

*State of Iowa*

# **Iowa**

# **Administrative**

# **Code**

# **Supplement**

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

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

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

## INSTRUCTIONS FOR UPDATING THE IOWA ADMINISTRATIVE CODE

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

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

d. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d.”

e. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency (Iowa Code sections 17A.2 and 17A.3).

f. All papers, documents, reports (including shareholder lists furnished to the superintendent pursuant to Iowa Code section 524.541), reports of examinations and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state (Iowa Code section 524.215).

g. Reports of examinations conducted by the superintendent and reports of examination received by or furnished to the superintendent pursuant to Iowa Code section 524.217.

h. All information obtained by examiners and described in Iowa Code section 524.212.

i. All applications, reports, materials, documents, information and other writings obtained from the Federal Deposit Insurance Corporation, Federal Reserve Bank, Comptroller of the Currency or any agency of the United States government which would cause the denial of services or information to the agency. (Iowa Code section 22.9; the Privacy Act of 1974 (5 U.S.C. 552a) and Part 310 of the Federal Deposit Insurance Corporation Rules and Regulations (12 CFR 310).)

j. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

k. Any other information made confidential by law.

**187—7.14(17A,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 7.1(17A,22). The division of banking does not maintain groups of records to be retrieved by individual identifiers. Division records concerning regulated entities may contain financial and other personal information about individuals who are officers, shareholders, employees, or customers of regulated entities or do business with them. The division of banking does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

**7.14(1) Personnel files.** The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include an individual's employment history, such as hiring and recruitment correspondence, salary, payroll and benefit information, record of personnel actions, military status, affirmative action statistics, education and training completed, professional certification achievements, professional organizational involvement, performance evaluation reports, and other information concerning the employer-employee relationship. This information is collected pursuant to Iowa Code section 524.208, and some of the information is confidential under Iowa Code sections 22.7(11) and 22.7(18). The information is maintained on paper; and certain parts are also contained on the agency's data processing system, as well as the state's main-frame automated data processing system.

**7.14(2) Payroll records.** Records showing individual earnings, hours worked, leave usage, class, position, salary range, deductions, net pay with agency summaries, and other related information. These records contain personally identifiable information collected under the authority of Iowa Code section 524.208, and some of the information may be confidential under Iowa Code section 22.7(11). The information is maintained on paper, with certain records maintained on the state's payroll automated data processing system.

**187—7.15(17A,22) Other groups of records routinely available for public inspection.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 7.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, the records listed in subrules 7.15(1) to 7.15(4) may contain information about individuals. All records are stored on paper.

**7.15(1) Rule making.** Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored on an automated data processing system.

**7.15(2) Banking board records.** Agendas, minutes and materials presented to the Iowa division of banking board are available from the office of the Iowa division of banking, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5, or which are otherwise confidential by law. Banking board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

**7.15(3) Publications.** News releases, annual reports, project reports, agency newsletters, etc., are available from the office of the Iowa division of banking.

Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

**7.15(4) Orders issued by the superintendent.** All findings of fact, conclusions of law, and orders issued by the superintendent subsequent to a public hearing under the provisions of chapter 17A, except as otherwise provided by law. (See Iowa Code section 17A.3.) These records may contain information about individuals.

**7.15(5) Published materials.** The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

**7.15(6) Policy manuals.** The agency's employees' manual, containing information concerning policies and procedures for programs administered by the agency, is available in the office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to Iowa Division of Banking, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309-1827. Policy manuals do not contain information about individuals.

**7.15(7) Reports to superintendent.** Reports obtained by the superintendent pursuant to the provisions of Iowa Code section 524.220. These reports are considered open records.

**7.15(8) Officers and directors.** Lists of officers and directors filed with the superintendent pursuant to the provisions of Iowa Code section 524.541. These reports are considered open records.

**7.15(9) Other.** All other records that are not exempted from disclosure by law.

**187—7.16(17A,22) Applicability.** This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

[Filed 4/28/88, Notice 3/23/88—published 5/18/88, effective 7/1/88]

[Filed 9/17/96, Notice 7/17/96—published 10/9/96, effective 11/13/96]

[Filed 8/2/00, Notice 6/28/00—published 8/23/00, effective 9/27/00]

Faint, illegible text at the bottom of the page, possibly bleed-through from the reverse side. The text is too light to transcribe accurately.



**CHAPTER 8**  
**GENERAL BANKING POWERS**  
[Prior to 4/22/87, see Banking Department[140] Ch 8]

**187—8.1 to 8.6** Rescinded, effective 7/1/79.

**187—8.7** Rescinded, effective 7/10/81.

**187—8.8(12B) Approved rating services.** Rating services approved by the superintendent as provided by Iowa Code section 12B.10 for use by the treasurer of state and the treasurer of each political subdivision in determining qualifying commercial paper investments are Moody's Investors Services, New York, New York 10007, and Standard & Poor's, Chicago, Illinois 60680.

This rule is intended to implement Iowa Code section 12B.10.

**187—8.9(524) General definition of bank.** It is the superintendent's intent that term "bank" used in Iowa Code section 524.103(7) means a corporation organized under Iowa Code chapter 524 or a corporation organized under 12 U.S.C. §21. The general definition of bank as set forth in 524.103(7) does not include a state savings association, federal savings association, state credit union, or federal credit union.

This rule is intended to implement Iowa Code section 524.103(7).

[Filed emergency 10/31/84—published 11/21/84, effective 10/31/84]

[Filed 4/1/87, Notice 2/25/87—published 4/22/87, effective 5/28/87]

[Filed 8/24/95, Notice 7/19/95—published 9/13/95, effective 10/18/95]

[Filed 9/17/96, Notice 7/17/96—published 10/9/96, effective 11/13/96]



The following information was obtained from the records of the  
 Department of the Interior, Bureau of Land Management, regarding  
 the land parcels described herein. The information was obtained  
 from the records of the Department of the Interior, Bureau of  
 Land Management, and is being furnished to you for your information.

The land parcels described herein are located in the State of  
 California, and are more particularly described as follows:

1. A certain parcel of land, situated in the County of  
 Santa Clara, State of California, and more particularly  
 described as follows:

Section 12, Township 12N, Range 12E, S. 1.

Section 13, Township 12N, Range 12E, S. 1.

The above information was obtained from the records of the  
 Department of the Interior, Bureau of Land Management, and is  
 being furnished to you for your information.



This document is a true and correct copy of the original as  
 filed in the records of the Department of the Interior, Bureau  
 of Land Management.

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## CHAPTER 17 OPEN ENROLLMENT

**281—17.1(282) Intent and purpose.** It is the intent of Iowa Code section 282.18 to maximize parental choice in providing a wide range of educational opportunities which are not available for pupils because of where they live. It is the purpose of this chapter to give guidance and direction to parents/guardians, public school district administrators and boards in making quality decisions regarding school district choice for the education of pupils.

**281—17.2(282) Definitions.** For the purpose of this chapter the indicated terms are defined as follows:

*“Alternative receiving district”* is a district to which a parent/guardian petitions for the open enrollment transfer of a pupil from a receiving district. An alternative receiving district could be the district of residence of the parents/guardians.

*“Economic eligibility requirements”* relate to family household income levels that qualify the parent/guardian for transportation assistance from the resident district for an open enrollment pupil.

*“Good cause”* is a condition that occurs after the open enrollment filing deadline related to change in the status of a pupil’s residence or change in the status of a pupil’s resident district that qualifies the parent/guardian to file a request for open enrollment which shall be considered in the same manner as if the deadline had been met.

*“Nuclear family”* is a family group that consists of the mother and father and their children in a two-parent family or all children in a family group for which a single parent/guardian(s) has custody and responsibility.

*“Open enrollment”* is the procedure allowing a parent/guardian to enroll one or more pupils in a public school district other than the district of residence at no tuition cost.

*“Receiving district”* is the public school district in which a parent/guardian desires to have the pupil enrolled or the district accepting the application for enrollment of a pupil under the provisions of Iowa Code section 282.18.

*“Resident district”* is the district of residence for school purposes of the parent/guardian and the district in which an open enrollment pupil shall be counted for the purpose of generating state aid regardless of the district in which the pupil is enrolled.

*“Sending district”* is synonymous with the term resident district.

*“Timely filed application”* includes an open enrollment request postmarked or hand-delivered on or before January 1, an open enrollment request for “good cause” as defined in Iowa Code section 282.18(16), and an open enrollment request filed for a continuation of an educational program postmarked or hand-delivered on or before the Thursday before the third Friday of the following September.

*“Volunteer or court-ordered desegregation”* is a district that is either under direct court order or is in voluntary compliance with state board of education guidelines to maintain certain minority-nonminority pupil ratios in the district according to a desegregation plan or order.

**281—17.3(282) Application process for the 1990-1991 and subsequent school years.** The following procedures shall be used by parents/guardians and school districts in processing open enrollment applications.

**17.3(1) Parent/guardian responsibilities.** On or before January 1 of the school year preceding the school year for which open enrollment is requested, a parent/guardian shall formally notify the district of residence of the request for open enrollment. The request for open enrollment shall be made on forms provided by the department of education. The parent/guardian is required to indicate on the form if the request is for a pupil requiring special education, as provided by Iowa Code chapter 256B. The forms for open enrollment application are available from each public school district, area education agency, and the state department of education.

**17.3(2) School district responsibilities.** The board of the resident district shall act on an open enrollment request by no later than February 1 of the year preceding the school year for which the request is made. If the request is denied, the parent/guardian shall be notified by the district superintendent within three days following board action and a copy of the application form, indicating the action taken, shall be filed with the department of education. If the request is approved, the district superintendent shall forward the approved application form to the receiving district within five days following board action and shall notify the parent/guardian within three days of this action.

The board of the receiving district shall act to approve or deny an open enrollment request by no later than March 1 following receipt of the request from the resident district. The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within 15 days of board action and shall file a copy of the application form, indicating the final action on the request, with the department of education.

As an alternative procedure, either the resident board or the receiving board may by policy authorize the superintendent to approve, but not deny, timely-filed applications. The board shall have the discretion to determine the scope of the authorization. The authorization may be for regular applications filed on or before January 1, good cause applications, kindergarten applications and continuation applications filed on or before the Thursday before the third Friday of the following September, or any combination that the board determines. The same timelines for approval, forwarding, and notification shall apply.

The parent/guardian may withdraw an open enrollment request anytime prior to the first day of school in the resident district. After the first day of school, an open enrollment request can only be changed during the term of the approval by the procedures of subrules 17.8(3) and 17.8(4).

Boards of the resident and receiving districts shall comply with the provisions of rule 17.11(282) if the application for open enrollment is for a pupil requiring special education as provided by Iowa Code chapter 256B.

By September 30 of each school year, the district shall notify parents of open enrollment deadlines, transportation assistance, and possible loss of athletic eligibility for open enrollment pupils. This notification may be published in a school newsletter, a newspaper of general circulation, or a parent handbook provided to all patrons of the district. This information shall also be provided to any parent/guardian of a pupil who transfers into the district during the school year.

**281—17.6(282) Restrictions to open enrollment requests.** A district board may exercise the following restrictions related to open enrollment requests.

**17.6(1) *Enrollment loss caps.*** Rescinded IAB 12/8/93, effective 1/12/94.

**17.6(2) *Volunteer or court-ordered desegregation.*** In districts involved with voluntary or court-ordered desegregation (see 17.2(282)) where there is a requirement to maintain minority and nonminority student ratios according to a desegregation plan or order, the superintendent of the district may deny a request for open enrollment transfer if it is found that the enrollment or release of a pupil will adversely affect the district's desegregation plan or order. Transfer requests that would facilitate the desegregation plan or order shall be given priority to other transfer requests received by the district. A parent/guardian whose request for open enrollment transfer is denied by the superintendent of the district on the basis of its adverse effect on the district's desegregation plan may appeal that decision to the district board.

**17.6(3) *Policy on insufficient classroom space.*** No receiving district shall be required to accept an open enrollment transfer request if it has insufficient classroom space to accommodate the pupil(s). Each district board shall adopt a policy which defines the term "insufficient classroom space" for that district. This policy shall establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment transfer request. This policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, law or rules governing special education class size, or board-adopted district educational goals and objectives. This policy shall be reviewed annually by the district board.

**17.6(4) *Designation of attendance center.*** The right of a parent/guardian to request open enrollment is to a district other than the district of residence, not to an attendance center within the nonresident district. In accepting an open enrollment pupil, the receiving district board has the same authority it has in regard to its resident pupils as provided by Iowa Code section 279.11, to "determine the particular school which each child shall attend." In the application process, however, the parent or guardian may request an attendance center of preference.

**281—17.7(282) Open enrollment for kindergarten.** While the regular time frame in requesting open enrollment is that an application should be made no later than January 1 of the school year preceding the school year for which the enrollment is requested, a parent/guardian requesting to enroll a kindergarten pupil in a district other than the district of residence may make such application on or before the Thursday before the third Friday of September of that school year. In considering an application for a kindergarten pupil the resident and the receiving district are not precluded from administering board-adopted policies related to insufficient classroom space or the requirements of a desegregation plan or order.

As an alternative procedure, either the resident board or the receiving board may by policy authorize the superintendent to approve, but not deny, timely filed applications under this rule. The timelines established in rule 17.4(282) shall apply to applications for a kindergarten pupil.

**281—17.8(282) Requirements applicable to parents/guardians and students.**

**17.8(1) Eligibility for transfer.** A pupil who has been suspended or expelled by action of the administration or board of the resident district shall not be permitted to transfer if an open enrollment request is filed until the pupil is reinstated for school attendance in the resident district. Once reinstated, the application for transfer shall be considered in the same manner as any other open enrollment request. If a pupil for which an open enrollment request has been filed is subsequently expelled by action of the resident district board, the pupil may be denied transfer by the receiving district board until the pupil is reinstated for school attendance by the resident district. The parent/guardian may appeal the decision to deny transfer by the receiving district to the director of the department of education. If the decision of the director is to allow the transfer, this action shall be conditioned upon the expiration of the expulsion imposed by the resident district. The provisions of this subrule shall also apply to a pupil who has been suspended or expelled in a receiving district and is requesting open enrollment transfer to an alternative receiving district or is seeking to return to the resident district as outlined in subrule 17.8(4).

**17.8(2) Restrictions on participation in interscholastic athletic contests and competitions.** A pupil who transfers school districts under open enrollment in any of the grades 10 through 12 shall not be eligible to participate in interscholastic contests and competitions during the first 90 school days of transfer. This restriction also shall apply to transfers resulting from an approved petition filed by a parent or guardian to transfer to an alternative receiving district and when the pupil returns to the district of residence using the process outlined in subrule 17.8(4). This 90-school-day restriction does not prohibit the pupil from practicing with an athletic team during the 90 school days of ineligibility. This 90-school-day restriction is not applicable to a pupil who:

- a. Participates in an athletic activity in the receiving district that is not available in the district of residence.
- b. Participates in an athletic activity for which the resident district and the receiving district have a "cooperative student participation agreement" in place as provided by rule 281—36.20(280).
- c. Has paid tuition for one or more years to the receiving school district prior to making application and being approved for open enrollment.
- d. Has attended the receiving district for one or more years, prior to making application and being approved for open enrollment, under a sharing or mutual agreement between the resident district and the receiving district.
- e. Has been participating in open enrollment and whose parents/guardians move out of their district of residence but exercise the option of maintaining the open enrollment agreement as provided in subrule 17.8(6). If the pupil has established athletic eligibility under open enrollment, it is continued despite the parent's or guardian's change in residence.
- f. Obtains open enrollment as provided in subrule 17.8(7).
- g. Obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code subsection 256.11(12).
- h. Obtains open enrollment due to the pupil's district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the pupil would be enrolled at the start of the whole-grade sharing agreement.
- i. Participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services.
- j. Is enrolled in an accredited nonpublic high school because the pupil's district of residence has entered into a whole-grade sharing agreement for the pupil's grade with another district.

**17.8(3) *Term of enrollment.*** Rescinded IAB 10/9/96, effective 11/13/96.

**17.8(4) *Petition for attendance in an alternative receiving district.*** Once the pupil of a parent/guardian has been accepted for open enrollment, attendance in an alternative receiving district under open enrollment can be initiated by filing a petition for change with the receiving district. The petition shall be filed by the parent/guardian with the receiving district by January 1 of the year preceding the school year for which the change is requested. The timelines and notification requirements for such a request shall be the same as outlined in subrule 17.3(2). If the request is approved, the alternative district shall send notice of this action to the parent/guardian, to the district filing the transfer, and to the resident district of the pupil. Petitions for transfer shall be effectuated at the start of the next school year.

As an alternative procedure, the receiving and alternative receiving district boards by mutual agreement may effectuate the transfer of an open enrollment pupil at any time following receipt of a written request for transfer which is approved by the two boards. The parent/guardian and the resident district board shall be notified of the approval and the date for transfer within 15 days of the mutual agreement action of the receiving and alternative receiving boards.

The record of approval action on any petition for transfer shall be filed with the department of education by the alternative receiving district.

A pupil in good standing may return to the district of residence at any time following written notice from the parent/guardian to both the resident district and the receiving district.

**17.8(5) *Renewal of an open enrollment agreement.*** An open enrollment agreement shall remain in place unless canceled by the parent/guardian or terminated as outlined in the provisions of subrule 17.8(10).

**17.8(6) *Change in residence when participating in open enrollment.*** If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian shall have the option to leave the pupil in the receiving district under open enrollment, to open enroll to another school district, or to enroll the pupil in the new district of residence, thus terminating the open enrollment agreement. If the choice is to leave the pupil under open enrollment or to open enroll to another school district, the original district of residence shall be responsible for payment of the cost per pupil plus any applicable weightings or special education costs for the balance of the school year, if any, in which the move took place, providing the move took place on or after the third Friday in September. The new district of residence shall be responsible for these payments during succeeding years of the agreement.

If the move takes place between the end of one school year and the third Friday in September of the following school year, the new district of residence shall be responsible for that year's payment as well as succeeding years.

If the pupil is to remain under open enrollment or to open enroll to another school district, the parent/guardian shall write a letter, delivered by mail or by hand on or before the Thursday before the third Friday of the next September, to notify the original resident district, the new resident district, and the receiving district of this decision.

Timely requests under this rule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2).

**17.8(7) *Change in residence when not participating in open enrollment.*** If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program or to open enroll to another school district. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made on or before the Thursday before the third Friday of the following September. Timely requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is on or after the third Friday in September, the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment transfer.

**17.8(8) *Pupil governance.*** An open enrollment pupil, and where applicable the pupil's parent/guardian, shall be governed by the rules and policies established by the board of directors of the receiving district. Any complaint or appeal by the parent/guardian concerning the educational system, its process, or administration in the receiving district shall be initially directed to the board of directors of that district in compliance with the policy of that district.

**17.8(9) *Appeal procedure.*** A parent/guardian may appeal the decision of the board of directors of a school district (resident or receiving) on any matter related to open enrollment. This appeal is to the state board of education and shall comply with the provisions of Iowa Code section 290.1; the appeal shall be filed within 30 days of the decision of the district board, it shall be in the form of an affidavit signed by the parent/guardian, and it shall state in a plain and concise manner what the parent/guardian feels to be the basis for appeal.

In addition, and as an alternative to an appeal to the state board of education under Iowa Code section 290.1, a parent/guardian may file an appeal to the director of the department of education on the following open enrollment decisions:

a. Denial by the resident district board of a request for open enrollment for failure on the part of the parent/guardian to show good cause in not meeting the filing deadline.

b. Denial by a receiving district to approve an open enrollment transfer for a pupil that has been expelled from school in the resident district.

If a parent/guardian files an appeal to the director of the department of education, this precludes the ability to file the same appeal to the state board of education.

**17.8(10) *Open enrollment termination.*** Open enrollment ends when:

a. The pupil graduates, moves into the receiving district, moves into a third district and does not elect to continue attending in the receiving district, moves out of state, elects to attend a nonpublic school instead of the receiving district, or any other circumstance not excepted below that results in the pupil no longer attending the receiving district.

**EXCEPTIONS:** This rule shall not apply if the pupil is placed temporarily in foster care, a juvenile detention center, mental health or substance abuse treatment facility, or other similar placement. In such cases, the open enrollment status will automatically be reinstated when the pupil returns.

b. The pupil drops out of school. In this instance, if the pupil desires to return to the resident district during the term of the original open enrollment, notice must be given as outlined in the provisions of subrule 17.8(4).

**281—17.11(282) Special education students.** If a parent/guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B, this request shall receive consideration under the following conditions. The request shall be granted only if the receiving district is able to provide within that district the appropriate special education program for that student in accordance with Iowa rules of special education, 281—41.84(256B,273,34CFR300). This determination shall be made by both the resident district and the receiving district before approval of the application. In a situation where the appropriateness of the program is in question, the pupil shall remain enrolled in the program of the resident district until a final determination is made. If the appropriateness of the special education program in the resident district is questioned by the parent, then the parent should request a due process hearing as provided by 281—41.113(1). If the appropriateness of the special education program in the receiving district is at issue, the final determination of the appropriateness of a special education instructional program shall be the responsibility of the director of special education of the area education agency in which the receiving district is located, based upon the decision of a diagnostic-education team from the receiving district which shall include a representative from the resident district that has the authority to commit district resources.

District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil shall be as provided by rule 17.9(282).

The district of residence shall pay to the receiving district on a quarterly basis the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the fourth quarter payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district shall provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any monies received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency.

**281—17.12(282) Laboratory school provisions.** A parent/guardian may make a request for open enrollment transfer to a laboratory school operated by the state board of regents. The regents institution operating a laboratory school and the board of directors of the public school district in which the laboratory school is located shall develop a transfer policy. This policy shall include:

1. A provision that the total number of pupils enrolled in a laboratory school in any one year shall not exceed 670 pupils.
2. Provisions to protect and promote the quality and integrity of the teacher education program of the laboratory school.

3. Provisions to protect and promote the viability of the education program of the public school district.

4. The order in which and the reasons why requests to transfer to the laboratory school shall be considered.

The denial of a request to transfer to a laboratory school is not subject to appeal by a parent/guardian under Iowa Code section 290.1.

A pupil that is accepted for open enrollment transfer to a laboratory school shall not be included in the basic enrollment of the resident district with the laboratory school reporting the enrollment directly to the department of education with the following exception. If the number of pupils enrolled in the laboratory school from a school district during the current year exceeds the number enrolled from that district during the 1989-1990 school year, the pupils representing the difference between the current and the 1988-1989 school year enrollment for the district shall be included in the basic enrollment of the resident district with the district retaining the money generated through the foundation aid formula.

**281—17.13(282) Applicability.** For implementing the open enrollment provisions of Iowa Code section 282.18, the provisions of this chapter shall be retroactively applicable to June 5, 1989.

These rules are intended to implement Iowa Code section 282.18.

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DIVISION II  
COMMUNITY COLLEGE ENERGY APPROPRIATIONS

**281—21.20 to 21.24** Rescinded IAB 9/7/88, effective 10/12/88.

**281—21.25 to 21.29** Reserved.

DIVISION III  
INSTRUCTIONAL COURSE FOR DRINKING DRIVERS

**281—21.30(321J) Purpose.** The purpose of the instructional course for drinking drivers is designed to inform the offender about drinking and driving and encourage the offender to assess the offender's own drinking and driving behavior in order to select practical alternatives.

**281—21.31(321J) Course.** A course provided according to this chapter shall be offered on a regular basis at each community college or by a substance abuse treatment program licensed under Iowa Code chapter 125. However, a community college shall not be required to offer the course if a substance abuse treatment program licensed under Iowa Code chapter 125 offers the course within the merged area served by the community college.

Enrollment in the course is not limited to persons ordered to enroll, attend, and successfully complete the course required under Iowa Code sections 321J.1 and 321J.17, subsection 2. However, any person under the age of 18 who is required to attend the courses for violation of Iowa Code section 321J.2 or 321J.17 must attend a course offered by a substance abuse treatment program licensed under Iowa Code chapter 125.

Any instructional course shall be approved by the department of education in consultation with the community colleges and substance abuse treatment programs licensed under Iowa Code chapter 125. Each course of instruction shall establish the following:

1. An understanding that alcohol-related problems could happen to anyone and that a person's drinking choices matter. The course illustrates common views of society that prevent people from taking drinking choices seriously. Research is presented to challenge common views with an understanding that alcohol problems are related to lifestyle choices.
2. An understanding that specific low-risk choices will help reduce the risk of experiencing alcohol-related problems at any point in life. The course presents research-based, low-risk guidelines.
3. Methods of providing support for making low-risk choices.
4. An accurate description of the progression of drinking to the development of alcoholism to help people weigh the risk involved with high-risk drinking and to see how high-risk choices may jeopardize their lives and the lives of others.
5. Opportunities to develop a specific plan of action to follow through with low-risk choices. A list of community resources is provided for ongoing support and treatment as needed.

**281—21.32(321J) Tuition fee established.**

1. Each person enrolled in an instructional course for drinking drivers shall pay to the community college or to a substance abuse treatment program licensed under Iowa Code chapter 125 a tuition fee of \$75 for the approved 12-hour course, plus a reasonable book fee or \$175 for the court-ordered approved 28-hour weekend course, plus a reasonable book fee. For the court-ordered approved 28-hour weekend course, the community college or the substance abuse treatment program licensed under Iowa Code chapter 125 shall set a reasonable fee for lodging, meals, and security.

2. A person shall not be denied enrollment in a course by reason of a person's indigency. For court-ordered placement, the court shall determine a person's indigency. In all other instances, the community college or the substance abuse treatment program licensed under Iowa Code chapter 125 shall determine indigence upon application.

These rules are intended to implement Iowa Code section 321J.22 and 2000 Iowa Acts, House File 2511.

**281—21.33 and 21.34** Reserved.

DIVISION IV  
JOBS NOW CAPITALS ACCOUNT

**281—21.35 to 21.44** Reserved.

DIVISION V  
STATE COMMUNITY COLLEGE FUNDING PLAN

**281—21.45(260C) Purpose.** A distribution plan for general state financial aid to Iowa's community colleges is established for the fiscal year commencing July 1, 1999, and succeeding fiscal years. Funds appropriated by the general assembly to the department of education for general financial aid to community colleges shall be allocated to each community college in the manner defined in this chapter.

**21.45(1) Definitions.** For the purpose of this rule, the following definitions shall apply:

*"Academic year"* means a period of time which begins with the first day of the fall term for each community college and continues through the day preceding the start of the next fall term as indicated in the official college calendar.

*"Base funding"* means the amount of general state financial aid each community college received as an allocation from appropriations made from the state general fund in the base year.

*"Base year"* means the fiscal year ending during the calendar year in which a budget is certified.

*"Contact hour"* for a noncredit course equals 50 minutes of contact between an instructor and students in a scheduled course offering for which students are registered.

*"Credit hour,"* for purposes of community college funding distribution, shall be as defined in sub-rule 21.2(13).

*"Eligible credit courses"* means all credit courses that are eligible for general state financial aid and which must be part of an approved program of study. Developmental education courses that award credit hours are eligible for inclusion in the FTEE calculation. The department of education shall review and provide a determination should a question of eligibility occur.

*"Eligible noncredit courses"* means all noncredit courses eligible for general state financial aid that must fit one of the following ten eligible categories for noncredit courses:

1. Community resource development: courses that provide participants with information which may result in improved and enhanced community resources or community development programs.

2. State-mandated or state-approved: organized educational instruction designed to meet legislated or licensing requirements as defined in the Code of Iowa. The educational curriculum for such instruction is approved by the department of education, licensing boards, or state departments.

3. Legal and consumer rights: a group of instructional courses that provide the opportunity to become a better-informed and more thoughtful consumer and identify the consumer's rights and obligations under a contract.

4. Health: courses designed to enhance understanding, attitudes, and practices relating to individual, family, and community health. Instruction is based on scientific facts that serve as a foundation for decision making and action to achieve health potentials.

5. Employment and business: learning activities that are designed to develop skills needed to obtain and enhance employment. The activities will provide an understanding of business principles and practices having applications in business and industry locally, regionally, nationally, and internationally.

*"Apprenticeship agreement"* shall mean a written agreement between an apprentice and the apprentice's employer, or an apprenticeship committee acting as the agent for the employer(s). The agreement contains the terms and conditions of the employment and training of the apprentice.

*"Apprenticeship committee"* shall mean those persons designated by the sponsor to act for it in the administration of the program. A committee may be "joint," i.e., composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s), and is established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be "unilateral" or "nonjoint" and shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

*"Apprenticeship program"* shall mean a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirement for a written apprenticeship agreement.

*"Bureau"* shall mean the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor.

*"Cancellation"* shall mean the termination of the registration or approval status of a program at the request of the sponsor or termination of an apprenticeship agreement at the request of the apprentice.

*"Certification"* shall mean written approval by the Bureau of: (1) a set of apprenticeship standards developed by a national committee or organization, joint or unilateral, for policy or guidelines used by local affiliates, as substantially conforming to the standards of apprenticeship; or (2) an individual as eligible for probationary employment as an apprentice under a registered apprenticeship program.

*"Employer"* shall mean any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

*"Registration agency"* shall mean the Bureau.

*"Registration of an apprenticeship agreement"* shall mean the acceptance and recording thereof by the Bureau as evidence of the participation of the apprentice in a particular registered apprenticeship program.

*"Related instruction"* shall mean an organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to the trade or occupation.

*"Sponsor"* shall mean any person, association, committee or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

**281—21.74(260C) Apprenticeship programs.** For an apprenticeship program to be offered by a community college or a local educational agency, the program must be approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training, and meet all requirements outlined in Title 29, Part 29, of the National Apprenticeship Act.

The rules in this division are intended to implement Iowa Code section 260C.44 and Title 29, Part 29, of the National Apprenticeship Act.

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TITLE IV  
*DRIVER AND SAFETY EDUCATION*

CHAPTER 26  
*DRIVER EDUCATION*

[Prior to 9/7/88, see Public Instruction Department[670] Ch 6]

**281—26.1(256) Qualifications for instructors.** To be qualified as a classroom driver education instructor, a person shall have satisfied the educational requirements for a teaching license at the elementary or secondary level and hold a valid license to teach driver education in the public schools of this state. Street or highway driving instruction may be provided by a person qualified as a classroom driver education instructor or a person certified by the department of transportation and authorized by the board of educational examiners. A final field test prior to a student's completion of an approved course shall be administered by a person qualified as a classroom driver education instructor.

**281—26.2(256) Course standards.**

**26.2(1) Minimum time.** Schools shall provide for each student a minimum of 1800 minutes in classroom instruction, plus 360 minutes in supervised laboratory instruction, exclusive of observation time, in a dual control automobile.

**26.2(2)** An approved driver education course shall include the following provisions:

a. Each student shall be scheduled to receive classroom and laboratory instruction each week of the course.

b. A minimum of 240 minutes of substance abuse education will be included in classroom instruction.

c. Classroom instruction shall be limited to a maximum of 120 minutes per student in a single day.

d. Behind-the-wheel instruction shall be limited to a maximum of 30 minutes per student per session and a maximum of 60 minutes in a single day.

e. Two or more students shall be scheduled for all behind-the-wheel instruction to ensure that appropriate observation time is experienced.

f. Approval of courses by the department of education must be obtained prior to the beginning of a course. Application forms are provided by the department.

g. Approval for an experimental program may be granted by a department division administrator if based on student or school district need for improved instruction. The maximum duration of an experimental program shall be three years. Annual documentation of the effectiveness of instruction is required and must be submitted subsequent to program completion.

h. Routine maintenance of motor vehicles to maximize energy efficiency and safety shall be included in classroom instruction.

i. Operation of motor vehicles to maximize energy efficiency and safety shall be included in classroom instruction.

j. Each school district shall provide students who are absent from instruction an opportunity to make up a reasonable amount of time and coursework.

**26.2(3)** Waiver provision. Rescinded IAB 12/16/98, effective 1/20/99.

**281—26.3(256) Time on driving simulators.** When simulators are used for part of the behind-the-wheel driving experiences, four hours of simulator experience shall be considered equal to one hour of behind-the-wheel driving in the car. However, in addition to simulator time, a minimum of three hours of on-street, behind-the-wheel driving must be attained.

**281—26.4(256) Driving ranges.** When driving ranges are used in driver education courses, two hours of range experience shall be considered equal to one hour of on-street, behind-the-wheel driving. However, in addition to range time, a minimum of three hours of on-street, behind-the-wheel driving must be attained.

**281—26.5(256) Dual controlled cars.** Motor vehicles which are designed primarily for carrying nine or fewer occupants, excluding motorcycles and mopeds, are the only motor vehicles approved for use in driver education courses and each shall be equipped with a dual brake control. In addition, all driver education vehicles shall have an inside rearview mirror and an outside rearview mirror mounted on each side of the vehicle.

**281—26.6(256) Instruction permit.** The driver education teacher shall verify at the beginning of each course that each student possesses a valid instruction permit or driver's license. Each student shall be responsible for possessing an instruction permit or driver's license throughout all laboratory instruction and report any suspension or revocation to the driver education teacher prior to attending laboratory instruction.

**281—26.7(256) Special minor's license.** The school board or superintendent of the applicant's resident school shall ensure that the following requirements are met prior to certifying a need exists for the issuance of the special minor's license.

**26.7(1)** The applicant lives one mile or more from the applicant's school of attendance. Distance to the school of attendance shall in all cases be measured on the public highway only, starting in the roadway opposite the private entrance to the residence of the applicant and ending in the roadway opposite the entrance to the school grounds.

**26.7(2)** The applicant for the minor's school license is enrolled in instructional programs or involved in extracurricular activities at the applicant's school of attendance that occur at such times that make it impossible to take advantage of the school transportation service, or that the school transportation service is not provided.

This rule is intended to implement Iowa Code section 321.194.

**281—26.8(256) Motorized bicycle rider education.**

**26.8(1) Course approval.** An approved course shall consist of a minimum of six clock hours of classroom instruction or completion of a classroom course which includes the instructional components contained in 26.12(2).

*a.* Motorized bicycle driving experiences in addition to classroom instruction are permissible, but not required.

*b.* Any school district, area education agency, merged area school, other agency or individual planning to offer a motorized bicycle education course, must receive course approval prior to beginning. Application and analysis forms are provided by the department of education.

- f. Possession of an Iowa driver's license validated for motorcycle operation.
- g. Number of years having taught motorcycle rider education courses.
- h. Number of beginning motorcycle rider education courses taught.
- i. Number of students trained.
- j. Personal interview with department personnel.

Approval of each grant is dependent upon an applicant's satisfying the expressed requirements of this chapter and the funding availability of the department. Failure to complete an approved course will result in forfeiture of the grant and requires that the funds be returned to the department within 30 days of the commencement of the course intended for attendance.

**26.9(7) Motorcycle rider education program reimbursement.** The sponsor of an approved motorcycle rider education program will be reimbursed annually for each student who completes the approved course. The department shall determine annually the reimbursement amount and inform all sponsors by February 1 each year.

Reimbursement recipients shall provide documentation as specified by the department and maintain records which comply with state of Iowa accounting procedures.

These rules are intended to implement Iowa Code sections 282.6, 321.178, and 321.189.

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CHAPTER 27  
IOWA INDUSTRIAL START-UP TRAINING PROGRAM  
Rescinded IAB 9/7/88

CHAPTERS 28 to 30  
Reserved



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CHAPTER 63  
EDUCATIONAL PROGRAMS AND SERVICES  
FOR PUPILS IN JUVENILE HOMES

[Prior to 9/7/88, see Public Instruction Department[670] Ch 42]

**281—63.1(282) Scope.** These rules apply to the provision of educational programs in juvenile shelter care homes and juvenile detention homes.

**281—63.2(282) Definitions.**

**63.2(1)** Special programs cited in 1999 Iowa Code section 282.30 shall be referred to as juvenile shelter care homes and juvenile detention homes, and shall be referred to jointly as juvenile homes.

**63.2(2)** For purposes of this chapter, “*school corporation*” shall refer to school districts, area education agencies, and community colleges.

**63.2(3)** For purposes of this chapter, “*aides*” shall refer to aides and para-educators as defined in Iowa Code section 272.12.

**281—63.3(282) Forms.**

**63.3(1)** The department of education shall provide forms to area education agencies (AEAs) for submitting program and budget proposals and for submitting claims. The annual dates for filing forms with the department of education are January 1 of the prior fiscal year for AEAs to submit program and budget proposals, and August 1 of the subsequent fiscal year for AEAs to file claims. The department of education shall review and approve or modify the program and budget proposals and shall notify the AEA by February 1.

**63.3(2)** The department of education shall also provide forms to AEAs for use by the juvenile homes requesting educational services. These forms must be filed with the AEA annually by December 1 of the fiscal year prior to the school year for which the services are being requested or 90 days prior to the beginning of the time for which the services are being requested if the facility is a newly established facility. An AEA shall file a budget amendment for a newly established juvenile home requesting educational services 90 days prior to the initial delivery of the educational services.

**281—63.4(282) Budget amendments.** An AEA shall amend the budget during the fiscal year in which actual classrooms implemented are different than budgeted or there is a significant decrease or increase in the student membership that would change the number of teachers or aides necessary to support the average daily membership. An amendment shall also be required if actual expenditures vary significantly from expenditures which were budgeted. A significant variance in actual expenditures means that the amount of funding which would be reverted to or due from the state equals or exceeds 10 percent of the advance payments in the subsequent year prior to adjustments.

**281—63.5(282) Area education agency responsibility.** An AEA shall provide or make provision for an appropriate educational program for each child living in the following types of facilities located within its boundaries:

1. An approved or licensed shelter care home, as defined in Iowa Code subsection 232.2(34).
2. An approved juvenile detention home, as defined in Iowa Code subsection 232.2(32).

The provision of the educational program shall be pursuant to a written agreement which identifies the responsibilities of the AEA, juvenile home, and any other agency with which the AEA contracts to provide the educational program.

**281—63.6(282) Educational program.**

**63.6(1) *Methods of program provision.*** The AEA may provide the educational program by one of the following:

- a. Enrolling the child in the child’s district of residence.

- b. Obtaining the course of study of the child's district of residence for use in the juvenile home where the child is living.
- c. Enrolling the child in the district where the child is living.
- d. Enrolling the child in the educational program provided in the juvenile home.
- e. A delivery method not encompassed by "a" through "d" immediately preceding, with approval of the department of education.

In accordance with Iowa Code section 273.2, an AEA shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

**63.6(2) Final determination.** In the absence of a decision of a court regarding a child's educational placement, the AEA where the child is living shall make the final determination regarding the provision of the appropriate educational program for the child, in consultation with the district of residence of the child and with the juvenile home. In making this determination, consideration shall be given to:

- a. A preference for continuance of the child's educational program that was in place prior to the child's placement in the home.
- b. Placement into the least restrictive environment.
- c. Development of a plan for future educational programming.
- d. The provisions of the court order if the child was placed in the facility by a court.
- e. Factors including, but not limited to, the child's emotional or physical state, the child's safety and the safety of others, the child's identified or assessed academic abilities, and the projected duration of stay in the home.

**63.6(3) Cooperation with area education agency.** The AEA of the child's district of residence, the school district of residence, the school district in which the home is located, other AEAs, the juvenile home and other appropriate agencies involved with the care or placement of the child shall cooperate with the AEA where the child is living in sharing educational information, textbooks, curriculum, assignments, and materials in order to plan and to provide for the appropriate education of the child living in the home and to grant academic credit to the child for instructional time earned upon discharge from the home.

**63.6(4) Summer school programs.** Summer school programs, as distinguished from extended year programming, may be operated pursuant to Iowa Code subsection 282.31(5), and shall be considered as separate programs in each home. The fiscal year for a juvenile home program is from July 1 through June 30. Program and budget proposals submitted to the department of education prior to January 1, pursuant to Iowa Code section 282.31, may include requests for summer school programs, or portions of summer school programs, commencing July 1 of the subsequent fiscal year and summer school programs, or portions of summer school programs, ending June 30 of the subsequent fiscal year.

**281—63.7(282) Special education.** The AEA shall establish policies and procedures for screening and evaluating students living in juvenile homes who may require special education.

**63.7(1) Assignment.** A diagnostic-educational team shall be assigned by the AEA in which each program is located. This diagnostic-educational team shall include individuals who are appropriately qualified to conduct special education evaluations and to assist in planning programs for students who are provided a special education program pursuant to an individualized education program (IEP).

**63.7(2) Duties.** The duties of this diagnostic-educational team shall include the screening of all students for potential special education needs, identifying children in need of special education, providing needed special education support services and assisting in the implementation of needed special education programs.

**63.7(3) Role of director of special education.** It is the responsibility of the AEA director of special education to ensure that all procedures related to due process, protection in evaluation, least restrictive environment, development of individual educational programs and other requirements specified in 281—Chapter 41 are adhered to for students provided a special education program pursuant to an IEP who are served in juvenile homes. In addition, the director is responsible for coordinating the activities of the special education program with other programs and services provided.

**281—63.19(282) Claims.** AEAs shall submit program and budget proposals and claims consolidating all juvenile home education programs within each AEA. Certain program information may be required for each separate juvenile home.

The number of classrooms being provided by each AEA shall be reported on the budget proposals and claims. The number is to be expressed in terms of full-time equivalent (FTE) classrooms. One FTE represents a full-time teacher providing a program during the normal school year. One-tenth FTE shall be added for each month of summer school taught on a daily full-time basis. A full school year and three months of summer school is calculated as 1.3 FTE.

Pursuant to Iowa Code section 294.4, each teacher shall keep a daily register which shall include the name, age, attendance, and enrollment status of each student.

The average daily membership of students of school age living in juvenile homes who are being provided an educational program shall be reported on the budget proposals and claims. "*Average daily membership (ADM)*" shall mean the average obtained by dividing the total of the aggregate days of attendance plus the aggregate days of absence by the total number of student contact days. Student contact days are the days during which the educational program is provided and students are under the guidance and instruction of the instructional professional staff. "*Aggregate days*" means the sum of the number of days of attendance and days of absence for all pupils who are enrolled during the school year. A student shall be considered enrolled after being placed in a juvenile home and taking part in the educational program. A student is considered to be in membership from the date of enrollment until the date of leaving the juvenile home or receiving a high school diploma or its equivalent, whichever occurs first. ADM shall be calculated on the regular school year exclusive of summer session. School age is defined pursuant to Iowa Code chapter 282.

**281—63.20(282) Audits.** AEAs must make the records related to providing educational services for juvenile homes available to independent auditors, state auditors and department of education staff on request.

**281—63.21(282) Waivers.** A waiver may be requested by an AEA which presents evidence of a need for a different configuration of expenditures under paragraph 63.18(1)"d," 63.18(3)"a," 63.18(3)"b," 63.18(3)"e," or 63.18(3)"g," or subrule 63.18(4) or 63.18(5). The AEA must annually request the waiver and must include the waiver request and the evidence required by this rule with the program and budget proposal or budget amendment submitted pursuant to rule 63.3(282) or rule 63.4(282). An approved waiver related to rent payment to the juvenile home does not require an annual waiver request except in any year that the rental contract terms change from the rental contract terms in the previous year.

If the department denies a waiver request, the AEA which was denied may request within ten days of notification of the denial that the director of the department of education review the denial of the waiver request.

It is the intent of the department of education to waive requirements only when it is determined that they would result in unequal treatment of the AEAs or cause an undue hardship to the requesting AEA and the waiver clearly is in the public interest.

These rules are intended to implement Iowa Code sections 282.30 as amended by 2000 Iowa Acts, Senate File 2294, and 282.31.

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\*Effective date of 63.18(4) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000; delay lifted by the Committee at its meeting held April 7, 2000, effective April 8, 2000.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It highlights the importance of using reliable sources and ensuring the accuracy of the information gathered.

3. The third part of the document focuses on the interpretation and analysis of the collected data. It discusses the various statistical tools and techniques used to identify trends and patterns in the data.

4. The fourth part of the document discusses the importance of communicating the findings of the research. It emphasizes the need for clear and concise reporting that is accessible to a wide range of stakeholders.

5. The fifth part of the document discusses the various challenges and limitations associated with data collection and analysis. It highlights the need for careful planning and execution to ensure the success of the research.

6. The sixth part of the document discusses the importance of ethical considerations in research. It emphasizes the need for transparency, honesty, and respect for the rights and privacy of all individuals involved in the study.

7. The seventh part of the document discusses the various applications and uses of the collected data. It highlights the importance of using the data to inform decision-making and improve organizational performance.

8. The eighth part of the document discusses the various methods and techniques used to ensure the reliability and validity of the data. It highlights the importance of using standardized procedures and ensuring the accuracy of the information gathered.

9. The ninth part of the document discusses the various challenges and limitations associated with data collection and analysis. It highlights the need for careful planning and execution to ensure the success of the research.

10. The tenth part of the document discusses the importance of ethical considerations in research. It emphasizes the need for transparency, honesty, and respect for the rights and privacy of all individuals involved in the study.

11. The eleventh part of the document discusses the various applications and uses of the collected data. It highlights the importance of using the data to inform decision-making and improve organizational performance.

CHAPTER 69  
WAIVER OF SCHOOL BREAKFAST PROGRAM REQUIREMENT

DIVISION I

**281—69.1(283A) General statement.** Applications for waiver of the requirement that all school districts shall operate or provide for the operation of school breakfast programs at all public schools in each district effective July 1, 1999, until July 1, 2000, are subject to approval by the state board of education as provided in Iowa Code section 283A.2(3).

**281—69.2(283A) Definitions.** For purposes of clarity, the following definitions are used throughout this chapter:

“*Department*” means the state department of education.

“*Nutritionally adequate meal*” means a lunch or breakfast which meets the minimum criteria for eligibility for federal reimbursement under the federal National School Lunch Act of 1946 and the federal Child Nutrition Act of 1966.

“*School*” means a public school of high school grade or under.

“*School board*” means a board of school directors regularly elected by the registered voters of a school corporation or district of the state of Iowa.

“*School breakfast or lunch program*” means a program under which breakfasts or lunches are served by any public school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.

**281—69.3(283A) Institutions impacted.** Iowa Code section 283A.2 states that all public school districts shall operate or provide for the operation of school breakfast programs at all public schools in each district beginning with the July 1, 1999, school year unless the state board of education has granted a waiver. Under Iowa Code section 283A.2(3), waivers are only available for the 1999-2000 school year.

**281—69.4(283A) Criteria for applying for a waiver.** Each school or school district unable to meet the requirement to provide a school breakfast program may file, not later than June 1, 1999, for the school year beginning July 1, 1999, on forms provided by the department, a written request to the state board of education for a waiver of the breakfast program requirement for the school or school district.

The written request for waiver shall be made by the school district for the entire district or for one or more schools within the district. The waiver request shall include the following components:

1. The name(s) of the school or school district applying for the waiver, agreement number, contact person, and telephone number.
2. The reason(s) for which the waiver is being requested and corresponding documentation.
3. The percentage of students in attendance at the school during the month of March 1999 who were eligible for free or reduced price meals.
4. Signatures of the president of the local school board, the school food authority, and the superintendent.

**281—69.5(283A) Approval of waiver applications.** The department shall receive all requests for waiver of the breakfast program requirement. The department will evaluate the requests and make recommendation for approval or denial based on the criteria established by the state board of education. The state board of education will approve or deny all waiver requests. The criteria for evaluating the waiver request shall include the following:

1. Required components including sufficient detail to justify the reason for the waiver request.
2. Documentation that less than 35 percent of the students in attendance at the school during the month of March 1999 were eligible for free or reduced price meals under the federal National School Lunch Act of 1946 and the federal Child Nutrition Act of 1966.
3. A valid reason for requesting a waiver:
  - A breakfast program was implemented in this facility during the 1997-98 or 1998-99 school year and participation was less than 15 percent of enrollment, or
  - A survey was conducted of all households in the school's attendance area within the past year and less than 25 percent expressed interest in participating in a breakfast program, or
  - The district school food service program is operating with a negative balance, or
  - A breakfast program is offered to all students in the district although a breakfast program is not available in all school buildings, or
  - Any other circumstance as determined by the state board that warrants the granting of the waiver request.

**281—69.6(283A) Notification.** The department will notify school districts if the request for waiver of the school breakfast program requirement for the school year beginning July 1, 1999, has been approved or denied. The notification will be mailed within ten working days of the decision by the state board of education.

**281—69.7(283A) Schools granted a waiver from the school breakfast program requirement.** School districts granted a waiver for the school year beginning July 1, 1999, shall be required to file a plan for implementing the required breakfast program for the following school year. The written plan shall be on file with the department no later than May 31, 2000.

**281—69.8(283A) Appeal of waiver denial.** A decision by the state board of education to deny a waiver is final. Any applicant may appeal the denial of a properly submitted waiver application to district court under the provisions of Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 283A.2.

**281—69.9 and 69.10** Reserved.

DIVISION II  
ACCESS TO A SCHOOL BREAKFAST PROGRAM  
(Effective July 1, 2000)

**281—69.11(283A) General statement.** Effective July 1, 2000, a school district shall operate or provide for the operation of a school breakfast program at all attendance centers in the district or provide access to a school breakfast program at an alternative site if the district meets the criteria established in 69.14(283A).

**281—69.12(283A) Definitions.** The following definitions are used in these rules:

“*Attendance center*” means a public school of high school grade or under.

“*Department*” means the state department of education.

“*Nutritionally adequate breakfast*” means a meal which meets the minimum criteria for eligibility for federal reimbursement under the federal National School Lunch Act of 1946 and the federal Child Nutrition Act of 1966.

“*School board*” means a board of school directors regularly elected by the registered voters of a school corporation or district of the state of Iowa.

“*School breakfast program*” means a program under which breakfasts are served by any public school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.

**281—69.13(283A) Institutions impacted.** Iowa Code Supplement section 283A.2 states that a school district shall operate or provide for the operation of school breakfast programs serving nutritionally adequate breakfasts at all attendance centers in the district. However, a school district that meets the requirements of rules 69.14(283A) through 69.16(283A) may provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program.

**281—69.14(283A) Criteria for a plan to provide safe, reasonable student access to a school breakfast program.** A school board that wishes to provide safe, reasonable student access to a school breakfast program, rather than operate or provide for the operation of a school breakfast program at a specific attendance center within the district, shall develop an alternative site plan to operate the school breakfast program at another attendance center or other site within the school district and shall annually certify to the department that the plan meets the following criteria:

1. Provides safe travel routes to and from the alternative breakfast site for all eligible students.
2. Minimizes student travel time between the student’s attendance center and the alternative breakfast site.
3. Provides for a reasonable relationship between the time breakfast is offered, the time the student is required to arrive at the attendance center and alternative site, and the daily school start time.
4. Provides an alternative breakfast site facility adequate for the number of students participating in the breakfast program.

**281—69.15(283A) Notification requirements.** The school board that wishes to provide access to a school breakfast program in accordance with this provision shall notify the parent, guardian, or legal or actual custodian of a child enrolled in the school district of the school district’s intention to develop and implement a plan to provide school breakfast programs only in certain attendance centers or other sites. At any time in which the school district proposes to make substantive changes to a plan certified with the department, the notification requirements of this rule shall apply.

**281—69.16(283A) Certification requirements.** The school board shall annually certify to the department that the plan meets the criteria outlined in rule 69.14(283A). The certification shall be submitted to the department of education, on forms provided, not later than May 1 each year for the school year beginning July 1. Any changes to the plan requiring a new notification must be certified with the department within 30 days of adoption of the new plan.

These rules are intended to implement Iowa Code Supplement section 283A.2 and 2000 Iowa Acts, House File 2549.

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CHAPTER 83  
BEGINNING TEACHER INDUCTION PROGRAM

**281—83.1(256E) Purpose.** The beginning teacher induction program is available to Iowa school districts as a means to promote excellence in teaching, build a supportive environment within school districts, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers.

**281—83.2(256E) Definitions.** For the purpose of these rules, the following definitions shall apply:  
“*Beginning teacher*” means an individual serving under an initial provisional or conditional license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a classroom teacher new to the profession of teaching.

“*Board*” means the board of directors of a school district or a collaboration of boards of directors of school districts.

“*Classroom teacher*” means an individual who holds a valid practitioner’s license under Iowa Code chapter 272 and who is employed under a teaching contract with a school district or area education agency in the state of Iowa.

“*Department*” means the department of education.

“*District facilitator*” means a professional licensed in Iowa who is appointed by a board to serve as the liaison between the board and the department for the beginning teacher induction program.

“*Mentor*” means an individual who holds a valid practitioner’s license under Iowa Code chapter 272 and who is employed under a teaching contract with a school district or area education agency in the state of Iowa. This individual has been selected and trained to be a mentor. The individual must have a record of four years of successful teaching practice, must be employed as a classroom teacher on a nonprobationary basis, and must demonstrate professional commitment to the improvement of teaching and learning, and the development of beginning teachers.

“*School district*” means a public school district.

**281—83.3(256E) Program requirements.**

**83.3(1) Area education agency models.** An area education agency shall prepare a model beginning teacher induction program plan and shall provide the model plan to each school district within its area. The plan shall include a model evaluation component by which a school district may measure the effectiveness of its program. The area education agency shall be responsible for monitoring effective practices, integrating those effective practices into the model, and continually updating the model based on those practices. The model shall include the components contained in the state-funded induction program.

**83.3(2) Eligibility.** All school districts are eligible to apply for funding. School districts eligible for the beginning induction program shall meet all of the following:

a. *District plan.* A school district that wishes to participate in the program shall have the board adopt a beginning teacher induction program plan and written procedures for the program. At the board’s discretion, the district may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district written induction program shall include, but are not limited to, the following:

- (1) Goals for the program.
- (2) A process for the selection of mentors.
- (3) A description of the mentor training process which shall:
  1. Be consistent with effective staff development practices and adult professional needs.
  2. Describe mentor needs, indicating a clear understanding of the role of the mentor.
  3. Demonstrate the mentor’s understanding of the needs of new teachers.

4. Demonstrate the mentor's understanding of the district expectations for all teachers.
5. Facilitate the mentor's ability to provide guidance and support to new teachers.
- (4) A description of the supportive organizational structure for beginning teachers which shall include:
  1. The activities that shall provide access and opportunities for interaction between mentor and beginning teacher.
  2. The identification of who will be in the mentor/beginning teacher partnership.
  3. Supportive actions of the district.
  4. The name of the district facilitator.
- (5) The evaluation process for the program, which shall include:
  1. The periodic assessment and monitoring of the mentor and beginning teacher program to address both summative and formative evaluation strategies.
  2. District participation in the state evaluation of the beginning teacher induction program.
  3. Evaluation strategies which shall include an evaluation of the district program goals, an evaluation process that provides for the minor and major program revisions and a process for how information about the program will be provided to interested stakeholders.
  - (6) The process for dissolving mentor and beginning teacher partnerships.
  - (7) A plan that reflects the needs of the beginning teacher employed by the district.
  - (8) Activities recommended to meet the needs of beginning teachers. Examples include:
    1. Managing the classroom.
    2. Acquiring information about the school system.
    3. Obtaining instructional resources and materials.
    4. Planning, organizing, and managing instruction and other professional responsibilities.
    5. Assessing students and evaluating student progress.
    6. Motivating students.
    7. Using effective teaching methods.
    8. Dealing with individual students' needs, interests, abilities, and problems.
    9. Communicating and collaborating with colleagues, including administrators, supervisors, and other teachers.
  10. Communicating with parents.
  11. Adjusting to the teaching environment and role.
  12. Receiving emotional support.
- (9) Budget.
  - b. *District facilitator.* A district must engage a board-appointed facilitator. Duties of the facilitator shall include, but not be limited to, the following:
    - (1) Submits the proposed board plan and proposed costs to the board and the department.
    - (2) Oversees the implementation of the board plan.
    - (3) Ensures that the plan meets the goals of the program as set forth in the board plan.
    - (4) Works collaboratively with the area education agency and postsecondary institutions in preparation and implementation of the board plan.
    - (5) Places beginning teachers participating in the program in a manner that provides the opportunity to work with at least one mentor. Whenever possible, there should be opportunities to work with other mentors in the district.
    - (6) Acts as a liaison between the district and the department.
    - (7) Submits the annual report on program results to the department.

**281—83.4(256E) Program approval.** Any district participating in the state-funded induction program must submit an application according to the components established in these rules. Programs shall be awarded a maximum of 425 points according to the following criteria:

1. Readiness summary—40 points. The readiness summary is evidence that the district is prepared to implement the program. The summary should describe the district's ability to make this program a success and the partnerships the district has or plans to develop with area education agency, community college, or other institution of higher education.
2. Abstract—20 points. The abstract is a detailed summary of the proposal. It may be shared with the department and others and may be used for annual reporting purposes.
3. District plan—300 points. The requirements for the plan are included in rule 83.3(256E).
4. Budget—25 points. The budget requirements are included in rule 83.6(256E).
5. Timeline—20 points. The timeline shall provide for the implementation of the program and be reflective of the period the applicant is utilizing the funds requested, not to exceed June 30, 2001.

**281—83.5(256E) Funding for approved programs.** The process to be followed in determining the amount of funds to be approved for this competitive program grant will be described in the grant application. The review criteria and point allocation for each criterion will also be described in the grant application material. The membership of the funding review committee shall be determined by the appropriate division administrator. Members shall, at minimum, include representatives from local school districts, area education agencies, and institutions of higher education. The review committee members shall allocate points per review criterion in rule 83.3(256E). In the event the number of approved programs exceeds available funding, the department will award grants based on the district population of the school districts with approved plans. A district may receive funding for subsequent years if it has an approved plan on file with the department and also submits any additional program improvements or updates that have been implemented by the district.

**281—83.6(256E) Beginning teacher induction program budget.** Funds received by a school district from the beginning teacher induction program shall be used for any or all of the following purposes:

1. To pay mentors as they implement the plan. A mentor in a beginning teacher induction program approved under this chapter shall be eligible for an award of \$500 per semester, at a minimum, for full participation in the program.
2. To provide for a stipend for the district facilitator.
3. To pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system for a pension and annuity retirement system established under Iowa Code chapter 294 for such amounts paid by the district.

These funds are miscellaneous funds or are considered encumbered. A school district shall maintain a separate listing within its budget for payments received and expenditures made for this program. Funds that remain unencumbered or unobligated at the end of the fiscal year will not revert, but will remain available for expenditure for the purposes of the program until the close of the succeeding fiscal year.

**281—83.7(256E) Appeal of grant denial or termination.** Any applicant for beginning teacher induction program grant funds may appeal the denial of a properly submitted competitive program grant application or the unilateral termination of a competitive program grant to the director of the department. Appeals must be in writing and received within ten working days of the date of the notice of decision and must be based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The hearing and appeal procedures found in 281—Chapter 6 that govern the director's decisions shall be applicable to any appeal of denial or termination. In the notice of appeal, the grantee shall give a short and plain statement of the reasons for the appeal. The director shall issue a decision within a reasonable time, not to exceed 60 days from the date of the hearing.

**281—83.8(256E) Annual report.** The board implementing an approved beginning teacher induction program will submit an assessment of the evaluation strategies on forms secured from the department by each July 1 of the fiscal year succeeding the year in which the school district received funding. Each district receiving funding must report the results of the state evaluation. The department will annually report the statewide results of the program to the chairpersons and ranking members of the senate and house education committees by January 1.

These rules are intended to implement Iowa Code Supplement chapter 256E as amended by 2000 Iowa Acts, Senate File 2452, section 25.

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TITLE XVI  
SCHOOL FACILITIES

CHAPTER 96  
LOCAL OPTION SALES AND SERVICES TAX FOR SCHOOL INFRASTRUCTURE

**281—96.1(422E) Definitions.** For purposes of these rules, the following definitions shall apply:

*“Actual enrollment”* means the number of students each school district certifies to the department by October 1 of each year in accordance with Iowa Code section 257.6, subsection 1.

*“Base year”* means the school year ending during the calendar year in which the budget is certified.

*“Combined actual enrollment”* means the sum of the students in each school district located in whole or in part in a county who are residents of that county as determined by rule 96.2(422E).

*“Department”* means the state department of education.

*“Nonresident student”* means a student enrolled in a school district who does not meet the requirements of a resident as defined in Iowa Code section 282.1.

*“Resident student”* means a student enrolled in a school district who meets the requirements of a resident as defined in Iowa Code section 282.1.

*“Sales tax”* means a local option sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 422E.

*“School district”* means a public school district in Iowa accredited by the state department of education.

**281—96.2(422E) Reports to the department.** Each school district shall report the following to the department on forms and in the manner prescribed by the department.

**96.2(1) *First year of taxation in fiscal year 2000-2001.*** Within 10 days after an election in a county where a sales tax has been adopted which is effective on January 1, 2001, each school district within the county shall report to the department the actual enrollment of the school district in September 1999 by county of residency. The department shall forward the actual enrollment to the department of management within 15 days of receipt.

**96.2(2) *Reporting by county of residency.*** Each school district shall, by October 1, annually report the school district’s actual enrollment by the student’s county of residency according to the following:

*a. County of residency.* The county of residency for each of the following students shall be the county of residency of the student’s parent or guardian:

(1) Resident students who were enrolled in the school district in grades kindergarten through 12 and including prekindergarten students enrolled in special education programs;

(2) Full-time equivalent resident students of high school age for whom the school district pays tuition to attend an Iowa community college;

(3) Shared-time and part-time students of school age enrolled in the school district;

(4) Eleventh and twelfth grade nonresident students who were residents of the school district during the preceding school year and are enrolled in the school district until the students graduate;

(5) Resident students receiving competent private instruction from a licensed practitioner provided through a public school district pursuant to Iowa Code chapter 299A; and

(6) Resident students receiving competent private instruction under dual enrollment pursuant to Iowa Code chapter 299A.

b. *Emancipated minor.* The county of residency for an emancipated minor attending the school district shall be the county in which the emancipated minor is living.

c. *County of residency unknown.* If a school district cannot determine an enrolled student's county of residency, the county of residency shall be the county in which the school district certifies its budget.

**281—96.3(422E) Combined actual enrollment.** By March 1, annually, the department shall forward to the department of management the actual enrollment and the actual enrollment by the student's county of residency for each school district located in whole or in part in a county where a sales tax has been imposed and the combined actual enrollment for that county.

These rules are intended to implement Iowa Code chapter 422E and 2000 Iowa Acts, Senate File 2447.

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# INSPECTIONS AND APPEALS DEPARTMENT[481]

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CHAPTER 8  
LICENSING ACTIONS FOR NONPAYMENT OF CHILD SUPPORT  
AND STUDENT LOAN DEFAULT/NONCOMPLIANCE  
WITH AGREEMENT FOR PAYMENT OF OBLIGATION

**481—8.1(252J) Certificates of noncompliance.** The department shall suspend, revoke, or deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the rules in this chapter shall apply.

**8.1(1)** The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with R.C.P. 56.1. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

**8.1(2)** The effective date of the revocation or suspension of a license, or denial of the issuance or renewal of a license as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant or licensee.

**8.1(3)** The department director or designee of the director is authorized to prepare and serve the notice as required by Iowa Code section 252J.8 upon the applicant or licensee.

**8.1(4)** Licensees and license applicants shall keep the department informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the department copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**8.1(5)** All department fees for license applications, license renewal or reinstatement must be paid by licensees or applicants before a license will be issued, renewed or reinstated after the department has denied the issuance or renewal of a license, or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

**8.1(6)** A licensee or applicant may file an application with the district court within 30 days of service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9.

*a.* The filing of the application shall stay the department action until the department receives a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

*b.* For purposes of determining the effective date of the revocation or suspension, or denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**8.1(7)** The department shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the department deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license or the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee when the license is issued, renewed, or reinstated following the department's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapter 252J.

**481—8.2(261) Student loan default/noncompliance with agreement for payment of obligation.**

**8.2(1) Definitions.** For the purposes of these rules, the following definitions shall apply.

*"Certificate of noncompliance"* means written certification from the college student aid commission to the licensing authority certifying that the licensee has defaulted on an obligation owed to or collected by the commission.

*"Commission"* means the college student aid commission.

*"Department"* means department of inspections and appeals.

*"Licensing authority"* means the department of inspections and appeals.

**8.2(2) Denial of issuance or renewal of a license.** The department shall deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to the procedures contained in those sections, the following shall apply:

a. In order to process the certificate of noncompliance received by the department, the department will maintain records of licensees by name, current known address and social security number.

b. Upon receipt of a certificate of noncompliance duly issued by the commission, the department shall initiate procedures for denial of issuance or renewal of a license.

c. The notice required by Iowa Code section 261.126(4) shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

d. The department's notice referred to in Iowa Code section 261.126(4) shall state all of the following:

(1) The licensing authority intends to deny issuance or renewal of an applicant's/licensee's license due to the receipt of a certificate of noncompliance from the commission.

(2) The applicant/licensee must contact the commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

(3) Unless the commission furnishes a withdrawal of a certificate of noncompliance to the licensing authority within 30 days of the issuance of the notice under 8.2(2)"c," the applicant's/licensee's license or application shall be denied.

e. The applicant or licensee served with a notice under 8.2(2)"c" shall not have a right to a hearing before the department but may request a court hearing pursuant to Iowa Code section 261.127. Such court hearing must be requested within 30 days of providing notice.

f. The effective date of the denial of the issuance or renewal of a license, as specified in the notice under 8.2(2)"c" and required by Iowa Code section 261.126(4), shall be 60 days following service of the notice upon the applicant or licensee.

g. The department is authorized to prepare and serve the notice required by Iowa Code section 261.126(4) upon the applicant or licensee.

h. All department fees required for application, license renewal, or license reinstatement must be paid by an applicant or licensee and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the department has denied the issuance or renewal of a license pursuant to Iowa Code sections 261.121 to 261.127.

i. In the event an applicant or licensee timely files a district court action following service of a department notice pursuant to Iowa Code section 261.126(4), the department shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

j. Upon the filing of a district court action, the applicant or licensee shall promptly file with the department a copy of the petition filed with the district court. In addition, the applicant or licensee shall provide the department with copies of all court orders and rulings entered in such action, including copies of any order entered dismissing the action, and shall provide such copies to the department within seven days of the action taken by the district court.

k. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**481—8.3(261) Suspension or revocation of a license.** The department shall suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to the provisions contained in those sections, the following shall apply:

**8.3(1)** In order to process the certificate of noncompliance received by the department, the department will maintain records of licensees by name, current known address and social security number.

**8.3(2)** Upon receipt of a certificate of noncompliance duly issued by the commission, the department shall initiate procedures for suspension or revocation of a license.

**8.3(3)** The notice required by Iowa Code section 261.126(4) shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rules of Civil Procedure. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

**8.3(4)** The department's notice referred to in Iowa Code section 261.126(4) shall state all of the following:

*a.* The licensing authority intends to suspend or revoke an applicant's/licensee's license due to the receipt of a certificate of noncompliance from the commission.

*b.* The applicant/licensee must contact the commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

*c.* Unless the commission furnishes a withdrawal of a certificate of noncompliance to the licensing authority within 30 days of the issuance of the notice under subrule 8.3(3), the applicant's/licensee's license shall be revoked or suspended.

**8.3(5)** The applicant or licensee served with a notice under subrule 8.3(3) shall not have a right to a hearing before the department but may request a court hearing pursuant to Iowa Code section 261.127. Such court hearing must be requested within 30 days of providing notice.

**8.3(6)** The effective date of suspension or revocation of the license, as specified in the notice required under subrule 8.3(3) and required by Iowa Code section 261.126(4), shall be 60 days following service of the notice upon the applicant or licensee.

**8.3(7)** The department is authorized to prepare and serve the notice required by Iowa Code section 261.126(4) upon the licensee.

**8.3(8)** All department fees required for application, license renewal, or license reinstatement must be paid by the applicant or licensee and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the department has revoked or suspended a license pursuant to Iowa Code sections 261.121 to 261.127.

**8.3(9)** In the event an applicant or licensee timely files a district court action following service of a department notice pursuant to Iowa Code section 261.126(4), the department shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

**8.3(10)** Upon the filing of a district court action, the applicant or licensee shall promptly file with the department a copy of the petition filed with the district court. In addition, the applicant or licensee shall provide the department with copies of all court orders and rulings entered in such action, including copies of any order entered dismissing the action, and shall provide such copies to the department within seven days of the action taken by the district court.

**8.3(11)** For purposes of determining the effective date of the denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

These rules are intended to implement Iowa Code chapter 252J and Iowa Code sections 261.121 to 261.127.

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## MEDICAL EXAMINERS BOARD[653]

[Prior to 5/4/88, see Health Department[470], Chs 135 and 136, renamed Medical Examiners Board[653] under the "umbrella" of Public Health Department[641] by 1986 Iowa Acts, ch 1245]

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CHAPTER 14  
LICENSURE OF ACUPUNCTURISTS

**653—14.1(148E) Purpose.** The licensure of acupuncturists is established to ensure that practitioners are qualified to provide Iowans with safe and healthful care. The provisions of Iowa Code chapters 147, 148E and 272C authorize the board of medical examiners to establish examination requirements for licensure; evaluate the credentials of applicants for licensure (147.2, 148E.3); grant licenses to qualified applicants (148E.2); institute continuing education requirements (272C.2); investigate complaints and reports alleging that licensed acupuncturists violated statutes and rules governing the practice of acupuncture (147.55, 148E.6); and discipline licensed acupuncturists found guilty of infractions as provided in state law and board rules (147.55, 148E.6).

**653—14.2(148E) Licensure exceptions.** In accordance with Iowa Code section 148E.3, the following rules govern those persons engaged in the practice of acupuncture not otherwise licensed by the state to practice medicine and surgery, osteopathy, osteopathic medicine and surgery, chiropractic, podiatry, or dentistry. A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the board as one that leads to eligibility for licensure is not required to obtain a license.

**653—14.3(148E) Definitions.**

*“Acupuncture”* means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

*“Applicant”* means a person not otherwise authorized to practice acupuncture under Iowa Code section 148E.3 who applies to the board for a license.

*“Board”* means the board of medical examiners established in Iowa Code chapter 147.

*“Committee”* means the license and examination committee of the board with oversight responsibility for administration of the licensure of acupuncturists.

*“Current registrant”* means a person who is registered to practice acupuncture in Iowa and who submits an application for licensure within 60 days of receiving an application from the board by certified mail. A current registrant may practice acupuncture in Iowa until the board issues or denies a license.

*“Department”* means the Iowa department of public health.

*“Disclosure sheet”* means the written information licensed acupuncturists must provide to patients on initial contact.

*“Disposable needles”* means presterilized needles that are discarded after initial use pursuant to Iowa Code section 148E.5.

*“English proficiency”* means sufficient knowledge of the English language as evidenced by achieving a passing score on one of the following examinations:

1. TOEFL, the Test of English as a Foreign Language administered by the Educational Testing Service.
2. TOEIC, the Test of English for International Communication administered by the Educational Testing Service.
3. TSE, the Test of Spoken English administered by the Educational Testing Service.

*“Former registrant”* means a person whose acupuncture registration has lapsed or a person who did not apply for licensure within 60 days of receiving an application from the board by certified mail. A former registrant is not in good standing to practice acupuncture in Iowa.

“License” means a license issued by the board pursuant to Iowa Code section 148E.2.

“Licensed acupuncturist” or “licensee” means a person holding a license to practice acupuncture granted by the board under the provisions of Iowa Code chapter 148E.

“National Commission for the Certification of Acupuncturists” means the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM).

“Practice of acupuncture” means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.

“Professional development activity (PDA)” means any activity for the purpose of continuing a person’s education that is defined and approved by NCCAOM. One PDA point equals one hour of continuing education.

#### **653—14.4(147,148E) Eligibility for licensure.**

**14.4(1) Eligibility requirements for those who apply after July 1, 2001.** To be licensed to practice acupuncture by the board, a person shall meet all of the following requirements:

- a. Fulfill all the application requirements, as specified in 14.5(147,148E).
- b. Hold current active status as a diplomate in NCCAOM.
- c. Demonstrate sufficient knowledge of the English language to understand and be understood by patients and board and committee members.

(1) An applicant who passed the NCCAOM written and practical examination components in English may be presumed to have sufficient proficiency in English.

(2) The board may, at the recommendation of the committee, choose any of the following examinations to test the English proficiency of any applicant: TOEFL, TOEIC, or TSE.

d. Successfully complete a three-year postsecondary training program or acupuncture college program which is accredited by, in candidacy for accreditation by, or which meets the standards of, the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

- e. Successfully complete a course in clean needle technique approved by the NCCAOM.

**14.4(2) Eligibility requirements for current registrants.** To continue practicing and to be licensed to practice acupuncture by the board, a registrant shall meet all of the following requirements within 60 days of receiving the application by certified mail:

- a. Fulfill all the application requirements, as specified in 14.5(147,148E).
- b. Provide documented evidence of current active status as a diplomate in NCCAOM.
- c. Provide documented evidence of successful completion of a course in clean needle technique approved by NCCAOM.

**14.4(3) Eligibility requirements for former registrants who apply before July 1, 2001.** To be licensed to practice acupuncture by the board, a former registrant shall meet all of the following requirements by July 1, 2001:

- a. Fulfill all the application requirements, as specified in 14.5(147,148E).
- b. Provide documented evidence of current active status as a diplomate in NCCAOM.
- c. Provide documented evidence of successful completion of a course in clean needle technique approved by NCCAOM.

- d. Refrain from practice until a license is issued.

**14.4(4) Eligibility requirements for individuals who apply before July 1, 2001, and who have not been registrants.** To be licensed to practice acupuncture by the board, a person shall meet all of the following requirements:

- a. Fulfill all the application requirements, as specified in 14.5(147,148E).
- b. Provide documented evidence of current active status as a diplomate in NCCAOM.
- c. Provide documented evidence of successful completion of an acupuncture degree program approved by the board or an apprenticeship or tutorial program approved by the board.
- d. Demonstrate sufficient knowledge of the English language to understand and be understood by patients and board and committee members.

(1) An applicant who passed the NCCAOM written and practical examination components in English may be presumed to have sufficient proficiency in English.

(2) The board may, at the recommendation of the committee, choose any of the following examinations to test the English proficiency of any applicant: TOEFL, TOEIC, or TSE.

e. Provide documented evidence of successful completion of a course in clean needle technique approved by the NCCAOM.

**14.4(5) Eligibility time limits.** Registrants have a limited time in which to become licensees.

a. Current registrants shall submit a completed application showing compliance with these eligibility requirements within 60 days of receiving the application by certified mail in order to continue practicing. A current registrant who fails to submit an application for licensure in this period shall cease practice by October 31, 2000.

(1) The board shall determine within 30 days of receiving an application for licensure if the current registrant meets the requirements in 14.4(147,148E) and 14.5(147,148E).

(2) If the current registrant meets the requirements in 14.4(147,148E) and 14.5(147,148E), the board shall issue a license that will expire October 31, 2002, and the registration is no longer valid.

(3) If the current registrant does not meet the requirements in 14.4(147,148E) and 14.5(147,148E), the board shall deny the license and shall invalidate the acupuncture registration. The individual may no longer practice acupuncture in Iowa after November 15, 2000.

(4) Current registrants who do not apply in the 60-day period must discontinue practice until they submit an application and the board approves them for licensure.

b. Former registrants shall be eligible for licensure if they submit a completed application showing compliance with 14.4(147,148E) and 14.5(147,148E) by July 1, 2001.

(1) Former registrants shall not practice acupuncture until the board issues an acupuncture license.

(2) The board shall determine within 30 days of receiving an application for licensure if the former registrant meets the requirements in 14.4(147,148E) and 14.5(147,148E). If so, the board shall issue the license to practice acupuncture.

(3) If the former registrant does not meet the requirements in 14.4(147,148E) and 14.5(147,148E), the board shall deny the license.

c. A registrant who does not qualify for licensure by July 1, 2001, shall meet the new requirements for licensure.

#### **653—14.5(147,148E) Application requirements.**

**14.5(1) Application required.** All registered acupuncturists shall apply for a license within 60 days of receiving an application by certified mail. Failure to apply for licensure in that time frame shall deem the registration invalid and the individual no longer qualified to practice acupuncture in Iowa.

**14.5(2) Application for licensure.** To apply for a license to practice acupuncture, an applicant shall:

a. Submit the completed application form provided by the board, including required credentials and documents; and

b. Pay a nonrefundable initial application fee of \$300.

(1) For current registrants, the fee to become licensed is prorated based on the expiration date of the individual's registration. The board shall notify each registrant of the nonrefundable application fee when the board sends the application by certified mail.

(2) For former registrants, the fee to become licensed is a nonrefundable application fee of \$300.

**14.5(3) Contents of the application form.** Each applicant, other than current registrants, shall submit the following information on the application form provided by the board:

a. The applicant's name, date and place of birth, and home address, mailing address and principal business address;

b. A photograph of the applicant suitable for positive identification;

c. The other jurisdictions in the United States or other nations or territories in which the applicant is authorized to practice acupuncture, including license, certificate of registration or certification numbers, date of issuance, and an explanation indicating the basis upon which authorization to practice acupuncture was received;

d. Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories;

e. Full disclosure of any disciplinary action taken against the applicant by, but not limited to, a regulatory authority, educational institution, or health facility in any jurisdiction of the United States, other nations or territories;

f. The NCCAOM score report verification form submitted directly to the board by the NCCAOM;

g. An official statement from NCCAOM that the applicant holds active status as a diplomate in NCCAOM;

h. An official statement showing successful completion of a course in clean needle technique approved by the NCCAOM;

i. A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in the practice of acupuncture and provide patients with safe and healthful care;

j. A description of the applicant's clinical acupuncture training, work experience and, where applicable, supporting documentation;

k. An official transcript sent directly from the institution of higher education or acupuncture school attended by the applicant and, if necessary, an English translation of the official transcript;

l. Proof of the applicant's proficiency in the English language, when the applicant has not passed the English version of the NCCAOM written and practical examinations; and

m. A copy of the disclosure sheet to be used in practice, as described in 14.5(5).

**14.5(4) Contents of the application form for current registrants.** Each current registrant shall submit the following information on the application form provided by the board:

a. The applicant's name, home address, mailing address and principal business address;

b. Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories;

c. Full disclosure of any disciplinary action taken against the applicant by, but not limited to, a regulatory authority, educational institution, or health facility in any jurisdiction of the United States, other nations or territories;

d. An official statement from NCCAOM that the registrant holds active status as a diplomate in NCCAOM;

e. An official statement showing successful completion of a course in clean needle technique approved by the NCCAOM;

f. A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in the practice of acupuncture and provide patients with safe and healthful care;

g. A description of the applicant's work experience in the past five years and, where applicable, supporting documentation; and

h. A copy of the disclosure sheet used in practice, as described in 14.5(5).

**14.5(5) Disclosure sheet.** Pursuant to Iowa Code section 148E.6, applicants shall also provide a copy of the disclosure sheet to be given to each patient that includes the following information:

a. The name, business address and business telephone number of the acupuncturist;

b. A fee schedule;

c. A listing of the acupuncturist's education, experience, degrees, certificates, or other credentials related to acupuncture awarded by professional acupuncture organizations, the length of time required to obtain degrees or credentials, and experience;

d. A statement indicating any license, certificate, or registration in a health care occupation which was revoked by any local, state, or national health care agency;

e. A statement that the acupuncturist is complying with statutes and with rules adopted by the board, including a statement that only presterilized, disposable needles are used by the acupuncturist;

f. A statement that the practice of acupuncture is regulated by the board; and

g. A statement indicating that a license to practice acupuncture does not authorize a person to practice medicine and surgery in this state, and that the services of an acupuncturist must not be regarded as diagnosis and treatment by a person licensed to practice medicine and must not be regarded as medical opinion or advice.

**14.5(6) Application cycle.** Applications for initial licensure, except for current registrants, shall be open for 120 days from the date the application form is received in the board's office.

a. After the 120 days, applicants shall update credentials and submit a nonrefundable reactivation of application fee of \$100 unless granted an extension in writing by the committee or the board. The period for requesting reactivation of the application is limited to one year from the date the application form is received by the board.

b. Once the application reactivation period is expired, applicants must reapply and submit a new, nonrefundable initial application fee of \$300.

**14.5(7) Applicant responsibilities.** An applicant for licensure to practice acupuncture bears full responsibility for each of the following:

a. Paying all fees charged by regulatory authorities, national testing or credentialing organizations, health facilities, and educational institutions providing the information specified in 14.5(3);

b. Providing accurate, up-to-date, and truthful information on the application form including, but not limited to, that specified under 14.5(3) and 14.5(4) related to prior professional experience, education, training, examination scores, diplomate status, licensure or registration, and disciplinary history; and

c. Submitting English translations of documents in foreign languages bearing the affidavit of the translator certifying that the translation is a true and complete translation of the foreign language original. The applicant shall bear the expense of the translation.

**14.5(8) Board responsibilities.** The board staff shall review new applications within two weeks of submission of all requested materials. If the individual clearly meets all of the requirements, staff may issue the license. If staff has any concern about the application, it shall be referred to committee at its next meeting. If the committee resolves the concern, staff may issue the license. If the committee recommends denial, the application will be referred to the board.

**14.5(9) Grounds for denial of application.** The board, on the recommendation of the committee, may deny an application for licensure for any of the following reasons:

a. Failure to meet the requirements for licensure specified in rule 653—14.4(147,148E) as authorized by Iowa Code section 148E.2 or of this chapter of the board's rules.

b. Pursuant to Iowa Code section 147.4, upon any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55 and 148E.8 or in rule 653—14.12(147,148E,272C).

**653—14.6(147,148E) Display of license and disclosure of information to patients.**

**14.6(1) *Display of license.*** Licensed acupuncturists shall display the license issued by the board in a conspicuous place in their primary place of business.

**14.6(2) *Approval of the disclosure sheet and time limit for revisions.*** Pursuant to Iowa Code section 148E.6, upon issuing a license, the board shall provide notification to the licensee of the approval or rejection of the disclosure sheet to be provided to patients on initial contact submitted subsequent to 14.5(4)“m.”

a. If rejected, the board shall provide the licensee with a written statement explaining the reasons for rejecting the disclosure sheet submitted and indicating the necessary amendments or revisions.

b. Upon receiving the rejection, the licensee shall submit within 14 days a revised mandatory disclosure sheet to the board for its approval.

**14.6(3) *Distribution and retention of disclosure sheet.*** The licensee shall distribute the disclosure sheet on initial contact with patients and retain a copy, signed and dated by the patient, for a period of at least five years after termination of the treatment.

**653—14.7(147,148E,272C) Biennial renewal of license required.** Pursuant to Iowa Code section 148E.2, a license is renewed every two years on November 1 for a fee of \$300 with documented evidence that the licensee has completed the 30 hours of continuing education required by the board. Renewal shall require evidence of current active status as a diplomate in the National Commission for the Certification of Acupuncturists.

**14.7(1) *Expiration date.*** Certificates of licensure to practice acupuncture shall expire on October 31 in even years. Those who are granted a license prior to October 31, 2000, shall receive a license that expires October 31, 2002.

**14.7(2) *Prorated fees.*** The renewal fee for a license shall be prorated on a monthly basis according to the date of issue.

**14.7(3) *Renewal requirements and penalties for late renewal.*** Each licensee shall be sent a renewal notice at least 60 days prior to the expiration date.

a. Pursuant to Iowa Code section 147.10, application for renewal shall be made in writing to the board accompanied by the required fee at least 30 days prior to the expiration date.

b. Every renewal shall be displayed in connection with the original certificate of licensure.

c. A \$50 penalty shall be assessed for renewal in the grace period, a period up until January 1 when the license lapses if not renewed.

**14.7(4) *Lapsed license.*** Failure of a licensee to renew by January 1 will result in invalidation of the license and the license will become lapsed.

a. Licensees are prohibited from engaging in the practice of acupuncture once the license is lapsed.

b. Having an acupuncturist license in lapsed status does not preclude the board from taking disciplinary actions authorized in Iowa Code section 147.55 or 148E.8.

**653—14.8(147,272C) Reinstatement of a lapsed license.**

**14.8(1) *Reinstatement requirements.*** Licensees who allow their licenses to lapse by failing to renew may apply for reinstatement of a license. Pursuant to Iowa Code section 147.11, applicants for reinstatement shall:

a. Submit a completed application for reinstatement of a license to practice acupuncture that includes:

(1) The applicant's name, home address, mailing address, and principal business address.

(2) Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories.

(3) Full disclosure of any disciplinary action taken against the applicant by, but not limited to, a regulatory authority, educational institution, or health facility in any jurisdiction of the United States, other nations or territories.

(4) A practice history for the period of the lapsed license.

b. Pay \$400.

c. Provide evidence of successful completion of 60 PDA points.

d. Provide an official statement from NCCAOM that the applicant holds current active status as a diplomate of NCCAOM.

e. Meet any new requirements instituted since the license lapsed.

**14.8(2) Reinstatement restrictions.** Pursuant to Iowa Code section 272C.3(2)“d,” the committee may require a licensee who fails to renew for a period of three years from the expiration date to meet any or all of the following requirements prior to reinstatement of a lapsed license:

a. Provide a written statement explaining the reasons for failing to renew;

b. Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;

c. Appear before the committee or board for an interview.

**653—14.9(272C) Continuing education requirements—course approval.** Pursuant to Iowa Code section 272C.2, a person licensed to practice acupuncture shall complete 30 PDA points to qualify for license renewal.

1. A licensee may earn from 1 to 15 extra PDA points in a license period that may be carried over for credit in the next license period. A licensee desiring to obtain credit for carryover hours shall report the carryover credit on the renewal application when the credit was earned.

2. It is the responsibility of each licensee to finance the costs of the licensee's PDA points.

**653—14.10(147,148E,272C) General provisions.**

**14.10(1) Use and disposal of needles.** A licensee shall use only presterilized, disposable needles and shall provide for the disposal of used needles in accordance with the requirements of the department.

**14.10(2) Standard of care.** A licensee shall be held to the same standard of care as persons licensed to practice medicine and surgery, osteopathy, and osteopathic medicine and surgery. Pursuant to Iowa Code section 272C.3, any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care in the practice of acupuncture constitutes malpractice and is grounds for the revocation or suspension of a license to practice acupuncture in this state.

**14.10(3) Title.** An acupuncturist licensed under this title may use the words “licensed acupuncturist” or “L.Ac.” to connote professional standing after the licensee's name in accordance with Iowa Code section 147.74(18).

**14.10(4) Change of residence.** In accordance with Iowa Code section 147.9, licensees shall notify the board of changes in residence and place of practice within 14 days of moving.

**14.10(5) Delegation of responsibilities prohibited.** The licensee shall perform all aspects of acupuncture treatment on a patient. Delegation of responsibility for acupuncture treatment is strictly prohibited.

**653—14.11(147,148E,272C) General disciplinary provisions.** The board is authorized to take disciplinary action against any licensee who violates the provisions set forth in state law and administrative rules pertaining to the safe and healthful practice of acupuncture.

**14.11(1) *Methods of discipline.*** The board may impose any of the following disciplinary sanctions:

- a. Revocation of a license;
- b. Suspension of a license until further order of the board;
- c. Nonrenewal of a license;
- d. Restrict permanently or temporarily the performance of specific procedures, methods, acts or techniques;
- e. Probation;
- f. Additional or remedial education or training;
- g. Reexamination;
- h. Medical or physical evaluation, or alcohol or drug screening within a specific time frame at a facility or by a practitioner of the board's choice;
- i. Civil penalties not to exceed \$1,000;
- j. Citations and warnings as necessary; and
- k. Other sanctions allowed by law as deemed appropriate.

**14.11(2) *Discretion of the board.*** The board may consider the following factors when determining the nature and severity of the disciplinary sanction to be imposed:

- a. The relative seriousness of the violation as it relates to assuring the citizens of Iowa a high standard of professional care.
- b. The facts of the particular violation.
- c. Any extenuating circumstances or other countervailing considerations.
- d. Number of prior violations or complaints.
- e. Seriousness of prior violations or complaints.
- f. Whether remedial action has been taken.
- g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

**653—14.12(147,148E,272C) *Grounds for discipline.*** The board may impose any of the disciplinary sanctions set forth in 14.11(1) upon determining that a licensee is guilty of any of the following acts or offenses:

**14.12(1) *Fraud in procuring a license.*** Fraud in procuring a license is the deliberate distortion of facts or use of deceptive tactics in the application for licensure to practice acupuncture including, but not limited to:

- a. Making false or misleading statements in obtaining or seeking to obtain licensure;
- b. Failing to disclose by deliberate omission or concealment any information the board deems relevant to the safe and healthful practice of acupuncture pursuant to Iowa Code chapters 147 and 148E;
- c. Misrepresenting any fact or deed to meet the application or eligibility requirements established by this chapter; or
- d. Filing or attempting to file a false, forged or altered diploma, certificate, affidavit, translated or other official or certified document, including the application form, attesting to the applicant's eligibility for licensure to practice acupuncture in Iowa.

**14.12(2) *Professional incompetence.*** Professional incompetence includes, but is not limited to:

- a. Substantial lack of knowledge or ability to discharge professional obligations within the scope of the acupuncturist's practice;
- b. Substantial deviation by the licensee from the standards of learning or skill ordinarily possessed and applied by other acupuncturists when acting in the same or similar circumstances;
- c. Failure by an acupuncturist to exercise in a substantial respect the degree of care which is ordinarily exercised by the average acupuncturist when acting in the same or similar circumstances; or
- d. Willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of acupuncture.



**14.12(3) *Fraud in the practice of acupuncture.*** Fraud in the practice of acupuncture includes, but is not limited to, any misleading, deceptive, untrue or fraudulent representation in the practice of acupuncture, made orally or in writing, that is contrary to the acupuncturist's legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare, and potentially injurious to another. Proof of actual injury need not be established.

**14.12(4) *Unethical conduct.*** Unethical conduct in the practice of acupuncture includes, but is not limited to:

- a. Failing to provide patients with the information required in Iowa Code section 148E.6 or providing false information to patients;
- b. Accepting remuneration for referral of patients to other health care professionals;
- c. Offering or providing remuneration for the referral of patients, excluding paid advertisements or marketing services;
- d. Engaging in sexual activity or genital contact with a patient while acting or purporting to act within the scope of the acupuncture practice, whether or not the patient consented to the sexual activity or genital contact;
- e. Disclosing confidential information about a patient without proper authorization; or
- f. Abrogating the boundaries of acceptable conduct in the practice of acupuncture established by the profession that the board deems appropriate for ensuring that acupuncturists provide Iowans with safe and healthful care.

**14.12(5) *Practice harmful to the public.*** Practice harmful or detrimental to the public in the practice of acupuncture includes, but is not limited to:

- a. Failing to possess and exercise the degree of skill, learning and care expected of a reasonable, prudent acupuncturist acting in the same or similar circumstances;
- b. Practicing acupuncture without reasonable skill and safety as the result of a mental or physical impairment, chemical abuse or chemical dependency;
- c. Prescribing, dispensing or administering any controlled substance or prescription medication for human use; or
- d. Performing any treatment or healing procedure not authorized in Iowa Code chapter 148E or this chapter.

**14.12(6) *Habitual intoxication or addiction.*** Habitual intoxication or addiction to the use of drugs includes, but is not limited to, the inability to practice acupuncture with reasonable skill and safety as a result of the excessive use of alcohol, drugs, narcotics, chemicals or other substances on a continuing basis, or the excessive use of the same in a way which may impair the ability to practice acupuncture with reasonable skill and safety.

**14.12(7) *Felony conviction.*** A felony conviction related to the practice of acupuncture or that affects the ability to practice the profession includes, but is not limited to:

- a. Any conviction for any public offense directly related to or associated with the practice of acupuncture that is classified as a felony under the statutes of any jurisdiction of the United States, the United States government, or another nation or its political subdivisions; or
- b. Any conviction for a public offense affecting the ability to practice acupuncture that is classified as a felony under the statutes of any jurisdiction of the United States, the United States government, or another nation or its political subdivisions and that involves moral turpitude, civility, honesty, or morals.

A copy of the record of conviction or plea of guilty or nolo contendere shall be conclusive evidence of the felony conviction.

**14.12(8) *Misrepresentation of scope of practice by licensees.*** Misrepresentation of a licensee's scope of practice includes, but is not limited to, misleading, deceptive or untrue representations about competency, education, training or skill as a licensed acupuncturist or the ability to perform services not authorized under this chapter.

**14.12(9) False advertising.** False advertising is the use of fraudulent, deceptive or improbable statements in information provided to the public. False advertising includes, but is not limited to:

- a. Unsubstantiated claims about the licensee’s skills or abilities, the healing properties of acupuncture or specific techniques or treatments therein;
- b. Presenting words, phrases, or figures which are misleading or likely to be misunderstood by the average person; or
- c. Claiming extraordinary skills that are not recognized by the acupuncture profession.

**14.12(10) General grounds.** The board may also take disciplinary action against an acupuncturist for any of the following reasons:

- a. Failure to comply with the provisions of Iowa Code chapter 148E or the applicable provisions of Iowa Code chapter 147, or the failure of an acupuncturist to comply with rules adopted by the board pursuant to Iowa Code chapter 148E;
- b. Failure to notify the board of any adverse judgment or settlement of a malpractice claim or action within 30 days of the date of the judgment or settlement;
- c. Failure to report to the board any acts or omissions of another acupuncturist authorized to practice in Iowa that would constitute grounds for discipline under 14.12(147,148E,272C) within 30 days of the date the acupuncturist initially became aware of the information;
- d. Failure to comply with a subpoena issued by the board;
- e. Knowingly submitting a false report of continuing education or failing to submit a required continuing education report;
- f. Failure to adhere to the disciplinary sanctions imposed upon the acupuncturist by the board; or
- g. Violating any of the grounds for revocation or suspension of licensure listed in Iowa Code chapter 147 or 148E.

**653—14.13(272C) Procedure for peer review.** Rule 653—12.7(272C) shall apply to peer review procedures in matters related to licensed acupuncturists.

**653—14.14(272C) Reporting duties and investigation of reports.** Rules 653—12.1(272C) to 12.3(272C) and 12.5(272C) shall apply to certain reporting responsibilities of licensed acupuncturists and the investigation of malpractice cases involving licensed acupuncturists.

**653—14.15(272C) Complaints, immunities and privileged communications.** Rule 653—12.5(17A,147,148,272C) shall apply to matters relating to licensed acupuncturists.

**653—14.16(272C) Confidentiality of investigative files.** Rule 653—12.10(272C) shall apply to investigative files relating to licensed acupuncturists.

**653—14.17 to 14.28** Reserved.

**653—14.29(17A,147,148E,272C) Disciplinary procedures.** Rules 653—12.11(17A) to 12.43(272C) shall apply to disciplinary actions against licensed acupuncturists.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.20, 147.55, 272C.3 to 272C.6, 272C.8 and 272C.9 and Iowa Code chapter 148E as amended by 2000 Iowa Acts, Senate File 182.

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[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]

[Filed emergency 8/3/00 after Notice 6/28/00—published 8/23/00, effective 8/3/00]

**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	I-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.

\*Editorial correction in 10.20(1)"c."

**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.

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- CHAPTER 89**
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*LOCAL OPTION SCHOOL INFRASTRUCTURE SALES AND SERVICE TAX*

- 108.1(422E) Definitions
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- 120.1(421) Organization of committee
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*ASSESSOR CONTINUING EDUCATION*

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TITLE IV  
USECHAPTER 28  
DEFINITIONS

[Prior to 12/17/86, Revenue Department[730]]

**701—28.1(423) Taxable use defined.** A “taxable use” is the exercise of any right of ownership over tangible personal property in Iowa by any person owning the property but does not include the right to sell the property in the regular course of business or the right to process or manufacture the property into another article of tangible personal property intended to be sold ultimately at retail.

A taxable use is also an enumerated taxable service rendered, furnished or performed for use in Iowa or the product or result of such enumerated service used in Iowa. For list of enumerated services and exemptions from tax, see 701—Chapter 26.

Laws governing the return of defective vehicles by a purchaser, commonly known as “lemon laws,” are found in Iowa Code chapter 322G. Under Iowa Code chapter 322G, the return of a qualifying defective vehicle to a manufacturer is not a taxable “use.” Consequently, the transfer of the vehicle from a purchaser to a manufacturer pursuant to Iowa Code chapter 322G and the titling and registration of that vehicle by the manufacturer are not subject to Iowa use tax. For refund of use tax paid by a purchaser of a vehicle that is returned under Iowa Code chapter 322G, see 701—34.3(423).

**701—28.2(423) Processing of property defined.** “Processing of property” is defined to include:

**28.2(1)** Personal property which forms an integral or component part of the manufactured product which is intended to be sold ultimately at retail.

**28.2(2)** Property which is consumed as fuel in creating power, heat or steam for processing, including grain drying or generating electric current, or consumed in implements of husbandry engaged in agricultural production.

**28.2(3)** Property consisting of chemicals, solvents, sorbents or reagents which are directly used, consumed or dissipated in processing personal property which is intended to be sold ultimately at retail, even though such property does not become a component or integral part of the finished product. This ordinarily does not include any item of machinery, tools or equipment.

**701—28.3(423) Purchase price defined.** “Purchase price” means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, provided that cash discounts and trade-in allowances allowed and taken on sales or purchases shall not be included.

These rules are intended to implement Iowa Code chapter 423.

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CHAPTER 104  
HOTEL AND MOTEL—  
FILING RETURNS, PAYMENT OF TAX, PENALTY, AND INTEREST  
[Prior to 12/17/86, Revenue Department[730]]

**701—104.1(422A) Returns, time for filing.** On the quarterly sales tax return, every retailer shall report the gross sales subject to the hotel and motel tax for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. The information required for the computation of the hotel and motel tax liability shall be separate from that required for the computation of the retail sales tax liability. Such information and computation must be stated and computed separately, even though the total tax liability may be paid with a single remittance.

The quarterly reports are due on the last day of the month following the end of the calendar quarter during which the tax is collected. If a person is required to collect the hotel and motel tax and file a monthly deposit for retail sales tax purposes, such monthly deposit should not include the hotel and motel tax collected during the period covered by the deposit.

When the due date falls on a Saturday, Sunday or legal holiday, the return is due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mail, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Sales and Use Tax Processing, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10412, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 421.14, 422.51, 422.52 and 422A.1.

**701—104.2(422A) Remittances.** The correct amount of tax collected and due shall accompany the forms prescribed by the department. The name, address and sales tax permit number of the sender and amount of tax for the quarterly remittance shall be stated. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the retailer; and, when feasible, every retailer shall use them when completing and mailing the return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

This rule is intended to implement Iowa Code sections 422.51, 422.52 and 422A.1.

**701—104.3(422A) Permits.** No permit other than an Iowa sales tax permit will be required under this chapter. However, the director may require all persons responsible for collecting and remitting a hotel-motel tax to register with the department.

*“Single permit—principal place of business.”* Any person not in the business of renting rooms to transient guests, but who regularly rents rooms or residences at varying locations to transient guests, may operate under one sales tax permit. The sales tax permit will be issued to the taxpayer’s principal place of business. (See 701—Chapter 13 relating to sales tax permits.)

This rule is intended to implement Iowa Code sections 422.53 and 422A.1.

**701—104.4(422A) Sale of business.** A retailer subject to the provisions of the Iowa Code relating to the hotel and motel tax who sells the business shall file a return within the month following the sale and pay all tax due. Any unpaid tax is due prior to the transfer of title of any personal property to the purchaser and, if unpaid, becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain records for a period of five years from the date of discontinuing business unless a release from the provision is given in writing by the department.

This rule is intended to implement Iowa Code sections 422.51(2), 422.52 and 422A.1.

**701—104.5(422A) Bankruptcy, insolvency or assignment for benefit of creditors.** In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code sections 422.51(2) and 422A.1.

**701—104.6(422A) Claim for refund of tax.** Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer to collect the tax as an agent for purposes of receiving a refund of tax. Anyone claiming a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department within five years from the date the tax became due or one year from the date of payment, whichever is later, stating in detail the reasons and facts and, if necessary, attaching supporting documents on which the claim for refund is based. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 60 days following the date of denial. See rule 701—7.41(17A).

This rule is intended to implement Iowa Code sections 422.73 and 422A.1.

**701—104.7(422A) Application of payments.** Since a combined hotel and motel tax and quarterly state sales tax return is utilized by the department, all payments received with the return will be applied to satisfy state sales tax and hotel and motel tax liabilities, which include penalty and interest. Application of partial payments received with the tax return and any subsequent partial payment received for that tax period will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2)“d.” The denominator in the ratio shall be the total of the hotel and motel tax due and the state sales tax due less any monthly sales tax deposits. The numerators in the ratio formula shall be the amounts of hotel and motel tax due and the net state sales tax due.

EXAMPLE: XYZ hotel owes a total of \$1,000 in net state sales tax and hotel and motel tax for the quarter. Of the \$1,000 owed, \$600 is for hotel and motel tax and \$400 is for state sales tax. XYZ files its quarterly sales tax return accompanied by a \$500 partial payment. The \$500 partial payment would be applied based on the following computation:

$$\frac{600}{1000} \times 500 = \$300 \text{ Hotel and motel tax}$$

$$\frac{400}{1000} \times 500 = \$200 \text{ State sales tax}$$

All revenues received under Iowa Code chapter 422A are to be credited to the “local transient guest tax fund.” Revenues include all interest and penalties applicable to any hotel and motel tax report or remittance, whether resulting from delinquencies or audits. All revenues received or moneys refunded 180 days after the date on which a city or county terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund. The 180-day limitation applies to actual receipts or disbursements and not to accrued but unpaid tax liabilities or potential refunds.

This rule is intended to implement Iowa Code section 422A.1.

**701—104.8(422A) Interest and penalty.** Renumbered as 701—10.110(422A), IAB 1/23/91.

**104.8(1)** Rescinded IAB 1/23/91.

**104.8(2)** Renumbered as 701—subrule 10.110(1), IAB 1/23/91.

**104.8(3)** Renumbered as 701—subrule 10.110(2), IAB 1/23/91.

**104.8(4)** Renumbered as 701—subrule 10.110(3), IAB 1/23/91.

**701—104.9(422A) Request for waiver of penalty.** Renumbered as 701—10.111(422A), IAB 1/23/91.

**701—104.10(422A) Extension of time for filing.** Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code sections 422.51 and 422A.1.

**701—104.11(421,422A) Personal liability of corporate officers and partners for unpaid tax.** If a retailer fails to pay hotel or motel tax due and unpaid on or after July 1, 1990, any officer of a corporation or association or any partner of a partnership who has control of, supervision of, or the authority for remitting the hotel or motel tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax. Rule 701—12.15(422,423) describes this liability in more detail and also characterizes the term "accounts receivable." The statements of the rule are made with reference to sales tax, but are also applicable to personal liability for hotel and motel tax.

This rule is intended to implement Iowa Code section 421.26 and chapter 422A.

**701—104.12(421,422A) Good faith exception for successor liability.** For taxes due and unpaid on and after July 1, 1990, an immediate successor's liability for unpaid hotel and motel tax is extinguished if the immediate successor can show that its purchase of the business owing the hotel and motel tax was done "in good faith." See rule 701—12.14(422,423) for a detailed analysis of immediate successor liability and the "good faith" exception to that liability.

This rule is intended to implement Iowa Code section 421.28 and chapter 422A.

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TITLE XV  
*LOCAL OPTION SALES AND SERVICE TAX*

CHAPTER 107  
**LOCAL OPTION SALES AND SERVICE TAX**  
[Prior to 12/17/86, Revenue Department [730]]

**701—107.1(422B) Definitions.** The following words and terms are used in the administration of the local option sales and service tax:

The word “city” means a municipal corporation and includes towns in Iowa which were incorporated prior to July 1, 1975, but a city does not mean a county, township, school district, or any special purpose district or authority.

When the word “department” is used, it means the “Iowa department of revenue and finance.”

The term “unincorporated area of the county” means all areas of a county which are outside the corporate limits of all cities which are located within the geographical area of the county.

When the meaning of the word “sale” cannot be determined by referring to the definition of that word set out in Iowa Code section 422.42(17), its meaning should be determined by studying Iowa Code chapter 554, Uniform Commercial Code, Article 2.

**701—107.2(422B) Local option sales and service tax.**

**107.2(1) Imposition and jurisdiction.** Only a county may impose a tax upon the gross receipts of sales of tangible personal property sold within the county and upon the gross receipts from services rendered, furnished, or performed within the county. The local option sales and service tax may not be imposed by a city except under the circumstances described in rule 107.14(422B). However, the tax may be imposed by a county for transactions in a specified city. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric services are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option sales and service tax also include local excise tax, and all rules governing the administration and collection of local option sales and service tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. The local sales and service tax may be imposed at any rate of not more than 1 percent. See rule 701—14.2(422,423) for a tax schedule setting out the combined rate for a state sales tax of 5 percent and a local sales tax of 1 percent. Frequency of deposit and quarterly reports of local option tax with the department of revenue and finance is governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of filing under Iowa Code section 422.52.

The local option sales and service tax can be imposed upon the unincorporated area of any county only if a majority of those voting in the area favor its imposition. The tax can be imposed upon any incorporated area within a county only if a majority of those voting in that area favor its imposition. All cities within a county contiguous to each other must be treated as part of one incorporated area, and tax can be imposed in such an incorporated area only if the majority of persons voting in the total area covered by the contiguous cities favor imposition of the tax. For the purposes of this rule, the local option sales and service tax can only be imposed in those areas specified in the ordinance of a county board of supervisors which imposes the tax.

Within ten days of the election at which a majority of those voting in favor of the question of imposition, repeal, or change in the rate of tax, the county auditor must give notice of the election results to the director in the form of a copy of the abstract of votes.

**107.2(2) Procedures for implementing and repealing the tax.**

a. Implementing the tax. The ballot proposition imposing the tax shall specify the type and rate of the tax and other items set forth in Iowa Code section 422B.1. Effective April 1, 2000, the date of imposition of the tax must occur on either January 1 or July 1, but cannot be earlier than 90 days from the date of the election in which a majority of those voting on the tax favored its imposition. Within ten days of the favorable election, the county auditor must give written notice of the election by sending a copy of the abstract of ballot from the favorable election to the director of revenue and finance. For the purposes of this rule, the "abstract of ballot" is defined as abstract of votes as provided in 721—21.800(4).

b. Repeal of the tax. A county that has imposed a local option tax may have the tax repealed. Repeal of the tax in an unincorporated area or an incorporated city area may occur either by the board of supervisors' acting upon its own motion or by the board's acting on a motion submitted by the governing body of an incorporated area asking for the repeal. The repeal is effective on the later of the date of the adoption of the motion of repeal or the earliest date set forth in Iowa Code section 422B.9(1).

Effective April 1, 2000, tax shall only be repealed on June 30, or December 31, but not sooner than 90 days following the favorable election if one is held. If the tax has been imposed prior to April 1, 2000, and at the time of election a date for the repeal was specified on the ballot, the tax may be repealed on that date despite the dates previously set forth.

This rule is intended to implement Iowa Code section 422B.1 as amended by 2000 Iowa Acts, House File 2136, section 36, Iowa Code Supplement section 422B.8 and Iowa Code section 422B.9 as amended by 1999 Iowa Acts, chapter 156.

**701—107.3(422B) Transactions subject to and excluded from local option sales tax.**

**107.3(1) Sales of tangible personal property.** The local option sales tax is imposed upon the gross receipts from "sales" of tangible personal property which occur within that portion of a county where a tax is imposed. There is no local option use tax. The taxable event which determines where a sale occurs is "delivery" of the tangible personal property pursuant to contract for sale. If "delivery" occurs within a county, a sale has occurred there, and local option sales tax may be due. If delivery has not occurred within a county, local option sales tax is not due. Whether the contract for sale becomes binding or title passes within the county is irrelevant. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). Delivery usually occurs when the seller of tangible personal property transfers physical possession of the property to the buyer. In most instances, this transfer takes place at the seller's place of business. However, if the seller transfers the property to the buyer from the seller's own vehicle, then the transfer usually takes place at the buyer's residence or place of business. Finally, if the seller transfers the property to a common carrier or the United States Postal Service for subsequent transport to the buyer, then "delivery" of the property occurs at the time and place where the seller transfers possession of the property to the postal service or the common carrier.

**EXAMPLE 1.** Assume that the whole of Polk County has enacted a local option sales tax. Assume that Mr. Edwards lives in Polk County and visits Smith's Furniture Storeroom also located in Polk County. Mr. Edwards enters into a contract to purchase furniture. Smith's Furniture Storeroom transports the furniture to a common carrier located in Polk County, who in turn transports it to Mr. Edwards' residence in Polk County. Local option sales tax is imposed since the delivery, and therefore the sale of the tangible personal property, occurred in a taxing jurisdiction. "Delivery" of the furniture occurred when the seller transferred physical possession of the furniture to the common carrier.

**EXAMPLE 2.** Assume that the whole of Polk County has enacted a local option sales tax and Jasper County has not. Mr. Jones, from Jasper County, comes to Smith's Furniture Showroom located in Polk County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. The furniture which has been purchased is placed on a Smith's Furniture Showroom truck and transported to Mr. Jones' home in Jasper County. "Delivery" of the furniture has occurred in Jasper County at the buyer's residence because that is where Smith's Furniture Showroom (the seller) transferred physical possession of the furniture to Mr. Jones (the buyer) under their contract of sale. Because delivery has occurred within Jasper County, no Polk County local option sales tax will be collected on the transaction.

**701—107.13(421,422B) Officers and partners, personal liability for unpaid tax.** If a retailer or purchaser fails to pay local option sales tax when due for taxes due and unpaid on and after July 1, 1990, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting local option sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to local option tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax. See rule 701—12.15(422,423) for a description of various criteria used to determine personal liability and for a characterization of the term "accounts receivable."

This rule is intended to implement Iowa Code section 421.26 and chapter 422B.

**701—107.14(422B) Local option sales and service tax imposed by a city.**

**107.14(1)** On or before January 1, 1998, a city may impose by ordinance of its council a local sales and service tax if all of the following circumstances exist:

- a. The city's corporate boundaries include areas of two Iowa counties.
- b. All the residents of the city live in one county as determined by the latest federal census preceding the election described in paragraph "c" immediately below. Effective May 20, 1999, at least 85 percent of the residents of the city must live in one county to qualify.
- c. The county in which the city's residents reside has held an election on the questions of the imposition of a local sales and service tax and a majority of those voting on the question in the city favored its imposition. Effective May 20, 1999, the city residents must live in the county and have held an election on the question of the imposition of the local sales and service tax and a majority of those voting on the question in the city favored its imposition.
- d. The city has entered into an agreement on the distribution of the sales and service tax revenues collected from the area where the city tax is imposed with the county where such area is located.

**107.14(2)** Imposition of the tax is subject to the following restrictions:

- a. The tax shall only be imposed in the area of the city located in the county where none of its residents reside. Effective May 20, 1999, the tax shall only be imposed in the area of the city located in the county where not more than 15 percent of the city's residents reside.
- b. The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.
- c. The tax once imposed shall continue to be imposed until the county-imposed tax is reduced or increased in rate or repealed, and then the city-imposed tax shall also be reduced or increased in rate or repealed in the same amount and be effective on the same date.
- d. The tax shall be imposed on the same basis as provided in rule 107.9(422B).
- e. The city shall assist the department of revenue and finance to identify the businesses in the areas which are to collect the city-imposed tax. The process shall be ongoing as long as the city tax is imposed.
- f. The agreement on the distribution of the revenue collected from the city-imposed tax shall provide that 50 percent of such revenue shall be remitted to the county in which the part of the city where the city tax is imposed is located.

This rule is intended to implement Iowa Code chapter 422B as amended by 1999 Iowa Acts, chapter 156, sections 5 and 6.

**701—107.15(422B) Application of payments.** Since a combined state sales and local option return is utilized by the department, all payments received will be applied to satisfy state sales tax and local option sales and service tax, which include tax, penalty and interest. Application of payments received with the tax return and any subsequent payments received will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2)“d.” The ratio for applying all payments received with the return and all subsequent payments for the given tax period will be based upon the calculated total of state sales and local option sales and service tax due for the given tax period in relation to combined total payment of sales and local option sales and service tax actually received for that tax period.

This rule is intended to implement Iowa Code Supplement section 422B.10.

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CHAPTER 108  
LOCAL OPTION SCHOOL INFRASTRUCTURE  
SALES AND SERVICE TAX

**701—108.1(422E) Definitions.** The following words and terms are used in the administration of the local option school infrastructure sales and service tax:

“*County*” means an involuntary political or civil division of the state, created by general statute, to aid in the administration of government and is simply a governmental auxiliary. *Shirkey v. Keokuk County*, 275 N.W. 706, 712, 225 Iowa 1159 (1938). A county is generally known to include a designated geographic area which may comprise municipalities, cities, or towns.

“*Department*” means the Iowa department of revenue and finance.

“*Director*” means the director of the Iowa department of revenue and finance.

“*Sale*” means the same as defined in 701—107.1(422B).

“*School district*” means a school corporation that has exclusive jurisdiction in all school matters over a designated geographic area. See Iowa Code section 274.1.

“*School infrastructure*” means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under Iowa Code section 296.1. Qualifying activities include construction, reconstruction, repair, purchasing, or remodeling of schoolhouses, stadiums, gyms, fieldhouses, or bus garages. School infrastructure activities also include the procurement of schoolhouse construction sites and making site improvements. Additional qualifying activities include the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this rule and the payment or retirement of such bonds.

However, “school infrastructure” does not include activities related to a teacher’s or superintendent’s home or homes.

This rule is intended to implement Iowa Code chapter 422E.

**701—108.2(422E) Authorization, rate of tax, imposition, use of revenues, and administration.**

**108.2(1) Authorization and imposition.** Effective April 20, 1998, a local option school infrastructure sales and service tax will only be imposed after an election in which a majority of those voting on the question favors the imposition of the tax. A local option school tax that has been approved by an election will be applied to all incorporated and unincorporated areas of that county. A request for the local option school tax may be made either by the county or a school district which contains at least 50 percent of the county population in which it is located. Each type of request has specific requirements for proposing the tax under this chapter. The requirements are set forth as follows:

*a. Imposition by county.* A petition must be submitted to a county board of supervisors requesting imposition of a local school infrastructure sales and service tax. To qualify, the petition must be signed by eligible voters of the whole county in a number equal to 5 percent of the persons in the whole county who voted in the last preceding state general election. Within 30 days of receiving the petition, the county board of supervisors must inform the county commissioner of elections to submit the question of imposing the tax to the registered voters of the whole county.

*b. Imposition by school district.* A motion or motions requesting the question of imposing a local option school infrastructure sales and service tax may be proposed and adopted by the governing body of a school district or school districts located within a county. To qualify for imposing this tax, a school district located within a county must contain a total, or a combined total in the case of more than one school district, of at least 50 percent of the population of the county. Upon adoption of the motion, the governing body of a school district must notify the county board of supervisors of the adoption of the motion. A motion is no longer valid at the time of the regular election of members of the governing body which adopted the motion. The county board of supervisors must then submit the motion to the county commissioner of elections, who will publish the notice of the ballot proposition regarding the local option school infrastructure sales and service tax.

**108.2(2) *Ballot proposition—procedure for imposition of the tax whether by county or the school district.*** A county commissioner for elections must submit the question for imposing the tax under this chapter at a state general election or a special election held at any time other than the time of a city regular election. The election cannot be sooner than 60 days after publication of the notice of the ballot proposition. The ballot proposition must be in the form established by the state commissioner of elections. For additional information regarding the form and content of the ballot proposition, see 721—21.803(77GA, HF2282).

**108.2(3) *Tax rate, election, and repeal.*** The maximum rate of tax imposed under this rule shall be 1 percent. The tax shall be imposed without regard to any other local sales and service tax authorized under the Iowa Code. The rate of tax may be increased up to 1 percent, decreased, or repealed after an election in which a majority of those voting are in favor of the question of rate change or repeal of the tax. However, the tax cannot be repealed before the tax has been in effect for one year.

The election for a change in the tax rate or repeal of the tax may be called and held under the same conditions as previously set forth for the election imposing the tax. The election may be held not sooner than 60 days following the publication of the notice of the ballot proposition.

Local option school infrastructure sales and service tax is automatically repealed at the expiration of ten years from the date of imposition or a shorter period provided in the ballot proposition.

A local option school infrastructure sales and service tax cannot be repealed or reduced in rate if bond obligations are outstanding unless sufficient funds to pay the principal, interest, and premium, if any, on the outstanding obligation at and prior to maturity have been properly set aside and pledged for that purpose.

For elections held on or after April 1, 2000, the tax may only be imposed with an effective date of either January 1 or July 1, but not sooner than 90 days following the favorable election.

For elections held on or after April 1, 2000, this tax shall be repealed on either June 30 or December 31, but not sooner than 90 days following a favorable election if one is held. If a tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the tax may be repealed on that date despite the previously mentioned dates set forth.

**108.2(4) *Use of revenues.*** Local option sales and service tax revenues received under this chapter shall be used for infrastructure purposes as defined in rule 701—108.1(422E). In addition, certain cities may obtain revenues from the local option school tax. A school district in a county that has imposed this tax may enter into an Iowa Code chapter 28E agreement with a city or cities whose boundaries encompass all or a part of the school district; the city may then receive a portion of the revenues from this tax as determined by the 28E agreement. A city may utilize revenues from this tax for school infrastructure purposes or any valid purposes authorized by the governing board of the city.

**108.2(5) *Notice of election results.*** The county auditor must give written notice by certified mail to the director of the results of an election in which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the tax, within ten days of the date of the election. This written notice must consist of a copy of the abstract of votes from the favorable election. For a definition of “abstract of votes” see 721—subrule 21.803(4).

**108.2(6) Administration of the tax.** The local option school infrastructure sales and service tax is to be imposed on the gross receipts of sales of tangible personal property sold within the local option jurisdiction and upon the gross receipts from services rendered, furnished, or performed within the local option jurisdiction. This tax may only be imposed by a county in the manner set forth previously in this rule. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric service are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option school infrastructure tax also include local excise tax and all rules governing the administration and collection of local option school infrastructure tax are also applicable to local excise tax. For further details, see 701—108.5(422E). With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. See rule 701—14.2(422,423) for a tax table setting forth the combined rate for a state sales tax of 5 percent and the local sales tax rate of 1 percent. Frequency of deposits and quarterly reports of local option tax filed with the department of revenue and finance are governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of the filing under Iowa Code section 422.52.

Prior to April 1, 2000, a local option school infrastructure tax cannot be imposed until 40 days after there has been a favorable election to impose the tax. All local option school infrastructure tax must be imposed January 1, April 1, July 1, or October 1. The tax can be repealed only on March 31, June 30, September 30, or December 31. However, this tax must not be repealed before the tax has been in effect for one year. For imposition and repeal date restrictions on or after April 1, 2000, see subrule 108.2(3).

This rule is intended to implement Iowa Code Supplement section 422E.2 as amended by 2000 Iowa Acts, House File 2136, section 37.

**701—108.3(422E) Collection of the tax.** After a majority vote favoring the imposition of the tax under this chapter, the county board of supervisors shall impose the tax at the rate specified and for a duration not to exceed ten years or less as specified on the ballot. To determine the amount of tax to be imposed on a sale, the taxable amount must not include any state gross receipts taxes or any other local option taxes. A retailer need only have a state tax permit to collect the local option sales and service tax under this chapter. This tax is to be imposed and collected in the following manner:

1. **Sale of tangible personal property.** This local option sales and service tax is imposed on the gross receipts from “sales” of tangible personal property in which delivery occurs within a jurisdiction imposing the tax. Department rule 701—107.3(422B), which governs transactions subject to and excluded from local option sales tax, is applicable to and governs transactions subject to tax under this chapter as well. As a result, the text of 701—107.3(422B) is incorporated by reference into this chapter.

2. **The sale of enumerated services.** Department rules 701—107.4(422B), 701—107.5(422B), and 701—107.6(422B), which govern transactions subject to and excluded from local option service tax, single contracts for taxable services performed partly within and partly outside of an area of a county imposing the local option service tax, and motor vehicle, recreational vehicle, and recreational boat rentals subject to local option service tax, respectively, are applicable to and govern transactions subject to tax under this chapter. As a result, the text of 701—107.4(422B), 701—107.5(422B), and 701—107.6(422B) is incorporated by reference into this chapter.

This rule is intended to implement Iowa Code section 422E.3.

**701—108.4(422E) Similarities to the local option sales and service tax imposed in Iowa Code chapter 422B and 701—Chapter 107.** The administration of the tax imposed under this chapter is similar to the local option tax imposed under Iowa Code chapter 422B and 701—Chapter 107. As a result, a few of the rules set forth in 701—Chapter 107 are also applicable and govern the local option sales and service school infrastructure tax as well. Accordingly, the following rules are incorporated by reference into this chapter and will govern their respective topics in relation to the local option sales and service school infrastructure tax:

1. 701—107.7(422B) Special rules regarding utility payments.
2. 701—107.8(422B) Contacts with county necessary to impose collection obligation upon a retailer.
3. 701—107.12(422B) Computation of local option tax due from mixed sales on excursion boats.
4. 701—107.13(421,422B) Officers and partners, personal liability for unpaid tax.
5. 701—107.15(422B) Application of payments.

This rule is intended to implement Iowa Code section 422E.3.

**701—108.5(422E) Sales not subject to local option tax, including transactions subject to Iowa use tax.** The local option sales and service tax for school infrastructure is imposed upon the same basis as the Iowa state sales and service tax. However, like the local option sales and service tax set forth in Iowa Code chapter 422B and department rule 701—107.9(422B), there are sales and services that are subject to Iowa state sales tax, but such sales or services are not subject to local option sales and service tax. Department rule 701—107.9(422B), which governs the sales not subject to local option sales and service tax pursuant to Iowa Code section 422B.8, is incorporated by reference into this chapter and will govern the local option sales and service tax for school infrastructure tax with the following exception:

For transactions prior to May 1, 1999. The gross receipts from the sale of natural gas or electricity in a city or county which are subject to a franchise or user fee are not exempt from the local option school infrastructure sales and service tax.

Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric service are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option school infrastructure tax also include local excise tax, and all rules governing the administration and collection of local option school infrastructure tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax.

This rule is intended to implement Iowa Code section 422E.1 as amended by 1999 Iowa Acts, chapter 151, section 36, and Iowa Code section 422E.3 as amended by 1999 Iowa Acts, chapter 151, sections 37 and 38.

**701—108.6(422E) Deposits of receipts.** The director of revenue and finance shall credit tax receipts, interest, and penalties from the tax under this chapter. If the director is unable to determine from which county any of the receipts from this tax were collected, those receipts shall be allocated among the possible counties based on the allocation rules set forth in 701—107.11(422B).

This rule is intended to implement Iowa Code section 422E.3.

**701—108.7(422E) Local option school infrastructure sales and service tax payments to school districts.** The director of revenue and finance within 15 days of the beginning of each fiscal year shall send to each school district where the local option school infrastructure sales and service tax is imposed, an estimate of the tax moneys each school district will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the school district to the school district on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. Effective on or after May 20, 1999, an adjustment for an overpayment that has resulted during the previous fiscal year will be reflected beginning with the November payment.

If more than one school district or a portion of a school district is located within the county, tax receipts shall be remitted to each school district or portion of a school district in which the county tax is imposed in a pro-rata share based upon the ratio which the percentage of actual enrollment for the school district that attends school in the county bears to the percentage of the total combined actual enrollments for all school districts that attend school in the county. A student's enrollment is based on the residency of the student. The formula to compute this ratio is the following:

$$\frac{\text{actual enrollment for the school district at issue}}{\text{combined actual enrollment for the county}}$$

The combined actual enrollment for the county, for purposes of this tax, shall be determined for each county imposing the tax under this rule by the Iowa department of management based on the actual enrollment figures reported by October 1 of each year to the department of management by the department of education pursuant to Iowa Code section 257.6(1). Enrollment figures to be used for the purpose of this formula are the enrollment figures reported by the department of education for the fiscal year preceding the date of implementation of the local option school infrastructure sales and service tax.

**EXAMPLE:** In November of 1999, Polk County holds a valid election that results in a favorable vote to impose the local option school infrastructure sales and service tax. The tax will be implemented in Polk County on July 1, 2000. The fiscal year preceding the implementation of the tax is July 1, 1999, through June 30, 2000. To determine the proper ratio of funds to be distributed to the multiple school districts located in Polk County, the enrollment figures reported by the department of education to the department of management by October of 1999 must be obtained to compute the formula as set forth.

For additional information regarding the formula for tax revenues to be distributed to the school districts, see the department of education's rules regarding this tax under 281—Chapter 96, Iowa Administrative Code.

This rule is intended to implement Iowa Code Supplement section 422E.3.

**701—108.8 (422E) Construction contract refunds.** Effective May 20, 1999, and retroactively applied to July 1, 1998, construction contractors may apply to the department for a refund of local option school infrastructure tax paid on goods, wares, or merchandise if the following conditions are met:

1. The goods, wares or merchandise are incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to the date of the imposition or increase in rate of the local option school infrastructure tax. The refund shall not apply to equipment transferred in fulfillment of a mixed contract.
2. The local option school infrastructure tax must have been effective in the jurisdiction on or after July 1, 1998.

3. The contractor has paid to the department or to a retailer the full amount of the state and local option tax.

4. The claim is filed on forms provided by the department and is filed within six months of the date the tax is paid.

The refund shall be paid by the department from the appropriate school district's account in the local sales and services tax fund.

The penalty provisions contained in Iowa Code section 422B.11(3) apply regarding erroneous application for refund of tax under this chapter.

This rule is intended to implement Iowa Code section 422E.3 as amended by 1999 Iowa Acts, chapter 156, section 19.

**701—108.9(422E) 28E agreements.** A school district which has imposed the tax under this chapter has the authority to enter into an agreement authorized and defined in Iowa Code chapter 28E with one or more cities whose boundaries encompass all or a part of the area of the school district. Such an agreement will set forth a designated amount of revenues from the tax imposed under this chapter that a city or each city may receive. A city or cities entering into an Iowa Code chapter 28E agreement is authorized to expend its designated portion of taxes imposed under this chapter for any valid purpose permitted and defined under this chapter as a school infrastructure purpose or for any purpose authorized by the governing body of the city.

Effective May 20, 1999, and for taxes imposed under this chapter on or after July 1, 1998, a county whose boundaries encompass all or a part of an area of a school district may enter into an Iowa Code chapter 28E agreement with that school district. The terms of the Iowa Code chapter 28E agreement will designate a portion of tax revenues received from the tax imposed under this chapter that a county is entitled to receive. A county entering into an Iowa Code chapter 28E agreement with a school district in which tax under this chapter has been imposed is authorized to expend its designated portion of such tax revenues to provide property tax relief within the boundaries of the school district located in the county.

Effective May 20, 1999, and for taxes imposed under this chapter on or after July 1, 1998, a school district where local option school infrastructure tax is imposed is also authorized to enter into an Iowa Code chapter 28E agreement with another school district which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district shall only expend its designated portion of the local option school infrastructure revenues for infrastructure purposes.

This rule is intended to implement Iowa Code section 422E.4 as amended by 1999 Iowa Acts, chapter 156, section 20.

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[Filed 8/4/00, Notice 6/28/00—published 8/23/00, effective 9/27/00]

CHAPTERS 109 to 112

Reserved

CHAPTER 113

Rescinded, effective 10/15/86

CHAPTERS 114 to 119

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]

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## 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]

CHAPTER 14  
NEW IOWAN CENTERS

**871—14.1(78GA,SF2428) Purpose.** The program is designed to establish immigration service centers to provide a broad array of services to deal with the multiple issues related to immigration and employment. The new Iowan centers program offers one-stop service designed to support workers, businesses and communities. Services may include, but are not limited to, information, referral, job placement assistance, translation, language training, resettlement, and technical and legal assistance.

**871—14.2(78GA,SF2428) Definitions.**

*“Department”* means the department of workforce development.

*“Immigrant”* means a person who enters the country with the expectation of legally residing in the United States of America rather than returning to the person’s country of origin.

*“Regional workforce investment board”* means a regional advisory board as defined in 877—Chapter 6.

*“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—14.3(78GA,SF2428) Allocation of funds.** Funds will be made available to a limited number of pilot projects in regions selected by the department, after consultation with other related state agencies. Matching funds shall be sought in the development of the pilot centers and special services needed to support the centers.

**871—14.4(78GA,SF2428) 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 is awarded.

**871—14.5(78GA,SF2428) Allowable costs and limitations.** A program coordinator shall be identified for each pilot site and shall work within the workforce development center system. Each pilot program shall provide training for local and workforce development center system partners, and supportive services for customers.

**14.5(1) Allowable training activities and support services.** The allowable training activities and support services under this program shall be jointly determined by the department and the program coordinator, and may include, but not be limited to, English as a second language programs in the workforce development center system, interpreter services, resources for legal services, facilitation of community meetings regarding immigrant issues, and development of specialized services specific to a community’s needs.

**14.5(2) Cost categories.** Allowable costs must be consistently charged against the three cost categories of staff salary and fringe benefits, supportive services, and administrative support.

**871—14.6(78GA,SF2428) Grant reporting and compliance review.** Program operators shall be 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 shall be in a format approved by the department.

These rules are intended to implement 2000 Iowa Acts, Senate File 2428, section 12, subsection 2.  
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CHAPTERS 15 to 20  
Reserved

**871—26.16(17A,96) Recording costs.**

**26.16(1)** The presiding officer shall electronically record all evidentiary hearings, prehearing conferences and hearings on motions, all of which constitute a part of the record of the contested case. A party may, at its own expense, also record any hearing electronically or by certified shorthand reporter.

**26.16(2)** The appeals section of the department of workforce development shall provide a copy of the whole or a part of the record at cost, unless there is further appeal in which event the record shall be provided to all parties at no cost.

**871—26.17(17A,96) Decisions.**

**26.17(1)** The presiding officer shall issue a written, signed decision as soon as practicable after the closing of the record in a contested case. Each decision shall:

*a.* Set forth the issues, appeal rights, a concise history of the case, findings of essential facts, the reasons for the decision and the actual disposition of the case;

*b.* Be based on the kind and quality of evidence upon which reasonably prudent persons customarily rely for the conduct of their serious affairs, even if none of such evidence would be admissible in a jury trial in the Iowa district court; and

*c.* Be sent by first-class mail to each of the parties in interest and their representatives.

**26.17(2)** In reaching a decision, the presiding officer shall apply relevant portions of the Iowa Code, decisions of the Supreme Court of Iowa, published decisions of the Iowa Court of Appeals, the Iowa Administrative Code and pertinent state and federal court decisions, statutes and regulations.

**26.17(3)** Copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development, filed according to hearing (appeal) number and indexed by the social security number of the claimant.

**26.17(4)** A presiding officer's decision allowing benefits shall result in the prompt payment of all benefits due. An appeal shall not stay the payment of benefits. A presiding officer's decision reversing an allowance of benefits shall include a statement of overpayment of benefits erroneously paid.

**26.17(5)** A presiding officer's decision constitutes final agency action in an employer liability contested case.

*a.* Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

*b.* Any party in interest may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.

These rules are intended to implement Iowa Code chapters 17A and 96.

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CHAPTERS 27 to 40  
Reserved

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CHAPTER 41  
REQUEST FOR WAIVER OR VARIANCE OF ADMINISTRATIVE RULE

**871—41.1(17A,ExecOrd11) Requests for waiver or variance of rules.** Any person may file a request for waiver or variance of an administrative rule of the Workforce Development Department[871], Iowa Administrative Code, by writing a proper request which is received by the Division Administrator, Division of Unemployment Insurance Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All requests for waiver or variance of an administrative rule must be in writing and meet all requirements set out in this chapter. A request is deemed filed when it is received by the division administrator. The agency shall provide the requester with a file-stamped copy of the request if the requester provides the agency an extra copy for this purpose. The request must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA WORKFORCE DEVELOPMENT

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(Name of person requesting waiver or variance)	}	Request for waiver or variance of (specify rule for which waiver or variance is requested)
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The petition must provide the following information:

1. The name and address of the person or entity for whom a waiver or variance is requested.
2. A description and citation of the specific rule for which a waiver or variance is requested.
3. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
4. Relevant facts that the requester believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons the petitioner believes will justify a waiver or variance.
5. A history of the agency's action relative to the requester.
6. Any information regarding the agency's treatment of similar cases, if known.
7. The name, address and telephone number of any person inside or outside state government who would be adversely affected by the grant of the request, or who otherwise possesses knowledge of the matter with respect to the waiver or variance request.
8. Signed release of information authorizing persons with knowledge regarding requests to furnish the agency with information pertaining to the waiver or variance, if necessary.

**871—41.2(17A,ExecOrd11) Procedural requirements.**

**41.2(1)** The department shall acknowledge a request upon receipt. Within 30 days after receipt of a request for waiver or variance of an administrative rule, the agency shall ensure that the requester has provided a copy of the request to all persons who are required to receive one by provision of law. The agency may also require the requester to give notice to send a copy of the request to other persons who would have an interest in the subject matter.

**41.2(2)** The agency shall grant or deny a request for waiver or variance of all or a portion of a rule as soon as practical but, in any event, shall do so within 120 days of its receipt, unless requester agrees to a later date. However, if a waiver or variance request has been filed in a contested case proceeding, the agency shall grant or deny the request no later than the time at which the final decision in that contested case is issued. Failure of the agency to grant or deny such a request within the required time period shall be deemed a denial of that request by the agency. If the request for waiver or variance relates to a time requirement of an administrative rule, the request must be received before the time specified in the rule has expired. Within seven days of its issuance, any response issued under this rule shall be transmitted, normally by depositing it in the mail, to the requester or the person to whom the response pertains and to any other person entitled to such notice by any provision of law.

**871—41.3(17A,ExecOrd11) Criteria for waiver or variance.**

**41.3(1)** The director of the workforce development department shall make a decision as to whether circumstances justify the granting of a waiver or variance. Waivers or variances are granted at the discretion of the director after consideration of relevant facts. The requester shall assume the burden of persuasion with regard to a request for waiver or variance of an administrative rule. The person requesting the waiver or variance of the rule must provide clear and convincing evidence that compliance with the rule will create an undue hardship on the person for whom the waiver or variance is requested; the waiver or variance of the rule on the basis of the particular circumstances relevant to that specified person would be consistent with public interest; 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; and the waiver or variance of the rule in the specific case would not prejudice the substantial legal rights of any person.

**41.3(2)** The agency shall deny a request for waiver or variance of an administrative rule if the request waives or varies any statute in whole or part. The agency shall deny any request if it does not comply with the provisions of this rule. The agency may grant waiver or variance of a rule if it finds that application of all or a portion of the rule to the circumstances of the specified person would not, to any extent, advance or serve any purposes of the rule. The agency will deny a request unless there are exceptional circumstances justifying an exception to the general application of the rule in otherwise similar circumstances. A waiver or variance shall be denied if the material facts presented in the request are not true or material facts have been withheld. The agency may request additional information from the requesting party relative to the application and surrounding circumstances.

**871—41.4(17A,ExecOrd11) Public inspection.** All waiver or variance requests and responses shall be indexed by administrative rule number and available to members of the public for inspection at the administrative office of the Workforce Development Department, 1000 East Grand Avenue, Des Moines, Iowa. Identifying information concerning individuals as unemployment benefit claimants and taxpayers and other identifying information may be withheld by the agency in order to protect the confidentiality of parties as required by Iowa Code chapter 96.

These rules are intended to implement Iowa Code chapter 17A and Executive Order Number 11.

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**EMPLOYERS**

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