewalks within the right-of-way of primary road extensions to meet the requirements of the Americans With Disabilities Act. If the department participates, the department's share of the construction cost shall be 55 percent; the city shall prepare plans, award the contract, supervise construction, and be responsible for the remaining construction cost. However, departmental participation shall not exceed $250,000 per year for any one city and $1.5 million per year in total.

150.4(4) *Overpasses and underpasses for pedestrian, equestrian, and bicycle routes.*

a. During initial construction of freeways and other relocated primary road extensions and when user-volumes and topographic conditions warrant the construction of a separation, the cost shall be shared between the department and the city on the basis of the current U-STEP cost apportionment.

b. The department may participate in a city-initiated separation as an unscheduled project.

150.4(5) *Utility relocation and removal.*

a. Except as otherwise provided by paragraph *"b"* of this subrule, the department shall expect the city to relocate or cause to be relocated, without cost to the department, all utilities necessary for construction when these utilities are within the existing street or alley right-of-way. The department shall reimburse the owner of a utility which is located on private right-of-way for the costs of relocation or removal, including the costs of installation in a new location.

b. Iowa Code section 306A.10 authorizes the department to pay the costs of relocation or removal, including the costs of installation in a new location, of utilities within existing street right-of-way when determined necessary for the construction of a project on routes of the national system of interstate and defense highways or resulting from interstate substitutions in a qualified metropolitan area. In accordance with Iowa Code section 306A.12, no reimbursement shall be made for any relocation or removal of facilities unless funds to be provided by federal aid amount to at least 85 percent of each reimbursement payment.

c. The department shall expect the city to comply with the utility accommodation policy of the department as adopted in rule 761—115.1(306A).

d. The term "utility" shall be as defined in Iowa Code section 306A.13.

150.4(6) *Project concept statements and predesign project agreements for proposed construction projects.*

a. As early as possible after an urban project is included in the department's "Five-Year Construction Program," a concept statement for the project shall be developed and shall be reviewed with the officials of the city prior to the public hearing.

b. A predesign project agreement shall be submitted to city officials for their approval. It shall outline:

(1) The general concepts of the project,

(2) Responsibilities for right-of-way acquisition, storm sewer costs and utility adjustment costs,

(3) The parking and access control restrictions to be applied to the project, and

(4) Financial participation above minimum standards.

150.4(7) *Preconstruction project agreements for proposed construction projects.*

a. During the design process, the predesign project agreement shall be revised to include a detailed project description, terms for reimbursement and local financial participation.

b. The department shall maintain a close liaison with the city during the development of the project plan so that all parties will be fully informed of the details involved in the proposed improvement.

c. When the plan is sufficiently complete to provide typical cross sections, plan and profile drawings and incidental details, the department shall submit a preconstruction project agreement, which shall include known design data, to city officials for their approval. Terms for reimbursement to the state and local financial participation shall be stated in this agreement.

d. Modifications to this agreement necessitated by design changes encountered during construction shall be made by extra work order agreed to in writing by the city, the contractor, and the department.

150.4(8) *Reverting primary road extensions.* When a primary road extension is to be reverted to a city by agreement, the applicable provisions of 761—Chapter 100 shall apply.

This rule is intended to implement Iowa Code sections 306.4, 306.5, 306.8, 313.21 to 313.24, 313.27, 313.36, 314.5 and 314.6, and chapters 306A and 319.

[Filed 7/1/75]

[Filed 4/4/85, Notice 2/13/85—published 4/24/85, effective 5/29/85]

[Filed emergency 7/18/85—published 8/14/85, effective 7/19/85]

[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]

[Filed emergency 8/26/88 after Notice of 7/13/88—published 9/21/88, effective 8/26/88]

[Filed 5/19/89, Notice 4/5/89—published 6/14/89, effective 7/19/89]

[Filed emergency 4/17/96 after Notice 3/13/96—published 5/8/96, effective 4/18/96]

[Filed 7/20/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

CHAPTER 151
CITY REQUESTS FOR CLOSURE OF PRIMARY ROAD EXTENSIONS

[Prior to 4/24/85, (06,J) Ch 1]
[Prior to 6/3/87, Transportation Department[820]—(06,L) Ch 2]

761—151.1(321) Closing primary road extensions. The purpose of this rule is to establish requirements and procedures for the closing of primary road extensions for reasons other than fire, construction or repair in accordance with Iowa Code section 321.348.

151.1(1) *Definitions.* The following terms shall have these meanings unless the context indicates a different meaning.

a. *"Adequate detour"* shall mean an alternate route which, based on the engineering judgment of the resident maintenance engineer, has the operational capability to handle the increased traffic for the specified period of the detour.

b. *"Arterial system"* and *"arterial connector system"* are defined in Iowa Code section 306.1, subsection 2, paragraphs *"b"* and *"c,"* respectively.

c. *"Local enforcement officers"* shall mean city police, town marshals, or other entities legally granted police power for control of traffic.

d. *"Primary road extensions"* shall mean the extension of any primary road into or through the corporate limits of a city.

e. *"Primary stub"* shall mean the extension of any primary road that crosses the corporate limits and terminates at the central business district of a city.

151.1(2) *Requirements.*

a. Adequate detour over paved roads shall be provided with traffic controls as prescribed in the "Manual on Uniform Traffic Control Devices for Streets and Highways," as adopted in rule 761—130.1(321). City officials shall secure the written approval of the county board of supervisors to use any county road as a detour.

b. The city shall be responsible for maintenance and restoration of the detour, and shall accept responsibility for any damages that may occur to the closed section of the primary extension. The city shall accept full liability for conditions and operations of the detour.

c. The closed streets shall be used only for a civic purpose; no closing for promotion of commercial activities shall be allowed.

d. The benefit to the community must outweigh the temporary inconvenience to motorists.

e. The city shall request the Iowa highway patrol to review the proposed detour for safety. During use, traffic shall be policed by local enforcement officers.

151.1(3) *Arterial system.* Primary road extensions which are classified as "arterial" may be closed for parades on holidays or for parades of local community significance. The duration of the closing for parades shall not exceed one hour before the parade until one hour after the completion of the parade.

151.1(4) *Arterial connector system.* Primary road extensions which are classified as "arterial connector" may be closed when no viable alternate site is available for the desired activity. The duration of the closing shall not exceed seven days.

151.1(5) *Procedures.* Procedures for closing primary road extensions shall be as follows:

a. Cities shall file a "Request for Closing Primary Road Extension," Form 810030, available from local resident maintenance engineer offices. The request shall include the name of the city, period that the covered route is to be closed, the precise section involved, the proposed detour and the purpose for the closure. If the proposed detour involves any part of a county road, the written approval of the county board of supervisors must be submitted with the request.

b. The request shall be signed by the city officials, be reviewed by the Iowa highway patrol, and submitted to the local resident maintenance engineer 45 days prior to the first day of closure. The department shall respond to the city in 20 days from the date the request is received. If all requirements in this rule are met, the department may approve the request.

c. The department shall erect any necessary signs on the detour.

151.1(6) *Primary stub routes.* The city may close a section of a primary stub route for a municipal celebration without obtaining department approval if substitute traffic arrangements are provided. The requirements set out in subrules 151.1(2) to 151.1(5) shall not apply.

[Filed 7/22/77, Notice 5/4/77—published 8/10/77, effective 9/14/77]
[Filed 4/4/85, Notice 2/13/85—published 4/24/85, effective 5/29/85]
[Filed 8/28/86, Notice 7/16/86—published 9/24/86, effective 10/29/86]
[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]

CHAPTERS 152 to 159
Reserved

b. If a signed franchise agreement is not available at the time of application, the department may accept written evidence of a franchise which includes all of the following:

(1) The name and address of the applicant and the manufacturer or distributor.

(2) The make of motor vehicle or travel trailer that the applicant is authorized to sell.

(3) The applicant's area of responsibility as stipulated in the franchise.

(4) The signature of the manufacturer or distributor.

425.10(4) *Corporate applicants.* If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

425.10(5) *Place of business.* The applicant shall maintain a place of business at a designated location. See rules 425.12(322) to 425.14(322) for further requirements.

425.10(6) *Zoning.* The applicant shall provide to the office of vehicle services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

425.10(7) *Separate licenses required.*

a. A separate license is required for each city or township in which an applicant for a motor vehicle dealer's license maintains a place of business.

b. A separate license is required for each county in which an applicant for a travel trailer dealer's license maintains a place of business.

425.10(8) *Financial liability.* The applicant for a motor vehicle dealer's license shall certify on the application that the applicant has the required financial liability coverage in the limits as set forth in Iowa Code Supplement section 322.4(8). It is the applicant's responsibility to ensure the required financial liability coverage is continuous with no lapse in coverage as long as the applicant maintains a valid dealer's license.

425.10(9) and **425.10(10)** Reserved.

425.10(11) *Verification of compliance.* The department shall verify the applicant's compliance with all statutory and regulatory dealer licensing requirements.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

761—425.11 Reserved.

761—425.12(322) Motor vehicle dealer's place of business.

425.12(1) *Verification of compliance; temporary license.* Before a motor vehicle dealer's license is issued, an investigator from the department shall physically inspect an applicant's principal place of business to verify compliance with this rule. The department may issue a temporary license upon receipt of certification by the applicant that the place of business complies with this rule. The temporary license shall be in effect until an on-site inspection is completed.

425.12(2) *Telephone service and office area.* A motor vehicle dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all motor vehicles offered for sale. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

425.12(3) *Facility for displaying motor vehicles.* A motor vehicle dealer's principal place of business shall include a suitable space reserved for display purposes where motor vehicles may be viewed by prospective buyers. The facility shall be:

a. Within a building. EXCEPTION: For used motor vehicle dealers and for dealers selling new trucks or motor homes exclusively, the display facility may be an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil.

b. Of a minimum size.

(1) For display of motorcycles and motorized bicycles, the minimum size of the display facility is 3 meters by 4.6 meters (10 feet by 15 feet).

(2) For display of other motor vehicles, the minimum size of the display facility is 5.5 meters by 9.1 meters (18 feet by 30 feet).

425.12(4) *Facility for reconditioning and repairing motor vehicles.* A motor vehicle dealer's principal place of business shall include a facility for reconditioning and repairing motor vehicles. The facility shall be an area that:

a. Is equipped to repair and recondition one or more motor vehicles of a type sold by the dealer.

b. Is within a building.

c. Has adequate access.

d. Is separated from the display and office areas by solid, floor-to-ceiling walls and solid, full-length doors.

e. Is of a minimum size.

(1) The minimum size facility for motorcycles and motorized bicycles is an unobstructed rectangular area measuring 3 meters by 4.6 meters (10 feet by 15 feet).

(2) The minimum size facility for other types of motor vehicles is an unobstructed rectangular area measuring 4.3 meters by 7.3 meters (14 feet by 24 feet).

425.12(5) *Motor vehicle dealer who is also a recycler.* If a motor vehicle dealer also does business as a recycler, there shall be separate parking for motor vehicles being offered for sale at retail from motor vehicles that are salvage.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

761—425.13 Reserved.

761—425.14(322) Travel trailer dealer's place of business.

425.14(1) *Telephone service and office area.* A travel trailer dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all travel trailers offered for sale. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

425.14(2) *Facility for displaying travel trailers.* A travel trailer dealer's principal place of business shall include a space of sufficient size to permit the display of one or more travel trailers. The display facility may be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil. If an outdoor display facility is maintained, it may be used only to display, recondition or repair travel trailers or to park vehicles.

425.14(3) *Facility for repairing and reconditioning travel trailers.* A travel trailer dealer's principal place of business shall include a facility for reconditioning and repairing travel trailers. The facility:

a. Shall be equipped and of sufficient size to repair and recondition one or more travel trailers of a type sold by the dealer.

b. Shall have adequate access.

c. May be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil.

d. May occupy the same area as the display facility.

425.14(4) *Travel trailer dealer also licensed as a motor vehicle dealer.* If a travel trailer dealer is also licensed as a motor vehicle dealer under the same name and at the same principal place of business, separate facilities for displaying, repairing and reconditioning travel trailers are not required.

This rule is intended to implement Iowa Code sections 322C.1 to 322C.6.

761—425.15 and **425.16** Reserved.

425.26(7) *Variance.* The department may grant a variance from the requirements of these rules and grant a special limited permit for the display only of motor homes or travel trailers at a convention sponsored by an established national association, if the department determines that granting the permit would not encourage evasion of these rules and that the public interest so demands. The department may impose alternative permit requirements.

425.26(8) *Display without permit.* A dealer who does not have a permit may display vehicles at fairs, vehicle shows and vehicle exhibitions.

This rule is intended to implement Iowa Code section 321.124 and subsections 322.5(2) and 322C.3(9).

761—425.27 and **425.28** Reserved.

761—425.29(322) Classic car permit. A classic car permit allows a motor vehicle dealer to display and sell classic cars at a specified county fair, vehicle show or vehicle exhibition that is held in the same county as the motor vehicle dealer's principal place of business. "Classic car" is defined in Iowa Code subsection 322.5(3).

425.29(1) The permit period is the duration of the event, not to exceed five days. The permit is valid on Sundays. Only one permit may be issued to each motor vehicle dealer for an event. No more than three permits may be issued to a motor vehicle dealer in any one calendar year.

425.29(2) Application for a classic car permit shall be made on Form 411045. The application shall include dealer's name, address and license number and the following information about the county fair, vehicle show or vehicle exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

425.29(3) The motor vehicle dealer shall display the permit in a prominent place at the location of the county fair, vehicle show or vehicle exhibition.

This rule is intended to implement Iowa Code subsection 322.5(3).

761—425.30(322) Motor truck display permit. Application for a permit under Iowa Code subsection 322.5(4) shall be made on Form 411176. The application shall include information or documentation showing that the nonresident motor vehicle dealer is eligible for issuance of a permit and that the event meets the statutory conditions for permit issuance.

This rule is intended to implement Iowa Code subsection 322.5(4).

761—425.31(322) Firefighting and rescue show permit.

425.31(1) Application for a firefighting and rescue show permit shall be made on Form 411220. The application shall include the name, address and license number of the applicant, the type of vehicles being displayed, and the following information about the vehicle show or exhibition: name, location, sponsor(s), and duration, including the opening and closing dates.

425.31(2) The permit is not valid on Sundays. Only one permit shall be issued to each licensee for an event.

425.31(3) The permit holder shall display the permit in a prominent place at the location of the vehicle show or exhibition.

This rule is intended to implement Iowa Code Supplement subsection 322.5(5).

761—425.32 to **425.39** Reserved.

761—425.40(322) Salespersons of dealers and used vehicle wholesalers.

425.40(1) Every motor vehicle and travel trailer dealer and used vehicle wholesaler shall:

a. Keep a current written record of all salespersons acting in its behalf. The record shall be open to inspection by any peace officer or any employee of the department.

b. Maintain a current record of authorized persons allowed to sign all documents required under Iowa Code chapter 321 for vehicle sales.

425.40(2) No person shall either directly or indirectly claim to represent a dealer or used vehicle wholesaler unless the person is listed as a salesperson by that dealer or wholesaler.

This rule is intended to implement Iowa Code sections 322.3, 322.13, and 322C.4.

761—425.41 to **425.49** Reserved.

761—425.50(322) Manufacturers, distributors, and wholesalers. This rule applies to the licensing of manufacturers, distributors, and wholesalers of new motor vehicles and travel trailers. The licensing of used vehicle wholesalers is addressed in rule 425.52(322).

425.50(1) *Application for license.* To apply for a license, the applicant shall complete Form 417029, "Manufacturer, Distributor, Wholesaler Application for License," and submit it to the office of vehicle services, accompanied by a list of the applicant's franchised dealers in Iowa and a sample copy of a completed manufacturer's certificate of origin that is issued by the firm. A distributor or wholesaler shall also provide a copy of written authorization from the manufacturer to act as its distributor or wholesaler.

425.50(2) *Licensing requirements.*

a. Rescinded IAB 11/3/99, effective 12/8/99.

b. New motor homes delivered to Iowa dealers must contain the systems and meet the standards specified in Iowa Code paragraph 321.1(39)*"d."*

c. A licensee shall ensure that any new retail outlet is properly licensed as a dealer before any vehicles are delivered to the outlet.

d. A licensee shall notify the office of vehicle services in writing at least ten days prior to any:

(1) Change in name, location or method of doing business, as shown on the license.

(2) Issuance of a franchise to a dealer in this state to sell new vehicles at retail.

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

(4) Change in the trade name of a travel trailer manufactured for delivery in this state.

e. A licensee shall notify the office of vehicle services in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

This rule is intended to implement Iowa Code sections 322.27 to 322.30 and 322C.7 to 322C.9.

761—425.51(322) Factory or distributor representatives. Rescinded IAB 11/3/99, effective 12/8/99.

761—425.52(322) Used vehicle wholesalers.

425.52(1) *Application for license.*

a. To apply for a license as a used vehicle wholesaler, the applicant shall complete Form 417004, "Used Vehicle Distributor/Wholesaler Application for License," and submit it to the office of vehicle services.

b. The applicant shall provide to the office of vehicle services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states that the applicant's designated location complies with all applicable zoning provisions or is a legal nonconforming use.

c. If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

425.72(2) The dealer shall complete the permit form. The information to be filled out includes, but is not limited to, the following:

a. Date of issuance by the dealer, date of expiration, and the specific dates for which the permit is valid. The expiration date shall be five days or less from the date of issuance.

b. Dealer's name, address and license number.

c. Name(s) of the prospective buyer(s) and all prospective drivers.

d. Route of the demonstration trip. The points of origin and destination shall be the dealership. The permit is not valid for a route outside Iowa.

e. The make, year and vehicle identification number of the motor vehicle being demonstrated.

425.72(3) The permit is a three-part form. The original copy of the permit shall at all times be carried in the motor vehicle to which it refers and shall be shown to any peace officer upon request. The dealer shall mail or deliver the second copy to the office of vehicle services within 48 hours after issuance. The dealer shall retain the third copy for at least one year from the date of issuance.

425.72(4) Only one demonstration permit per motor vehicle shall be issued for a prospective buyer.

425.72(5) The demonstration permit is valid only for a movement that does not exceed the legal length, width, height and weight restrictions. The permit is not valid for an overdimensional or overweight movement.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

[761—Chapter 420 appeared as Ch 10, Department of Public Safety, 1973 IDR]
[Filed 7/1/75]
[Filed 10/28/77, Notice 8/24/77—published 11/16/77, effective 12/21/77]
[Filed 11/22/77, Notice 10/5/77—published 12/14/77, effective 1/18/78]
[Filed 5/9/78, Notice 3/22/78—published 5/31/78, effective 7/5/78]
[Filed 10/10/78, Notice 8/23/78—published 11/1/78, effective 12/6/78]
[Filed 8/23/79, Notice 7/11/79—published 9/19/79, effective 10/24/79]
[Filed 2/14/80, Notice 12/26/79—published 3/5/80, effective 4/9/80]
[Filed 9/9/81, Notice 7/22/81—published 9/30/81, effective 11/4/81]
[Filed 1/28/82, Notice 12/9/81—published 2/17/82, effective 3/24/82]
[Filed 1/21/83, Notice 12/8/82—published 2/16/83, effective 3/23/83]
[Filed emergency 2/17/83—published 3/16/83, effective 3/23/83]
[Filed 9/4/85, Notice 7/17/85—published 9/25/85, effective 10/30/85]
[Filed emergency 10/23/86—published 11/19/86, effective 10/24/86]
[Filed 1/6/87, Notice 11/19/86—published 1/28/87, effective 3/4/87]
[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]
[Filed 11/3/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]◊
[Filed emergency 11/30/89—published 12/27/89, effective 12/1/89]
[Filed 12/5/90, Notice 10/17/90—published 12/26/90, effective 1/30/91]
[Filed 1/15/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]
[Filed 1/14/93, Notice 11/25/92—published 2/3/93, effective 3/10/93]
[Filed 12/16/93, Notice 11/10/93—published 1/5/94, effective 2/9/94]
[Filed 6/19/96, Notice 1/17/96—published 7/17/96, effective 8/21/96]
[Filed 3/5/97, Notice 1/29/97—published 3/26/97, effective 4/30/97]
[Filed 12/17/97, Notice 11/5/97—published 1/14/98, effective 2/18/98]
[Filed 10/14/99, Notice 9/8/99—published 11/3/99, effective 12/8/99]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]

CHAPTERS 426 to 429
Reserved

◊Two ARCs

CHAPTER 602
CLASSES OF DRIVER'S LICENSES

761—602.1(321) Driver's licenses.

602.1(1) *Classes.* The department issues the following classes of driver's licenses. All licenses issued, including special licenses and permits, shall carry a class designation. A license shall be issued for only one class, except that Class M may be issued in combination with another class.

Class A—commercial driver's license (CDL)
Class B—commercial driver's license (CDL)
Class C—commercial driver's license (CDL)
Class C—noncommercial driver's license
Class D—noncommercial driver's license (chauffeur)
Class M—noncommercial driver's license (motorcycle)

602.1(2) *Special licenses and permits.* The department issues the following special licenses and permits. More than one type of special license or permit may be issued to an applicant. On the driver's license, a restriction number designates the type of special license or permit issued, as follows:

1 — Motorcycle instruction permit—includes motorcycle instruction permits issued under Iowa Code subsection 321.180(1) and 1998 Iowa Acts, chapter 1112, section 5, subsection 1

2 — Noncommercial instruction permit (vehicle less than 16,001 gross vehicle weight rating)—includes instruction permits, other than motorcycle instruction permits, issued under Iowa Code subsection 321.180(1) and section 321.180A and 1998 Iowa Acts, chapter 1112, section 5, subsection 1

3 — Commercial driver's instruction permit
4 — Chauffeur's instruction permit
5 — Motorized bicycle license
6 — Minor's restricted license
7 — Minor's school license

602.1(3) *Commercial driver's license (CDL).* See 761—Chapter 607 for information on the procedures, requirements and validity of a commercial driver's license (Classes A, B and C), a commercial driver's instruction permit, and their restrictions and endorsements.

This rule is intended to implement Iowa Code sections 321.178, 321.180, 321.180A, 321.189, and 321.194 and 1998 Iowa Acts, chapter 1112, section 5.

761—602.2(321) Information and forms. Applications, forms and information about driver's licensing are available at any driver's license examination station. Assistance is also available at the address in rule 761—600.2(17A).

602.2(1) *Certificate of completion.* Form 430036 shall be used to submit proof of successful completion of an Iowa-approved course in driver education, motorcycle rider education or motorized bicycle education.

a. If a student completed a course in another state, a public or licensed commercial or private provider of the Iowa-approved course may issue the form for the student if the provider determines that the out-of-state course is comparable to the Iowa-approved course.

b. If the out-of-state course is comparable but lacks certain components of the Iowa-approved course, the provider may issue the form after the student completes the missing components.

602.2(2) *Affidavit for school license.* Form 430021 shall be used for submitting the required statements, affidavits and parental consent for a minor's school license. See rule 761—602.26(321).

602.2(3) *Waiver of accompanying driver for intermediate licensee.* Form 431170 is the waiver described in 1998 Iowa Acts, chapter 1112, section 5. This form allows an intermediate licensee to drive unaccompanied between the hours of 12:30 a.m. and 5 a.m. and must be in the licensee's possession when the licensee is driving during the hours to which the waiver applies.

a. If the waiver is for employment, the form must be signed by the licensee's employer.

b. If the waiver is for school-related extracurricular activities, the form must be signed by the chairperson of the school board, the superintendent of the school, or the principal of the school if authorized by the superintendent.

c. The form must be signed by the licensee's parent or guardian. However, the parent's or guardian's signature is not required if the licensee is married and the original or a certified copy of the marriage license is in the licensee's possession when the licensee is driving during the hours to which the waiver applies.

This rule is intended to implement Iowa Code sections 321.8, 321.178, 321.184, 321.189, and 321.194 and 1998 Iowa Acts, chapter 1112, section 5.

761—602.3(321) Examination and fee. Rescinded IAB 8/9/00, effective 7/24/00.

761—602.4(321) Definitions of immediate family.

602.4(1) A "member of the permittee's immediate family" as used in Iowa Code subsection 321.180(1) means the permittee's parent or guardian or a brother, sister or other relative of the permittee who resides at the permittee's residence.

602.4(2) A "member of the permittee's immediate family" as used in 1998 Iowa Acts, chapter 1112, section 5, subsections 1 and 2, means a brother, sister or other relative of the permittee who resides at the permittee's residence.

This rule is intended to implement Iowa Code section 321.180 and 1998 Iowa Acts, chapter 1112, section 5.

761—602.5 to **602.10** Reserved.

761—602.11(321) Class C noncommercial driver's license. This rule describes a noncommercial Class C license that is not a special license or permit.

602.11(1) *Validity and issuance.*

a. The license is valid for operating:

(1) A motor vehicle that does not require a commercial driver's license or a Class D or Class M license for its operation.

(2) A motorized bicycle.

[Filed 1/20/88, Notice 12/2/87—published 2/10/88, effective 3/16/88]*
[Filed 11/3/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]
[Filed emergency 6/29/89—published 7/26/89, effective 7/31/89]
[Filed 9/21/89, Notice 7/26/89—published 10/18/89, effective 11/22/89]
[Filed 11/1/89, Notice 7/26/89—published 11/29/89, effective 1/3/90]
[Filed emergency 11/30/89—published 12/27/89, effective 12/1/89]
[Filed emergency 6/7/90—published 6/27/90, effective 7/1/90]
[Filed 12/18/91, Notice 11/13/91—published 1/8/92, effective 2/12/92]
[Filed 10/30/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 10/28/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed emergency 7/20/00 after Notice 6/14/00—published 8/9/00, effective 7/24/00]

CHAPTER 603
Reserved

*Effective date delayed 70 days by the Administrative Rules Review Committee at its March 9, 1988, meeting. Delay lifted by ARRC, April 21, 1988.

605.5(6) *Additional information.*

a. Hearing impairment. A person with a hearing aid or a noticeable loss of hearing may be restricted to a motor vehicle equipped with a left outside rearview mirror.

b. Reexamination or report. The department may issue a restriction requiring a person to reappear at a specified time for examination. The department may require a medical report to be submitted. The department shall send Form 430029 as a reminder to appear.

c. Loss of consciousness or voluntary control.

(1) If a person is licensed pursuant to 761—subrule 600.4(4), the department shall issue the first license with a restriction supplement reading: "Medical report to be furnished at the end of six months."

(2) If this medical report shows that the person has been free of episodes of loss of consciousness or voluntary control since the previous medical report and the report recommends licensing, the department shall issue a duplicate license with a restriction reading: "Medical report upon renewal." At each renewal accompanied by a favorable medical report, the department shall issue a two-year license with the same restriction.

(3) If the latest medical report indicates the person experienced only a single nonrecurring episode, the cause has been identified, and the physician is not treating or has not treated the person for the episode and believes it is unlikely to recur, the department may waive the medical report requirement upon recommendation by the medical advisory board.

d. Financial responsibility. When a person is required under Iowa Code chapter 321A to have future proof of financial responsibility on file, the license restriction will read: "SR required." The license shall be valid only for the operation of motor vehicles covered by the class of license issued and by the proof of financial responsibility filed.

e. Vision restriction. Restrictions relating to vision are addressed in 761—Chapter 604.

This rule is intended to implement Iowa Code chapter 321A and sections 321.178, 321.180, 321.189, 321.193, 321.194, 321.215, 321J.4, and 321J.20 and 1998 Iowa Acts, chapter 1112, section 5.

761—605.6 Reserved.

761—605.7(321L) Handicapped designation. Rescinded IAB 2/11/98, effective 3/18/98.

761—605.8 Reserved.

761—605.9(321) Fees for driver's licenses. Fees for driver's licenses are specified in Iowa Code section 321.191. A license fee may be paid by cash, check or money order. If payment is by check, the following requirements apply:

605.9(1) The check shall be for the exact amount of the fee and shall be payable to: Treasurer, State of Iowa. An exception may be made when a traveler's check is presented.

605.9(2) One check may be used to pay fees for several persons, such as members of a family or employees of a business firm. One check may pay all fees involved, such as the license fee and the reinstatement fee.

This rule is intended to implement Iowa Code section 321.191.

761—605.10(321) Waiver or refund of license fees—pilot project. This rule establishes the pilot project authorized by 2000 Iowa Acts, House File 2538, section 5.

605.10(1) The department may waive payment of or refund the fee for a renewal or duplicate of a driver's license if:

a. An error occurs during the issuance process and is discovered by the applicant at the time of issuance. However, the fee shall not be waived or refunded if the error is discovered by department staff and is corrected within the 30-minute time period specified in paragraph *"c"* of this subrule.

b. An error occurs during the issuance process and is discovered during the edit process of updating the driver record, and the error requires the applicant to return to the driver's license station to have the error corrected.

c. The applicant is required to wait more than 30 minutes to renew a license or obtain a duplicate license. This 30-minute time period is determined by using an automated customer numbering system that monitors waiting time.

605.10(2) The department shall not waive payment of or refund a fee if the applicant does not have in the applicant's possession at the time of application the previously issued driver's license.

605.10(3) The department shall not waive payment of or refund fees for any of the following transactions: reinstatements following sanctions, new applications, or applications requiring knowledge or skills testing.

605.10(4) This pilot project is limited to issuance activity at the driver's license stations in Burlington, Iowa, and Davenport, Iowa.

This rule is intended to implement 2000 Iowa Acts, House File 2538, section 5.

761—605.11(321) Duplicate license.

605.11(1) *Lost or destroyed license.* To replace a valid license that is lost or destroyed, the licensee shall submit Form 430052 and proof of age, identity and social security number. The replacement fee is $3.

605.11(2) *Voluntary replacement.* The department shall issue a duplicate of a valid license to an eligible licensee if the license is surrendered to the department and the $1 voluntary replacement fee is paid. Voluntary replacement includes but is not limited to:

a. Replacement of a damaged license.

b. Replacement to change the address on a license.

c. Replacement to change the name on a license. The licensee shall submit an affidavit of the name change on Form 430043. The affidavit must be accompanied by one of the following documents:

(1) Court-ordered name change. It must contain the full name, date of birth, and court seal.

(2) Divorce decree.

(3) Marriage license or certificate.

d. Replacement to change the sex on a license. The licensee shall submit court documentation of the sex change.

e. Issuance of a license without the words "under 21" to a licensee who is 21 years of age or older.

f. Issuance of a license without the words "under 18" to a licensee who is 18 years of age or older. (If the licensee is under 21 years of age, the words "under 21" will replace the words "under 18.")

g. Issuance of a noncommercial driver's license to an eligible person who has been disqualified from operating a commercial motor vehicle.

h. Replacement of a valid license before its expiration date to obtain a license issued under the new classification system.

This rule is intended to implement Iowa Code sections 321.189, 321.195, and 321.208.

761—605.12 to **605.14** Reserved.

761—605.15(321) License extension.

605.15(1) *Six-month extension.* An Iowa resident may apply for a six-month extension of a license if the resident:

a. Has a valid license,

b. Is eligible for further licensing, and

c. Is temporarily absent from Iowa or is temporarily incapacitated at the time for renewal.

605.15(2) *Procedure.* The licensee shall apply for an extension by submitting Form 430027 to the department. The form may be obtained from and submitted to a driver's license examination station. The licensee may also apply by letter to the address in 761—600.2(17A).

a. A six-month extension shall be added to the expiration date on the license. When the licensee appears to renew the license, the expiration date of the renewed license will be computed from the expiration date of the original license, notwithstanding the extension.

b. The department shall allow only two six-month extensions.

This rule is intended to implement Iowa Code section 321.196.

761—605.16(321) Military extension.

605.16(1) *Form.* A person who qualifies for a military extension of a valid license should request Form 430028 from the department and carry it with the license for verification to peace officers. Form 430028 explains the military extension.

a. A military extension shall apply only to a noncommercial Class C or Class M license, or their equivalents.

b. When the license is renewed, the department may require the person to provide documentation of the military service and of the date of separation from service.

605.16(2) *Record.* A person with a military extension may request that the department retain or reenter the record of license issuance for the duration of the extension. The requesting letter shall be submitted with the required letter from the person's commanding officer to the department at the address in 761—600.2(17A).

605.16(3) *Reinstatement after sanction.* A person with a military extension whose license has been canceled, suspended or revoked shall comply with the requirements of 761—615.40(321) to reinstate the license.

This rule is intended to implement Iowa Code section 321.198.

761—605.17 to **605.19** Reserved.

761—605.20(321) Fee adjustment for upgrading license. The fee for upgrading a license shall be computed on a full-year basis. The fee is charged for each year or part of a year between the date of the change and the expiration date on the license.

605.20(1) The fee to upgrade a license from one class to another is determined by computing the difference between the current license fee and the new license fee as follows:

a. Converting a noncommercial Class C to noncommercial Class D—$4 per year of new license validity.

b. Adding noncommercial Class D to noncommercial Class M—$4 per year of new license validity.

c. Adding noncommercial Class M to noncommercial Class C or D—$1 per year of new license validity.

d. Adding noncommercial Class C to noncommercial Class M—$1 one-time fee.

605.20(2) The fee to add a privilege to a license is computed per year of new license validity as follows:

Noncommercial Class C (full privileges from a restricted Class C)	$4 per year
Motorized bicycle	$4 per year
Minor's restricted license	$4 per year
Minor's school license	$4 per year
Instruction permit, noncommercial	$3 per year
Chauffeur's instruction permit	$6 per year
Motorcycle instruction permit	$1 per year

This rule is intended to implement Iowa Code sections 321.189 and 321.191.

761—605.21 to **605.24** Reserved.

761—605.25(321) License renewal.

605.25(1) Except as provided in rule 605.26(321), a licensee who wishes to renew a noncommercial license shall apply at a driver's license examination station and, if required, pass the appropriate examination.

605.25(2) A valid license may be renewed 30 days before the expiration date. If this is impractical, the department for good cause may renew a license earlier, not to exceed one year prior to the expiration date.

605.25(3) A valid license may be renewed within 60 days after the expiration date, unless otherwise specified.

This rule is intended to implement Iowa Code sections 321.186 and 321.196.

761—605.26(321) License renewal by mail.

605.26(1) *Scope.* This rule applies to the renewal of noncommercial Classes C, CM, D, DM and M licenses. However, this rule does not apply to intermediate licenses, to temporary restricted licenses or to the special licenses and permits listed in 761—subrule 602.1(2).

605.26(2) *Applicant eligibility.* An applicant who meets the following requirements may apply for renewal without making a personal appearance at a driver's license examination station or completing the vision, knowledge or driving examinations:

a. The applicant is at least 17 years and 11 months but under 65 years of age.

b. The applicant's current license is not restricted to a two-year period due to vision or other physical disabilities.

c. The applicant's current license does not carry a "Y" in the restriction supplement box or any of the following restriction codes: C, D, E, F, G, J, Q, R, S, V, W, X or Y.

d. The applicant has a clear driving record during the four-year period immediately preceding the expiration date of the current license. A clear driving record means the applicant has:

(1) Not been identified as a candidate for license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).

(2) No license suspensions, revocations, denials, cancellations, disqualifications or bars.

(3) Not committed an offense which would result in license suspension, revocation, denial, cancellation, disqualification or bar.

(4) No record of an accident for which the applicant was convicted of a moving traffic violation.

e. The applicant's current license was originally issued by a personal appearance at a driver's license examination station.

f. All information on the current license is correct.

g. The applicant has a previously verified social security number on file.

h. The applicant currently possesses a digitally issued photo driver's license.

605.26(3) *Application.*

a. An application for renewal without a personal appearance shall comply with Iowa Code subsections 321.182(1), (3) and (4).

b. The application must be sent by first-class mail to the Office of Driver Services, Iowa Department of Transportation, P.O. Box 9174, Des Moines, Iowa 50306-9174.

c. The department shall not process applications received after expiration of the 60-day grace period.

d. Inability of the department to process an application that was timely mailed does not extend the grace period of the current license.

605.26(4) *Payment of fees.* The application shall be accompanied by the license fee(s) specified in Iowa Code section 321.191, plus a $2 fee to cover handling. The fees are payable by personal check, certified check, cashier's check, or bank or postal money order. The check or money order shall be made payable to: Treasurer, State of Iowa.

605.26(5) *Validation document.* The department shall determine an applicant's eligibility for renewal without a personal appearance. Upon verification and approval, the department shall issue to the applicant a validation document to be carried with the applicant's current license.

This rule is intended to implement Iowa Code sections 321.182 and 321.196.

[Filed emergency 6/7/90—published 6/27/90, effective 7/1/90]
[Filed emergency 10/24/90—published 11/14/90, effective 10/24/90]
[Filed 5/9/91, Notices 11/14/90, 2/20/91—published 5/29/91, effective 7/3/91]
[Filed 12/18/91, Notice 11/13/91—published 1/8/92, effective 2/12/92]
[Filed 11/4/93, Notice 9/29/93—published 11/24/93, effective 12/29/93*]
[Filed emergency 1/10/94—published 2/2/94, effective 1/10/94]
[Filed 10/30/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 1/21/98, Notice 12/17/97—published 2/11/98, effective 3/18/98]
[Filed 10/28/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed emergency 7/20/00 after Notice 6/14/00—published 8/9/00, effective 7/24/00]

CHAPTER 606
Reserved

*Effective date of December 29, 1993, for 761—605.26(2)"*a*" and "*d*," delayed 70 days by the Administrative Rules Review Committee at its meeting held December 15, 1993; delay lifted by this Committee on January 5, 1994, effective January 6, 1994.

CHAPTER 630
NONOPERATOR'S IDENTIFICATION

[Prior to 6/3/87, see Transportation Department[820]—(07,C)Ch 12]

761—630.1(321) General information.

630.1(1) The department shall issue a nonoperator's identification card only to an Iowa resident who does not have a driver's license. However, a card may be issued to a person holding a temporary permit under Iowa Code section 321.181.

630.1(2) Information concerning the nonoperator's identification card is available at any driver's license examination station, or at the address in 761—600.2(17A).

761—630.2(321) Application and issuance.

630.2(1) An applicant for a nonoperator's identification card shall complete and sign an application form at a driver's license examination station. The signature shall be without qualification and shall contain only the applicant's usual signature without any other titles, characters or symbols.

630.2(2) The applicant shall present proof of age, identity and social security number as required by rule 761—601.5(321). Submission of parental consent is also required in accordance with rule 761—601.6(321).

630.2(3) The nonoperator's identification card shall be coded for identification only, as explained on the reverse side of the card. The county number shall indicate the county of residence. The card shall expire four years from the date of issue.

630.2(4) Upon the request of the cardholder, the department shall indicate on the nonoperator's identification card the presence of a medical condition, that the cardholder is a donor under the uniform anatomical gift law, or that the cardholder has in effect a medical advance directive.

630.2(5) The issuance fee is $5. However, no issuance fee shall be charged for a person whose license has been suspended for incapability pursuant to rule 761—615.14(321) or who has been denied further licensing in lieu of a suspension for incapability pursuant to rule 761—615.4(321).

630.2(6) This subrule establishes the pilot project authorized by 2000 Iowa Acts, House File 2538, section 5.

a. The department may waive payment of or refund the fee for a renewal or duplicate of a nonoperator's identification card if:

(1) An error occurs during the issuance process and is discovered by the applicant at the time of issuance. However, the fee shall not be waived or refunded if the error is discovered by department staff and is corrected within the 30-minute time period specified in subparagraph (3).

(2) An error occurs during the issuance process and is discovered during the edit process of updating the identification record, and the error requires the applicant to return to the driver's license station to have the error corrected.

(3) The applicant is required to wait more than 30 minutes to renew a nonoperator's identification card or obtain a duplicate card. This 30-minute time period is determined by using an automated customer numbering system that monitors waiting time.

b. The department shall not waive payment of or refund a fee if the applicant does not have in the applicant's possession at the time of application the previously issued nonoperator's identification card.

c. The department shall not waive payment of or refund fees for new applications.

d. This pilot project is limited to issuance activity at the driver's license stations in Burlington, Iowa, and Davenport, Iowa.

761—630.3(321) Duplicate card.

630.3(1) *Lost or destroyed card.* To replace a nonoperator's identification card that is lost or destroyed, the cardholder shall submit Form 430052 and proof of age, identity and social security number. The replacement fee is $3.

630.3(2) *Voluntary replacement.* To voluntarily replace a nonoperator's identification card, the cardholder shall surrender to the department the card to be replaced. The reasons a card may be voluntarily replaced and any additional supporting documentation required are the same as those listed in subrule 761—605.11(2), paragraphs *"a"* to *"f."* The fee for voluntary replacement is $1.

761—630.4(321) Cancellation. The department shall cancel a nonoperator's identification card upon receipt of evidence that the person was not entitled or is no longer entitled to a card, failed to give correct information, committed fraud in applying or used the card unlawfully.

These rules are intended to implement Iowa Code sections 321.189, 321.190, 321.195, 321.216, 321.216A, and 321.216B.

[Filed 12/28/76, Notice 11/3/76—published 1/12/77, effective 2/16/77]
[Filed emergency 6/20/84—published 7/18/84, effective 7/1/84]
[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]
[Filed 1/20/88, Notice 12/2/87—published 2/10/88, effective 3/16/88]
[Filed 9/21/89, Notice 7/26/89—published 10/18/89, effective 11/22/89]
[Filed emergency 6/7/90—published 6/27/90, effective 7/1/90]
[Filed 12/18/91, Notice 11/13/91—published 1/8/92, effective 2/12/92]
[Filed 11/1/95, Notice 9/27/95—published 11/22/95, effective 12/27/95]
[Filed 10/30/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 1/21/98, Notice 12/17/97—published 2/11/98, effective 3/18/98]
[Filed 10/28/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed emergency 7/20/00 after Notice 6/14/00—published 8/9/00, effective 7/24/00]

CHAPTERS 631 to 634
Reserved

WORKFORCE DEVELOPMENT DEPARTMENT[871]

[Prior to 9/24/86, see Employment Security[370], renamed Job Service Division[345]
under the "umbrella" of Department of Employment Services by 1986 Iowa Acts, chapter 1245]
[Prior to 3/12/97 see Job Service Division[345],
renamed Department of Workforce Development by 1996 Iowa Acts, chapter 1186]

CHAPTER 23
EMPLOYER'S CONTRIBUTION AND CHARGES

CHAPTER 12
FORMS AND INFORMATIONAL MATERIALS

871—12.1(96) Federal restriction—forms. The research and information services division uses many federally prepared and supplied forms that contain an office of management and budget (OMB) number and an approved expiration date. The department, which receives and uses in its normal operations such federal forms through a federally appointed special agent, is subject to all of the provisions, restrictions, sanctions and penalties imposed by the Federal Reports Act of 1942 and subsequent amendments.

Form No. Name and description of form.

12.1(1) *Federal forms.*

a. *BLS 790, Bureau of Labor Statistics Report on Employment, Payroll and Hours.* A research and information services division shuttle schedule sent each month, to a sample of Iowa employers, to collect employment, payroll and hours worked information.

b. *BLS 3020, Multiple Worksite Report (65-5519) [reference 345—2.3(96)].* A research and information services division form required each quarter of Iowa employers subject to the unemployment insurance law.

c. *BLS 3023VS, Industry Verification Statement (single worksite).* A research and information services division form required of employers on a periodic basis to verify the products or services, or both, provided by an employer to ensure that the correct standard industrial classification code is assigned to the employer's unemployment insurance account.

d. *BLS 3023VM, Industry Verification Statement (multiple worksites).* A research and information services division form required of employers on a periodic basis to verify the products or services, or both, provided at each worksite by an employer to ensure that the correct standard industrial classification code is assigned to each employer location.

e. *BLS 2877, Occupational Employment Survey.* Sent once a year to a sample of employers. Voluntary. Used to obtain confidential information on occupational employment and occupational wages by industry. Forms differ by industry.

12.1(2) *State forms.*

a. *E-Z Form—for Occupational Employment Survey.* Short form for collecting confidential occupational employment and occupational wages. Sent once a year to a sample of employers. Voluntary. Forms differ by industry.

b. *Fringe Benefit Survey.* Sent once a year to a sample of employers. Voluntary. Used to collect confidential information on employee fringe benefits.

c. *Prevailing Wage Request Form.* Used by employers to request prevailing wage determinations from the department of workforce development.

This rule is intended to implement Iowa Code chapter 96.

[Filed 2/20/97, Notice 1/15/97—published 3/12/97, effective 4/16/97]

CHAPTER 13
NEW EMPLOYMENT OPPORTUNITIES FUND

871—13.1(78GA,SF2428) Purpose. The new employment opportunities program is designed to help individuals in underutilized segments of Iowa's workforce gain and retain employment. The new employment opportunities program complements existing employment and training programs by providing additional flexibility and services that are often needed for underutilized segments of the population to gain and retain employment. Services may include, but are not limited to, transportation, child care, mentoring, assisting businesses with compliance issues related to the Americans with Disabilities Act, or reducing perceived risks that cause segments of the population to be underutilized in the workforce.

871—13.2(78GA,SF2428) Definitions.

"Department" means the department of workforce development.

"Regional workforce investment board" means a regional advisory board as defined in 877—Chapter 6.

"Underutilized segments of Iowa's workforce" means persons with disabilities, ex-offenders, immigrants and refugees, minority youth, dislocated workers, senior workers, seasonal workers, welfare recipients, and low-income individuals. Additional target groups may be identified by a regional workforce investment board based on the region's needs assessment and analysis.

"Workforce development region" means a region of the state designated by the state workforce development board as required by Iowa Code section 84B.2.

871—13.3(78GA,SF2428) Allocation of funds. Funds will be appropriated either by a direct allocation to the regions on a per capita basis, or made available to a limited number of pilot projects. The director of the department will determine the method by which the funds are appropriated.

871—13.4(78GA,SF2428) Projects.

13.4(1) *Maximum grant amounts.* The maximum grant amount for a project is set at $250,000.

13.4(2) *Length of project.* A proposed project may be designed for up to 18 months in duration, but must have an ending date no later than June 30 of the state fiscal year following the year funding was awarded.

871—13.5(78GA,SF2428) Pilot projects.

13.5(1) *Maximum grant amounts.* The maximum grant amount for a pilot project is set at $250,000.

13.5(2) *Length of project.* A proposed pilot project may be designed for up to 18 months in duration, but must have an ending date no later than June 30 of the state fiscal year following the year funding was awarded.

13.5(3) *Eligible recipients.* The regional workforce investment board will identify the recipient(s) of funds and program operator. The project must be operated in conjunction with the workforce development center system.

871—13.6(78GA,SF2428) Allowable costs and limitations. The program operator shall distribute new employment opportunities program funds on a voucher basis to address individuals' barriers to obtaining or retaining employment. A maximum of $5,000 in vouchers shall be allowed per individual served.

13.6(1) *Allowable training activities and support services.* The allowable training activities and support services under this program will be jointly determined by the department and the program operator. To be allowable, training activities and support services must meet needs not covered by existing programs and enhance an individual's ability to obtain and retain employment.

13.6(2) *Cost categories.* Allowable costs must be consistently charged against the two cost categories of administration and participant support/training.

13.6(3) *Cost limitations.* Costs of administration may not exceed 10 percent of the budget.

871—13.7(78GA,SF2428) Grant reporting and compliance review. Grantees are required to submit a monthly financial report detailing fund expenditures. Quarterly progress reports shall be submitted to the department detailing progress in accomplishing the goals and objectives of the project. Financial and quarterly progress report forms will be in a format approved by the department.

These rules are intended to implement 2000 Iowa Acts, Senate File 2428, section 20.

[Filed emergency 7/11/00—published 8/9/00, effective 7/11/00]

CHAPTERS 14 to 20
Reserved

LABOR SERVICES DIVISION[875]

[Prior to 11/19/97, see Labor Services Division[347]]

CHAPTER 1
DESCRIPTION OF ORGANIZATION AND PROCEDURES BEFORE THE DIVISION

875—1.94(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

875—1.95(17A) Emergency adjudicative proceedings.

1.95(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the division may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the division by emergency adjudicative order. Before issuing an emergency adjudicative order the division shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the division is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the division is necessary to avoid the immediate danger.

1.95(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the division's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the division;

(3) Certified mail to the last address on file with the division;

(4) First-class mail to the last address on file with the division; or

(5) Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that division orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the division shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

1.95(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

1.95(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the division shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which division proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further division proceedings to a later date will be granted only in compelling circumstances upon application in writing.

875—1.96 to **1.98** Reserved.

DIVISION VI
INTEREST, FEES AND CHARGES

875—1.99(17A,91) Interest. The commissioner may assess and collect interest on fees, penalties, and other amounts due the division. Interest shall accrue from the first of the month following the date when payment was due. If it becomes necessary to initiate legal actions to recover the money, the commissioner may recover court costs and attorney fees in addition to the interest. The interest rate shall be 10 percent per annum.

875—1.100 Reserved.

DIVISION VII
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

875—1.101(17A,91) Scope.

1.101(1) These rules provide general procedures for waivers and variances from division rules. Specific waiver or variance procedures must be followed when applicable. No waiver or variance may be granted from a requirement or duty imposed by statute or when granting a waiver or variance would cause a denial of federal funds or be inconsistent with federal statute or regulation. Any waiver or variance must be consistent with statute. These waiver and variance procedures do not apply to rules that merely define the meaning of a statute or other provision of law unless the division possesses delegated authority to bind the courts with its rules.

1.101(2) Waivers or variances of rules may be granted either in response to a petition for waiver or variance filed within a contested case proceeding, or in response to a petition filed in the absence of a contested case proceeding.

875—1.102(17A,91) Petitions. If the petition for waiver or variance relates to a pending contested case, the petition shall be filed in the contested case proceeding. Other petitions must be submitted in writing to Byron K. Orton, Labor Commissioner, 1000 E. Grand Avenue, Des Moines, Iowa 50319. In either case, the petition shall include the following information where applicable:

1.102(1) The name, address, case file number or state identification number, and telephone number of the person requesting the waiver or variance and the person's representative, if any.

1.102(2) A description and citation of the specific rule to which the petition applies.

1.102(3) The specific waiver or variance requested, including the precise scope and time period for the waiver or variance.

1.102(4) The relevant facts the petitioner believes justify a waiver or variance.

1.102(5) A description of any prior contacts between the division and the petitioner relating to the subject matter of the proposed waiver or variance, including but not limited to a list or description of division licenses, registrations, or permits held by the petitioner, and any notices of violation, citations, contested case hearings, or investigative reports relating to the subject matter of the proposed waiver or variance within the last five years.

1.102(6) The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the grant of a waiver or variance.

1.102(7) Any information known to the petitioner regarding the division's treatment of similar cases.

1.102(8) The name, address, and telephone number of all persons inside or outside state government who would be adversely affected by the grant of the petition or who possess knowledge of relevant facts.

1.102(9) A signed release of information authorizing persons with knowledge regarding the request to furnish the division with information pertaining to the waiver or variance.

1.102(10) A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition.

875—1.103(17A,91) Notice and acknowledgment. The division will acknowledge petitions upon receipt. The division shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of receipt of the petition. The division may require the petitioner to serve the notice and a concise summary on all persons to whom notice is required by any provision of law, and provide a written statement to the division attesting that notice has been provided. Notice and a concise summary may also be provided to others.

875—1.104(17A,91) Review. Each petition for a waiver or variance shall be evaluated by the agency based on the unique, individual circumstances set out in the petition. Discretion to grant or deny a waiver or variance petition rests with the labor commissioner or the labor commissioner's designee. The burden of persuasion shall be upon the petitioner. The division may request additional information relating to the requested waiver or variance from the petitioner and may conduct any necessary and appropriate investigation.

1.104(1) A waiver or variance may be granted if the division finds all of the following based on clear and convincing evidence:

a. Application of the rule would pose an undue hardship on the person for whom the waiver or variance is requested;

b. The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law;

c. Waiver or variance of the rule in the specific circumstances would not prejudice the substantial legal rights of any person or cause a denial of federal funds; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

1.104(2) Petitioners requesting permanent waivers or variances must also show that a temporary waiver or variance would be impracticable.

875—1.105(17A,91) Ruling.

1.105(1) The division shall grant or deny all requests as soon as practicable, but no later than 120 days from receipt without consent of the petitioner. However, waiver or variance petitions filed in contested cases shall be granted or denied no later than the date of the decision in the contested case proceeding. Failure to grant or deny a petition within the required time period shall be deemed a denial.

1.105(2) If a waiver or variance is granted, it shall be drafted to provide the narrowest exception possible to the provisions of the rule. The ruling shall be in writing and shall include the reasons for granting or denying the petition and, if approved, the time period during which the waiver or variance is effective. The division may place any condition on a waiver or variance that the division finds desirable to protect the public health, safety, and welfare.

1.105(3) Within seven days of issuance of the ruling, a copy shall be mailed to the petitioner or the petitioner's representative, and to any other person(s) entitled to such notice by any provision of law or rule.

875—1.106(17A,91) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)"*e*," orders granting and denying waivers or variances shall be indexed by rule and available for public inspection.

875—1.107(17A,91) Cancellation. The division may cancel a waiver or variance upon appropriate notice and hearing if the facts alleged in the petition or supplemental information provided were not true, material facts were withheld or have changed, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, the requester has failed to comply with conditions set forth in the waiver or variance approval, or the rule or enabling Act has been amended.

875—1.108(17A,91) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

875—1.109(17A,91) Appeals. Appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A. An appeal shall be taken within 30 days of the ruling. However, any appeal from a decision on a petition for waiver or variance in a contested case proceeding shall be in accordance with the procedures for appeal of the contested case decision.

These rules are intended to implement Iowa Code chapters 17A, 22 and 91, 2000 Iowa Acts, House File 2206, and Executive Order Number Eleven.

[Filed 12/15/75, Notice 10/6/75—published 12/29/75, effective 2/4/76]
[Filed emergency 11/20/79—published 12/12/79, effective 11/20/79]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 4/29/88, Notice 3/23/88—published 5/18/88, effective 7/1/88]
[Filed 8/30/88, Notice 5/18/88—published 9/21/88, effective 11/1/88]
[Filed 12/9/88, Notice 10/5/88—published 12/28/88, effective 2/15/89]
[Filed 3/17/89, Notice 9/21/88—published 4/5/89, effective 5/10/89]
[Filed emergency 4/26/89—published 5/17/89, effective 4/26/89]
[Filed 10/26/89, Notice 6/28/89—published 11/15/89, effective 12/29/89]
[Filed emergency 6/8/90—published 6/27/90, effective 7/1/90]
[Filed 11/9/90, Notice 6/27/90—published 11/28/90, effective 1/2/91]
[Filed 11/13/98, Notice 9/23/98—published 12/2/98, effective 1/6/99]
[Filed emergency 5/4/99 after Notice 3/24/99—published 6/2/99, effective 7/1/99]
[Filed 7/20/00, Notice 1/26/00—published 8/9/00, effective 9/13/00]

FINANCE AUTHORITY, IOWA

FIRE AND FIRE PROTECTION (cont'd)
Flammable liquids

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