State of Iowa

Iowa Administrative Code Supplement

Biweekly
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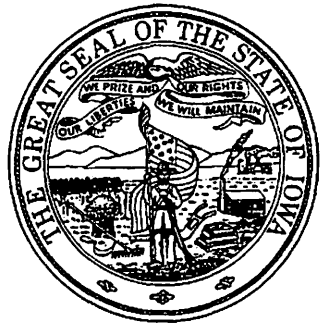

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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement pages to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each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

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

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

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

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

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UPDATING INSTRUCTIONS

September 20, 2000, Biweekly Supplement

[Previous Supplement dated 9/6/00]

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Community Action Agencies Division[427]	Ch 10, p. 1, 2 Ch 10, p. 5, 6	Ch 10, p. 1, 2 Ch 10, p. 5, 6
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*These pages may be archived for tracing the history of a rule.

PUBLIC BROADCASTING DIVISION[288]

Created within the Department of Cultural Affairs by 1986 Iowa Acts, chapter 1245, section 1318. (Iowa Code §303.76)
[Prior to 8/10/88, see Public Broadcasting Department[645] and Educational Radio and Television Facility Board[340]]
[Prior to 9/14/94, see Public Broadcasting Division [225]]

CHAPTER 13
CONTESTED CASES

CHAPTER 14
CRITERIA FOR GRANTS

CHAPTER 14
CRITERIA FOR GRANTS

288—14.1(256) Purpose. The division provides grant funding and contracts to a variety of entities throughout the state for support of educational telecommunications programs. To ensure objective evaluation of applicants for these funds, grant and contract application materials shall contain, at minimum, specific content. Program grant and contract application packets shall be developed by the division in accordance with these rules unless prohibited by or in conflict with appropriation language, the Iowa Code, the Iowa Administrative Code, federal regulations, or interagency agreements between the division and other state agencies.

288—14.2(256) Definitions. For the purpose of these rules, the following definitions shall apply:

"Division" means Iowa Public Television.

"Program grant or contract" means the collective activities of a grant or contract funded through the division.

"Program period" means the period of time during which the division intends to support the program without requiring recompetition for funds. The program period is specified within the grant application.

"Service delivery area" means the defined geographic area for delivery of program services.

288—14.3(256) Requirements. The following shall be included in all program grant and contract application materials made available by the division:

1. Funding source.
2. Program period.
3. Description of eligible applicants.
4. Services to be delivered.
5. Service delivery area.
6. Target population to be served (if applicable).
7. Funding purpose.
8. Funding restrictions.
9. Funding formula (if any).
10. Matching requirement (if any).
11. Reporting requirements.
12. Performance criteria (if any).
13. Need for letters of support or other materials (if applicable).
14. Application due date.
15. Anticipated date of awarding grant/contract.
16. Required components of submitted grant applications.
17. An explanation of the review process and the review criteria to be used by application evaluators, including, if applicable, the number of points allocated per required component.
18. Appeal process in the event an application is denied (only with competitive grant/contract process).

288—14.4(256) Review process (for competitive grants and contracts). The review process to be followed in determining the amount of funds to be approved for any competitive program grant or contract shall be described in the application. The review criteria and point allocation for each criterion shall also be described in the grant application material.

288—14.5(256) Appeal of grant or contract denial or termination. Any applicant may appeal to the administrator the denial of a properly submitted competitive program grant or contract application or the unilateral termination of a competitive program grant or contract. 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 contested case procedures found in 288—Chapter 13 that govern the administrator's decision shall be applicable to any appeal of denial or termination.

In the notice of appeal, the applicant shall give a short and plain statement of the reasons for the appeal.

The administrator shall issue a decision within a reasonable time, not to exceed 60 days from the date of the appeal.

These rules are intended to implement Iowa Code sections 256.80 to 256.90.

[Filed 8/28/00, Notice 7/26/00—published 9/20/00, effective 10/25/00]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

427—10.4(216A,PL97-35,PL98-558) Application period. Clients may apply for energy assistance between the first working day of October and April 15 of each year. Applications will be processed and the applicant and the appropriate energy suppliers notified of eligibility within 30 days of the date of application to comply with the terms of the winter moratorium on disconnections.

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

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

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

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

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

c. Each administering agency must;

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

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

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

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

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

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

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

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

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

427—10.15(216A,PL97-35,PL98-558) Appeal and hearing procedures. The following appeal and hearing procedures shall be used.

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

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

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

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

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

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

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

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

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

• Region 4: Harrison, Shelby, Audubon, Pottawattamie, Cass, Mills, Montgomery, Fremont, and Page.

• Region 5: Guthrie, Dallas, Polk, Jasper, Adair, Madison, Warren, Marion, Adams, Union, Clarke, Lucas, Taylor, Ringgold, Decatur, and Wayne.

• Region 6: Benton, Linn, Poweshiek, Iowa, Johnson, Muscatine, Mahaska, Keokuk, Washington, Louisa, Monroe, Wapello, Jefferson, Henry, Des Moines, Appanoose, Davis, Van Buren, and Lee.

"Third-party administrator" shall mean the person or entity with which the department contracts to provide administrative services for the HAWK-I program.

441—86.2(514I) Eligibility factors. A child must meet the following eligibility factors to participate in the HAWK-I program.

86.2(1) *Age.* The child shall be under 19 years of age. Eligibility for the program ends the first day of the month following the month of the child's nineteenth birthday.

86.2(2) *Income.* Countable income shall not exceed 200 percent of the federal poverty level for a family of the same size when determining initial and ongoing eligibility for the program.

a. *Countable income.* When determining initial and ongoing eligibility for the HAWK-I program, all earned and unearned income, unless specifically exempted, shall be countable.

(1) Earned income. The earned income of all parents, spouses, and children under the age of 19 who are not students shall be countable. Income shall be countable earned income when an individual produces it as a result of the performance of services. Earned income is income in the form of a salary, wages, tips, bonuses, and commissions earned as an employee, or net profit from self-employment.

1. Earned income from employment. Earned income from employment means total gross income.

2. Earned income from self-employment. Earned income from self-employment means the net profit determined by comparing gross income with the allowable costs of producing the income. The net profit from self-employment income shall be determined according to the provisions of 441—subparagraphs 75.57(2)*"f"*(1) through (7). Additionally, the cost of depreciation of capital assets identified for income tax purposes shall be allowed as a cost of doing business for self-employed persons. A person is considered self-employed when any of the following conditions exist. The person:

• Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions; or

• Establishes the person's own working hours, territory, and methods of work; or

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

3. Earned income deduction. Each person in the household whose nonexempt income, earned as an employee or from self-employment, is considered in determining HAWK-I eligibility is entitled to a 20 percent earned income deduction. The deduction is intended to include work-related expenses other than child care. These expenses may include taxes, transportation, meals, uniforms and other work-related expenses.

(2) Unearned income. The unearned income of all parents, spouses, and children under the age of 19 shall be counted. Unearned income is any income in cash that is not gained by labor or service. The available unearned income shall be the amount remaining after the withholding of taxes (Federal Insurance Contribution Act, state and federal income taxes). Examples of unearned income include, but are not limited to:

1. Social security benefits. Social security income is the amount of the entitlement before withholding of a Medicare premium.

2. Child support and alimony payments received for a member of the family.

3. Unemployment compensation.

4. Veterans benefits.

(3) Recurring lump sum income. Earned and unearned lump sum income that is received on a regular basis shall be counted and prorated over the time it is intended to cover. These payments may include, but are not limited to:

1. Annual bonuses.
2. Lottery winnings that are paid out annually.

b. Exempt income. The following shall not be counted toward the income limit when establishing eligibility for the HAWK-I program.

(1) Nonrecurring lump sum income. Nonrecurring lump sum income is income that is not expected to be received more than once. These payments may include, but are not limited to:

1. An inheritance.
2. A one-time bonus.
3. Lump sum lottery winnings.
4. Other one-time payments.

(2) Food reserves from home-produced garden products, orchards, domestic animals, and the like, when used by the household for its own consumption.

(3) The value of the coupon allotment in the Food Stamp Program.

(4) The value of the United States Department of Agriculture donated foods (surplus commodities).

(5) The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act.

(6) Any benefits received under Title III-C, Nutrition Program for the Elderly, of the Older Americans Act.

(7) Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981.

(8) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Federal-Aid Highway Act of 1968.

(9) Interest and dividend income.

(10) Any judgment funds that have been or will be distributed per capita or held in trust for members of any Indian tribe.

(11) Payments to volunteers participating in the Volunteers in Service to America (VISTA) program.

(12) Payments for supporting services or reimbursement of out-of-pocket expenses received by volunteers in any of the programs established under Titles II and III of the Domestic Volunteer Services Act.

(13) Tax-exempt portions of payments made pursuant to the Alaskan Native Claims Settlement Act.

(14) Experimental housing allowance program payments.

(15) The income of a Supplemental Security Income (SSI) recipient.

(16) Income of an ineligible child if the family chooses not to include the child in the eligibility determination in accordance with the provisions of paragraph 86.2(3)"*c.*"

(17) Unearned income in kind.

(18) Family support subsidy program payments.

(19) All earned and unearned educational funds of an undergraduate or graduate student or a person in training. However, any additional amount of educational funds received for the person's dependents that are in the eligible group shall be considered as nonexempt income.

(20) Bona fide loans.

(21) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

(3) Provides a specific medical record on demand.

(4) Meets state and federal reporting requirements applicable to the HAWK-I program.

(5) Maintains the confidentiality of medical records information and releases the information only in accordance with established policy below:

1. All medical records of the enrollee shall be confidential and shall not be released without the written consent of the enrollee or responsible party.

2. Written consent is not required for the transmission of medical records information to physicians, other practitioners, or facilities that are providing services to enrollees under a subcontract with the plan. This provision also applies to specialty providers who are retained by the plan to provide services which are infrequently used, which provide a support system service to the operation of the plan, or which are of an unusual nature. This provision is also intended to waive the need for written consent for department staff and the third-party administrator assisting in the administration of the program, reviewers from the peer review organization (PRO), monitoring authorities from the Health Care Financing Administration (HCFA), the plan itself, and other subcontractors which require information as described under numbered paragraph "5" below.

EXCEPTION: Written consent is required for the transmission of medical records relating to substance abuse, HIV, or mental health treatment in accordance with state and federal laws.

3. Written consent is not required for the transmission of medical records information to physicians or facilities providing emergency care pursuant to paragraph 86.15(2)"*b.*"

4. Written consent is required for the transmission of the medical records information of a former enrollee to any physician not connected with the plan.

5. The extent of medical records information to be released in each instance shall be based upon a test of medical necessity and a "need to know" on the part of the practitioner or a facility requesting the information.

6. Medical records maintained by subcontractors shall meet the requirements of this rule.

b. Each plan shall provide at a minimum reports and plan information to the third-party administrator as follows:

(1) A list of providers of medical services under the plan.

(2) Information regarding the plan's appeals process.

(3) A plan for a health improvement program.

(4) Periodic financial, utilization and statistical reports as required by the department.

(5) Encounter data on a monthly basis as required by the department.

(6) Time-specific reports which define activity for child health care, appeals, and other designated activities which may, at the department's discretion, vary among plans, depending on the services covered and other differences.

(7) Other information as directed by the department.

86.15(10) *Systems.* The participating health plan shall maintain data files that are compatible with the department's and third-party administrator's systems.

86.15(11) *Payment to the participating health plan.*

a. In consideration for all services rendered by a plan, the plan shall receive a payment each month for each enrollee. This capitation rate represents the total obligation of the department with respect to the costs of medical care and services provided to the enrollees.

b. The capitation rate shall be actuarially determined by the department July of 2000 and each fiscal year thereafter using statistics and data assumptions and relevant experience derived from similar populations.

c. The capitation rate does not include any amounts for the recoupment of losses suffered by the plan for risks assumed under the current or any previous contract. The plan accepts the rate as payment in full for the contracted services. Any savings realized by the plan due to lower utilization from a less frequent incidence of health problems among the enrolled population shall be wholly retained by the plan.

d. If an enrollee has third-party coverage or a responsible party other than the HAWK-I program available for purposes of payment for medical expenses, it is the right and responsibility of the plan to investigate these third-party resources and attempt to obtain payment. The plan shall retain all funds collected through third-party sources. A complete record of all income from these sources must be maintained and made available to the department.

86.15(12) *Quality assurance.* The plan shall have in effect an internal quality assurance system.

441—86.16(514I) Clinical advisory committee. Members of the clinical advisory committee established in accordance with the provisions of 441—paragraph 1.10(2)"*c*" shall be appointed to three-year terms. Members may be appointed for more than one term. No more than one-third of the membership of the committee shall rotate off the committee in any given calendar year.

These rules are intended to implement Iowa Code chapter 514I.

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INSPECTIONS AND APPEALS DEPARTMENT[481]

CHAPTER 1
ADMINISTRATION

MISSION STATEMENT

The department of inspections and appeals maintains integrity in state or federal programs and operations through audits, investigations, inspections of designated programs, and through impartial hearings of contested administrative actions to ensure compliance with laws, rules and regulations.

481—1.1(10A) Organization.

1.1(1) The Iowa department of inspections and appeals was established by Iowa Code sections 10A.101 to 10A.601. The chief executive officer of the department is the director of the department of inspections and appeals who shall be appointed by the governor to serve at the pleasure of the governor subject to confirmation by the senate no less frequently than every four years.

1.1(2) The director is assisted by a deputy director who is appointed by the director of inspections and appeals.

1.1(3) The department is organized into divisions which are further divided into bureaus and sections.

1.1(4) The director has general supervision over the administration and operation of all divisions. The director also develops statewide programs in compliance with the goals of the department.

1.1(5) The deputy director serves as the principal deputy to the director to assist in the development, implementation, or revision of the policies affecting overall operations and relationships in the agency; confers with staff department heads regarding the progress and problems of specific programs and operations for which they are responsible; reviews activities, reports and records, and determines conformity with policies and procedures and the need for improvements or revisions; determines and ensures that policy required by changes in the law or director action are executed, reports findings and submits recommendations to the director for approval or subsequent actions; supervises divisions requiring administrative coordination, and supervises general administrative matters. The deputy director represents the director in various capacities as directed.

481—1.2(10A) Definitions. For rules of the department of inspections and appeals[481], the following definitions apply:

"Department" means the department of inspections and appeals.

"Department of human services" is referred to as DHS.

"Director" means the director of the department.

481—1.3(10A) Audits division. This division conducts audits, except those conducted by the state auditor's office, including but not limited to the following:

1. Audits of real estate broker trust accounts.
2. Audits relative to the administration of hospitals and health care facilities.
3. Audits relative to the administration and disbursement of funds under the state supplemental assistance program and the state medical assistance program.
4. Audits relative to the administration and disbursement of funds from the energy research and development fund designated for the weatherization program or the energy assistance program.

481—1.4(10A) Investigations division. This division conducts investigations including but not limited to the following:

1. Investigations relative to the practice of regulated professions and occupations, except those within the jurisdiction of the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.
2. Investigations relative to proposed sales within the state of subdivided land situated outside of the state.
3. Investigations relative to applications for beer and liquor licenses.
4. Investigations relative to the liquidation of overpayment debts owed to the department of human services.
5. Investigations relative to the operations of the department of elder affairs.
6. Investigations relative to the administration of the state supplemental assistance program, the state medical assistance program, the food stamp program, and the family investment program.
7. Investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.

481—1.5(10A) Inspections division. This division conducts inspections including but not limited to the following:

1. Licensing procedures related to social and charitable gambling pursuant to Iowa Code chapter 99B.
2. Food establishments, including groceries, restaurants, hotels, food and beverage vending machines, state educational or charitable institutions for licensing determination, and sanitation inspections in any locality of the state upon the written petition of five or more residents of a particular locality. Correctional and penal institutions are also inspected for sanitary conditions.

481—1.6(10A) Administrative hearings division. This division conducts hearings including but not limited to the following:

1. Hearings and appeals relative to foster care facilities, child day care facilities, administration of the state medical assistance program, administration of the state supplementary assistance program, administration of the food stamp program, and administration of the family investment program and other programs administered by the department of human services. Decisions of the division in these areas are subject to review by the department of human services.
2. Hearings and appeals relative to occupational safety and health regulations and the state elevator code. Decisions of the division in these areas are subject to review by the employment appeal board.

3. Hearings and appeals relative to administration of the department of general services. Decisions of the division in this area are subject to review by the department of general services.

4. Hearings and appeals relative to administration of the department of transportation. Decisions of the division in this area are subject to review by the department of transportation.

5. Appeals relative to professional and occupational license denials, suspensions, revocations, and other matters involving professional and occupational discipline except those within the jurisdiction of the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.

Judicial review of the division's actions in these areas may be sought in accordance with the terms of Iowa Code chapter 17A.

6. Hearings and appeals relative to administration of the department of elder affairs. Decisions of the division in this area are subject to review by the department of elder affairs.

7. Hearings and appeals relative to the licensure or certification of hospitals, hospices, and health care facilities. Decisions of the division in this area are subject to review by the department of inspections and appeals.

8. Hearings and appeals relative to the administration of the department of public health. Decisions of the division in this area are subject to review by the department of public health.

9. Hearings and appeals relative to administration of the department of public safety. Decisions of the division in this area are subject to review by the department of public safety.

10. Hearings and appeals relative to the administration of the department of personnel except those cases within the jurisdiction of the public employment relations board. Decisions of the division in this area shall be determined by the employment appeal board, and the appeal board's decisions shall be considered final agency action under Iowa Code chapter 17A, except for reduction in force appeals which shall be subject to review by the director of the department of personnel.

11. Hearings and appeals relative to the administration of the department of cultural affairs. Decisions of the division in this area are subject to review by the department of cultural affairs.

12. Hearings and appeals relative to administration of the department of natural resources. Decisions of the division in this area are subject to review by the department of natural resources.

13. The administrator shall coordinate the division's conduct of all nonstatutory administrative hearings and appeals provided for in the Iowa administrative code and bulletin.

481—1.7(10A) Administering discretion. Nothing in the aforesaid allocation of duties shall be interpreted to prevent flexibility in interdepartmental operations or to forbid other divisional allocations of duties in the discretion of the director of the department of inspections and appeals.

481—1.8(10A) Employment appeal board. The employment appeal board consists of three members appointed by the governor, subject to confirmation by the senate, to staggered six-year terms. One member shall be qualified by experience and affiliation to represent employers, one member shall be qualified by experience and affiliation to represent employees, and one member shall represent the general public. This board hears and decides contested cases under Iowa Code chapters 19A, 80, 88, 96, 97B and 104 in accordance with administrative rules promulgated by the employment appeal board.

481—1.9(10A) Foster care review board. The foster care review board consists of seven members appointed by the governor, subject to confirmation by the senate.

This board administers foster care review programs as defined in Iowa Code section 237.19, in accordance with administrative rules promulgated by the foster care review board.

481—1.10(10A) The state appellate defender. The state appellate defender is appointed by the governor and represents indigents on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief when appointed by the district court which issued the judgment or order.

481—1.11(10A) Hospital licensing board. This board consists of five individuals who have recognized ability in the field of hospital administration. They are appointed by the governor. The hospital licensing board consults and advises the department of public health on matters of policy affecting Iowa Code chapter 135B. The board reviews and approves rules and standards for the implementation of chapter 135B before they are reviewed and approved by the department of public health and adopted by the department of inspections and appeals.

481—1.12(10A) Health facilities division. This division conducts inspections and investigations including but not limited to the following:

1. Investigations relative to the standards and practices of hospitals, hospices, and health care facilities.
2. Inspections and other licensing procedures relative to the hospice program, hospitals, and health care facilities. The division shall be the sole designated licensing authority for these programs and facilities.
3. Inspections relative to hospital and health care facility construction projects.
4. Inspections of child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.

These rules are intended to implement Iowa Code sections 10A.104 and 17A.3(1), paragraph *"a,"* and Iowa Code Supplement section 10A.106 as amended by 2000 Iowa Acts, Senate File 2390, section 2.

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240.8(5) Application for any required examination will be denied or deferred if the applicant lacks the required education or supervised experience.

240.8(6) An oral examination, if required, will be scheduled only for those applicants who pass the written examination(s).

240.8(7) The board will notify the applicant in writing of examination results. An applicant will be deemed to have passed the written examination if the score obtained on the examination is equal to or greater than 70 percent of the total items.

240.8(8) Beginning January 1, 1984, persons determined by the board not to have performed satisfactorily may apply for reexamination no more than three times. Any applicant who has taken and failed the examination a combined total of four times in this state or in any other state or jurisdiction shall not be permitted to sit for the examination in this state.

This rule is intended to implement Iowa Code sections 147.36 and 147.80.

645—240.9(154B) License renewal.

240.9(1) At least two months before the renewal date, a renewal notice will be sent to each license holder at the last address in the board's file. Failure to receive the notice shall not relieve the license holder of the obligation to pay the renewal fee as provided in rule 645—240.10(154B) on or before the renewal date.

240.9(2) Renewal fees shall be received by the board on or before the end of the last month of the renewal period. Whenever renewal fees are not received as specified, the license lapses and the practice of psychology must cease until all renewal fees are received by the board. In addition thereto a penalty fee as provided in rule 645—240.10(154B) shall be paid.

240.9(3) If the renewal fees are not received by the board within 180 days after the end of the last month of the renewal period, an application for reinstatement must be filed with the board with a reinstatement fee as provided in rule 645—240.10(154B) in addition to the renewal fee and the penalty.

240.9(4) A duplicate license to practice psychology issued to be displayed in a branch office shall be renewed at the same time as the original license.

This rule is intended to implement Iowa Code sections 147.11 and 147.80.

645—240.10(154B) Licensure fees. All fees are nonrefundable. Checks should be made payable to the Iowa State Board of Psychology Examiners.

240.10(1) Application fee for license to practice psychology is $100. Fee for application for psychology license by reciprocity is $250.

240.10(2) The fee for the Examination for Professional Practice in Psychology is $350. Effective July 1, 2001, the fee will be $450.

240.10(3) Application fee for a limited permit is $100.

240.10(4) Biennial renewal fee for a license to practice psychology is $140. Biennial renewal fee for a duplicate license to practice psychology for a branch office is $20.

240.10(5) Renewal fee for a limited permit is $70.

240.10(6) Penalty fee for failure to submit renewal fee as required by subrule 240.9(2) is $50.

240.10(7) Reinstatement fee as required by subrule 240.9(3) is $70.

240.10(8) Delinquent penalty fee for failure to complete continuing education as provided in subrule 240.101(6) is $25.

240.10(9) Fee for a duplicate license if the original is lost or stolen is $10. Fee for a duplicate license for a branch office is $10.

240.10(10) Fee for a certified statement that a licensee is licensed in this state is $10.

240.10(11) Fee for registration of an applicant and for annual renewal of registration of an applicant as provided by subrule 240.6(12) is $20.

240.10(12) Delinquent penalty fee for failure to file continuing education report as provided in rule 240.105(272C) is $25.

This rule is intended to implement Iowa Code section 147.80.

SPECIALTY CERTIFICATION

645—240.11(154B) Definitions.

240.11(1) *"Certified health service provider in psychology"* means a person licensed to practice psychology who has a doctoral degree in psychology, or prior to July 1, 1984, was licensed at the doctoral level with a degree in psychology or its equivalent, or was prior to January 1, 1984, licensed as a psychologist in this state and prior to January 1, 1985, receives a doctoral degree equivalent to a doctoral degree in psychology, and who has at least two years of clinical experience in a recognized health service setting or meets the standards of a national register of health service providers in psychology. A person certified as a health service provider in psychology shall be deemed qualified to diagnose or evaluate mental illness and nervous disorders, and to treat mental illnesses and nervous disorders, excluding those mental illnesses and nervous disorders which are established as primarily of biological etiology with the exception of the treatment of the psychological and behavioral aspects of those mental illnesses and nervous disorders.

The board of examiners for psychology after determining a person meets the qualifications for certification may issue a certificate designating the person as a health service provider in psychology.

240.11(2) *"Doctoral degree in psychology"* means a doctoral degree in any program which meets the following criteria:

a. Programs that are accredited by the American psychological association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serve as a model for professional psychology training, or all of the following criteria, *"b"* through *"j."*

b. Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

c. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. A program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

d. The psychology program must stand as a recognizable, coherent organizational entity within the institution.

e. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

f. The program must be an integrated, organized sequence of study.

g. There must be an identifiable psychology faculty on-site sufficient in size to ensure that the ratio of faculty to students is adequate for instruction. The faculty must also have sufficient breadth in order to ensure that the scope of knowledge in psychology is sufficiently broad for adequate instruction. There must be a psychologist responsible for the program.

h. The program must have an identifiable body of students who are matriculated in that program for a degree.

i. The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

j. The curriculum shall encompass a minimum of three academic years of graduate study. Because a significant residency experience is necessary to ensure adequate professional-technical skills, at least a minimum of one year's residency at the educational institution granting the doctoral degree is required. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (five or more graduate quarter hours) in each of these four substantive content areas:

(1) Biological bases of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

(2) Cognitive-affective bases of behavior: learning, thinking, motivation, emotion.

(3) Social bases of behavior: social psychology, group processes, organizational and systems theory.

(4) Individual differences: personality theory, human development, abnormal psychology.

In addition, all professional education programs in psychology will include course requirements in specialty areas.

240.11(3) *"Two years of clinical experience"* means two years of supervised experience in health service in psychology, of which at least one year is in an organized health service training program as defined in subrule 240.11(4) and one year is postdoctoral or for a person who prior to July 1, 1984, was licensed as a psychologist in this state means two years of experience in health service in psychology supervised by a licensed psychologist.

Those psychologists licensed at the subdoctorate level prior to January 1, 1985, who then seek licensure recognition at the doctorate level may be allowed credit for licensure supervision and experience that was done at the subdoctorate level.

240.11(4) *Health service training program.* An organized health service training program shall meet the following criteria:

a. An organized health service training program is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose is assuring breadth and quality of training.

b. The organized health service training program has a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed or certified by the state board of examiners in psychology in the state in which the program exists.

c. The organized health service training program has two or more psychologists on the staff as supervisors, at least one of whom is actively licensed as a psychologist by the state board of examiners in psychology in the state in which the program exists.

d. Supervision is provided by a staff member of the organized health service training program or by an affiliate of the organized health service training program who carries clinical responsibility for the cases being supervised. At least half of the internship supervision is provided by one or more psychologists.

e. The organized health service training program provides training in a range of assessment and treatment activities conducted directly with patients seeking psychological services.

f. At least 25 percent of trainees' time is in direct patient contact (minimum 375 hours).

g. The organized health service training program includes a minimum of two hours per week (regardless of whether the internship is completed in one year or two) of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with psychological services rendered directly by the intern. There must also be at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern is actively involved; seminars dealing with clinical issues; cotherapy with a staff person including discussion; group supervision; additional individual supervision.

h. Training is postclerkship, postpracticum, and postexternship level.

i. The organized health service training program has a minimum of two interns at the internship level of training during any period of training.

j. The internship level trainees have a title such as "intern," "resident," "fellow," or other designation of trainee status.

k. The organized health service training program has a written statement or brochure which describes the goals and content of the internship, states clear expectations for quantity and quality of trainee's work and is made available to prospective interns.

l. The training experience (minimum 1800 hours) shall be completed within 24 consecutive months and no less than 12 months.

240.11(5) *"Recognized health service setting"* means a setting in which the delivery of direct preventive, assessment, and therapeutic intervention services are provided to individuals whose growth, adjustment or functioning is actually impaired or is demonstrably at high risk of impairment; delivery of the aforementioned services includes, but is not limited to, the diagnosis or evaluation and treatment of mental illness and nervous disorders, excluding those mental illnesses and nervous disorders which are established as primarily of biological etiology with the exception of the treatment of the psychological and behavioral aspects of those mental illnesses and nervous disorders.

This rule is intended to implement Iowa Code section 154B.7.

645—240.12(154B) Requirements for certification.

240.12(1) Any person currently licensed as a psychologist in the state of Iowa and listed in the 1983 National Register of Health Service Providers in Psychology as published by the Council for Health Service Providers in Psychology or the Cumulative Summer 1984 Supplement to the National Register of Health Service Providers in Psychology is eligible for certification as a health service provider in psychology upon making application and payment of the required certification fee.

240.12(2) Any person, who is not listed in the 1983 National Register of Health Service Providers in Psychology or Cumulative Summer 1984 Supplement, making application for certification as a health service provider in psychology shall comply with the following requirement:

a. Current licensure to practice psychology in the state of Iowa; and

b. Doctoral degree in psychology or prior to July 1, 1984, was licensed at the doctoral level with a degree in psychology or its equivalent, or was licensed as a psychologist in Iowa prior to January 1, 1984, and prior to January 1, 1985, receives a doctoral degree equivalent to a doctoral degree in psychology; and

c. Completion of at least two years of clinical experience in a recognized health service setting.

240.12(3) Applications. All applications shall be made upon a form furnished by the board.

240.12(4) Fees. All fees are nonrefundable:

a. Application fee for a person who is listed in the 1983 National Register of Health Service Providers in Psychology or Cumulative Summer 1984 Supplement is $30.

b. Application fee for a person who is not listed in the 1983 National Register of Health Service Providers or the Cumulative Summer 1984 Supplement is $140.

c. Biennial renewal fee for certification as a certified health service provider in psychology is $40, which shall be paid at the same time as the psychology license renewal fees are due.

d. Fee for a duplicate certificate if the original is lost or stolen is $10.

e. Fee for a certified statement that a licensee is certified in this state is $10.

This rule is intended to implement Iowa Code section 154B.7.

645—240.13 to **240.99** Reserved.

645—240.100(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 645—13.1(272C) including civil penalties in an amount not to exceed $1000, when the board determines that a licensee is guilty of any of the following acts or offenses:

240.100(1) All grounds listed in Iowa Code section 147.55 which are:

a. Fraud in procuring a license.

b. Professional incompetency.

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

d. Habitual intoxication or addiction to the use of drugs.

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

f. Fraud in representations as to skill or ability.

g. Use of untruthful or improbable statements in advertisements.

h. Willful or repeated violations of the provisions of Iowa Code chapter 147.

240.100(2) Violation of the rules promulgated by the board.

240.100(3) Personal disqualifications:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

240.100(4) Practicing the profession while the license is suspended.

240.100(5) Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the Iowa board of psychology examiners revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.

240.100(6) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

240.100(7) Prohibited acts consisting of the following:

a. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

b. Permitting another person to use the licensee's license for any purpose.

c. Practice outside the scope of a license.

d. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.

e. Verbally or physically abusing clients.

f. Any sexual intimidation or sexual relationship between a psychologist and a client.

240.100(8) Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying client's records.

240.100(9) Failure to report a change of name or address within 30 days after it occurs.

240.100(10) Submission of a false report of continuing education or failure to submit the annual report of continuing education.

240.100(11) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

240.100(12) Failure to comply with a subpoena issued by the board.

240.100(13) Failure to report to the board as provided in 645—Chapter 13 any violation by another licensee of the reasons for the disciplinary action as listed in this rule.

240.100(14) Failure to comply with the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association, as published in the December 1992 edition of *American Psychologist*, effective December 1, 1992, which is hereby adopted by reference. Later amendments or editions of the Principles are not included in this rule. Copies of the Principles may be obtained at cost from the board, or may be obtained by contacting the Director, Office of Ethics, American Psychological Association, 750 First Street N.E., Washington, D.C. 20002-4242.

These rules are intended to implement Iowa Code sections 147.76, 147.55(3), 272C.4 and 272C.10.

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CHAPTER 241
CONTINUING EDUCATION FOR PSYCHOLOGISTS

645—241.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

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

"Administrator" means the administrator of the board of psychology examiners.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the board of psychology examiners.

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

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

"Inactive license" means the license of a person who is not in practice in the state of Iowa.

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

"License" means license to practice.

"Licensee" means any person licensed to practice as a psychologist in the state of Iowa.

"Practice of psychology" means the application of established principles of learning, motivation, perception, thinking, psychophysiology and emotional relations to problems, behavior, group relations, and biobehavior by persons trained in psychology for compensation or other personal gain. The application of principles includes, but is not limited to, counseling and the use of psychological remedial measures with persons, in groups or individually, with adjustment or emotional problems in the areas of work, family, school and personal relationships. The practice of psychology also means measuring and testing personality, mood-motivation, intelligence/aptitudes, attitudes/public opinion, and skills; the teaching of such subject matter; and the conducting of research on the problems relating to human behavior.

645—241.2(272C) Continuing education requirements.

241.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of even-numbered years and ending on June 30 of even-numbered years. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 40 hours of continuing education approved by the board. For the 2001 renewal cycle only, 50 hours of continuing education will be due by June 30, 2002. Continuing education credit earned from December 31, 2000, through June 30, 2001, may be used for either the 2001 renewal cycle or the following biennium. The licensee may use the earned continuing education credit hours only once. Credit may not be duplicated for both compliance periods. This applies for the renewal biennium of 2001 and for the following renewal biennium. Continuing education hours will return to 40 hours each biennium at the end of this prorated compliance period.

241.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

241.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must meet the requirements herein and be approved by the board pursuant to statutory provisions and the rules that implement them.

241.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal.

241.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—241.3(272C) Standards for approval.

241.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours (One contact hour equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

241.3(2) *Specific criteria.*

a. A licensee may obtain continuing education hours of credit by:

(1) Attending programs/activities that are sponsored by the American Psychological Association or the Iowa Psychological Association.

(2) Completing academic coursework that meets the criteria set forth in the rules. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

(3) Conducting scholarly research or other activities that integrally relate to the practice of psychology, the results of which are published in a recognized professional publication.

(4) Preparing new courses that have received prior approval from the board.

(5) Completing home study courses that issue a certificate of completion.

(6) Completing courses that are electronically transmitted and issue a certificate of completion.

(7) Attending workshops, conferences, or symposiums that meet the criteria in 645—241.3(272C).

b. A combined maximum of 20 hours of credit per biennium may be used for scholarly research and preparation of new courses.

645—241.4(272C) Reporting continuing education by licensee. At the time of license renewal, each licensee shall be required to submit a report on continuing education to the board on a board-approved form.

241.4(1) The information on the form shall include:

a. Title of continuing education activity;

b. Date(s);

c. Sponsor of the activity;

d. Number of continuing education hours earned; and

e. Teaching method used.

241.4(2) Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

a. The board will select licensees to be audited.

b. The licensee shall make available to the board for auditing purposes a certificate of attendance or verification for all reported activities that includes the following information:

(1) Date, location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation;

(2) Number of contact hours for program attended; and

(3) Indication of the successful completion of the course.

c. For auditing purposes, the licensee must retain the above information for two years after the biennium has ended.

d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.

e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of the continuing education report.

f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—241.5(272C) Reinstatement of lapsed license. Failure of the licensee to renew within 30 days after the expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse must apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement and statement of competence to the board;
2. Pays all the renewal fees then due;
3. Pays all the penalty fees which have been assessed by the board for failure to renew;
4. Pays the reinstatement fee; and
5. Provides evidence of satisfactory completion of continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 40 by the number of bienniums since the license lapsed with a maximum of 80 hours. The continuing education hours must be completed within the prior two bienniums of date of application for reinstatement.

645—241.6(272C) Continuing education waiver for active practitioners. A psychologist licensed to practice psychology shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing psychologist.

645—241.7(272C) Continuing education exemption for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa may be granted an exemption of continuing education compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in practice in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon forms provided by the board. The licensee shall have completed the required continuing education at the time of reinstatement.

645—241.8(272C) Continuing education waiver for disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum education requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived, by such methods as may be prescribed by the board.

645—241.9(272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and have obtained a certificate of waiver shall, prior to engaging in the practice of psychology in the state of Iowa, satisfy the following requirements for reinstatement.

241.9(1) Reinstatement of the inactive license may be granted by the board if the applicant:

a. Submits a written application for reinstatement to the board;

b. Pays all the renewal fees then due; and

c. Pays the reinstatement fee.

241.9(2) The applicant shall furnish in the application evidence of one of the following:

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

b. Completion of a total number of hours of approved continuing education computed by multiplying 40 by the number of bienniums that the certificate of exemption has been in effect for such applicant, with a maximum of 80 hours. The continuing education hours must be completed within the two most recent bienniums prior to the date of application for reinstatement.

645—241.10(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education activity for continuing education credit, the applicant or licensee shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

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

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CHAPTER 242
IMPAIRED PRACTITIONER REVIEW COMMITTEE

Rescinded IAB 7/14/99, effective 8/18/99

CHAPTERS 243 to 248
Reserved

CHAPTER 249
PUBLIC RECORDS AND FAIR INFORMATON PRACTICES

Rescinded IAB 7/14/99, effective 8/18/99

CHAPTERS 250 to 259
Reserved

CHAPTER 106
Reserved

TITLE XV
LOCAL OPTION SALES AND SERVICE TAX

CHAPTER 107
LOCAL OPTION SALES AND SERVICE TAX

CHAPTER 108
LOCAL OPTION SCHOOL INFRASTRUCTURE SALES AND SERVICE TAX

CHAPTERS 109 to 119
Reserved

TITLE XVI
REASSESSMENT EXPENSE FUND

CHAPTER 120
ORGANIZATION AND OPERATION

CHAPTER 121
Reserved

TITLE XVII
ASSESSOR CONTINUING EDUCATION

CHAPTER 122
ADMINISTRATION

X.14(17A) Filing of rules;
X.15(17A) Effectiveness of rules prior to publication;
X.16(17A) General statement of policy; and
X.17(17A) Review by agency of rules.

7.57(2) The department hereby states that the following cited Uniform Rules on Agency Procedure for Rule Making are not adopted by the department:
X.1(17A) Applicability;
X.3(17A) Public rule-making docket;
X.4(2) Notice of proposed rule making—incorporated by reference;
X.12(2) Contents, style, and form of rule—incorporation by reference;
X.12(3) Contents, style and form of rule—references to materials not published in full; and
X.13(17A) Agency rule-making record.

701—7.58(17A) Public inquiries on rule making and the rule-making records. The department maintains records of information obtained and all actions taken and criticisms received regarding any rule within the past five years. The department also keeps a record of the status of every rule within the rule-making procedure. Inquiries concerning the status of rule making may be made by contacting the Administrator of the Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. For additional information regarding criticism of rules see 701—7.59(17A).

701—7.59(17A) Criticism of rules. The Administrator of the Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, is designated as the office where interested persons may submit by electronic means or by mail criticisms, requests for waivers, or comments regarding a rule. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, and have a valid legal basis for support. All requests for waivers, comments, or criticisms received on any rule will be kept in a separate record for a period of five years by the department.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 421.60.

DIVISION III
WAIVER OR VARIANCE

701—7.60(78GA,HF2206) Waiver or variance of certain department rules. All discretionary rules or discretionary provisions in a rule over which the department has jurisdiction, in whole or in part, may be subject to waiver or variance. See subrules 7.60(3) and 7.60(4).

7.60(1) *Definitions.* The following terms apply to the interpretation and application of this rule:

"Discretionary rule" or *"discretionary provisions in a rule"* means rules or provisions in rules resulting from a delegation by the legislature to the department to create a binding rule to govern a given issue or area. The department is not interpreting any statutory provision of the law promulgated by the legislature in a discretionary rule. Instead, a discretionary rule is authorized by the legislature when the legislature has delegated the creation of binding rules to the department and the contents of such rules are at the discretion of the department. A rule that contains both discretionary and interpretive provisions is deemed to be a discretionary rule to the extent of the discretionary provisions in the rule.

"Interpretive rules" or *"interpretive provisions in rules"* means rules or provisions in rules which define the meaning of a statute or other provision of law or precedent where the department does not possess the delegated authority to bind the courts to any extent with its definition.

"Waiver or variance" means an agency action which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

7.60(2) *Scope of rule.* This rule creates generally applicable standards and a generally applicable process for granting individual waivers or variances from the discretionary rules or discretionary provisions in rules adopted by the department in situations where no other specifically applicable law provides for waivers or variances. To the extent another more specific provision of law purports to govern the issuance of a waiver or variance from a particular rule, the more specific waiver or variance provision shall supersede this rule with respect to any waiver or variance from that rule.

The waiver or variance provisions set forth in this rule do not apply to rules over which the department does not have jurisdiction or when issuance of the waiver or variance would be inconsistent with any applicable statute, constitutional provision or other provision of law.

7.60(3) *Applicability of this rule.* This rule applies only to waiver or variance of those departmental rules that are within the exclusive rule-making authority of the department. This rule shall not apply to interpretive rules that merely interpret or construe the meaning of a statute, or other provision of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its interpretation or construction. Thus, this waiver or variance rule applies to discretionary rules and discretionary provisions in rules, and not to interpretive rules.

The application of this rule is strictly limited to petitions for waiver or variance filed outside of a contested case proceeding. Petitions for waiver or variance from a discretionary rule or discretionary provisions in rules filed after the commencement of a contested case as provided in 701—7.47(17A) will be treated as an issue of the contested case to be determined by the presiding officer of the contested case.

7.60(4) *Authority to grant a waiver or variance.* The director may not issue a waiver or variance under this rule unless:

a. The legislature has delegated authority sufficient to justify the action; and

b. The waiver or variance is consistent with statutes and other provisions of law. No waiver or variance from any mandatory requirement imposed by statute may be granted under this rule.

7.60(5) *Criteria for waiver or variance.* The director may, in the director's sole discretion, issue an order in response to a petition, granting a waiver or variance from a discretionary rule or a discretionary provision in a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person, if the director finds that the waiver or variance is consistent with subrules 7.60(3) and 7.60(4), and if all of the following criteria are also met:

a. The waiver or variance would not prejudice the substantial legal rights of any person;

b. The rule or provisions of the rule are not specifically mandated by statute or another provision of law;

c. The application of the rule or rule provision would result in an undue hardship or injustice to the petitioner; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule or rule provision for which the waiver or variance is requested.

7.60(6) *Director's discretion.* The final decision to grant or deny a waiver or variance shall be vested in the director of revenue and finance. This decision shall be made at the sole discretion of the director based upon consideration of relevant facts.

7.60(7) *Burden of persuasion.* The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant the petitioner a waiver or variance based upon the criteria contained in subrule 7.60(5).

7.60(8) *Contents of petition.* A petition for waiver or variance must be in the following format:

Iowa Department of Revenue and Finance

Name of Petitioner	*	Petition for
Address of Petitioner	*	Waiver
Type of Tax at Issue	*	Docket No._____

A petition for waiver or variance must contain all of the following, where applicable and known to the petitioner:

a. The name, address, telephone number, and case number or state identification number of the person or entity for whom a waiver or variance is being requested;

b. A description and citation of the specific rule or rule provisions from which a waiver or variance is being requested;

c. The specific waiver or variance requested, including a description of the precise scope and operative period for which the petitioner wants the waiver or variance to extend;

d. The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance;

e. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed waiver or variance, including audits, notices of assessment, refund claims, contested case hearings, or investigative reports relating to the activity within the last five years;

f. Any information known to the petitioner relating to the department's treatment of similar cases;

g. The name, address, and telephone number of any public agency or political subdivision which might be affected by the grant of a waiver or variance;

h. The name, address, and telephone number of any person or entity who would be adversely affected by the granting of the waiver or variance;

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance;

j. Signed releases of information authorizing persons with knowledge of relevant facts to furnish the department with information relating to the waiver or variance;

k. If the petitioner seeks to have identifying details deleted, which deletion is authorized by statute, such details must be listed with the statutory authority for the deletion; and

l. Signature by the petitioner at the conclusion of the petition attesting to the accuracy and truthfulness of the information set forth in the petition.

7.60(9) *Filing of petition.* A petition for waiver or variance must be filed with the clerk of the hearings section for the Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50309.

7.60(10) *Additional information.* Prior to issuing an order granting or denying a waiver or variance, the director may request additional information from the petitioner relating to the petition and surrounding circumstances. The director may, on the director's own motion, or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner or the petitioner's representative, or both, and the director to discuss the petition and surrounding circumstances.

7.60(11) *Notice of petition for waiver or variance.* The petitioner shall provide, within 30 days of filing the petition for waiver or variance, a notice consisting of a concise summary of the contents of the petition for waiver or variance and stating that the petition is pending. Such notice shall be mailed by the petitioner to all persons entitled to such notice. Such persons to whom notice must be mailed include, but are not limited to, the director and all parties to the petition for waiver or variance, or the parties' representatives. The petitioner must then file written notice with the clerk of the hearings section for the department (address indicated above) attesting that the notice has been mailed. The names, addresses and telephone numbers of the persons to whom the notices were mailed shall be included in the filed written notice. The department has the discretion to give such notice to persons other than those persons notified by the petitioner.

7.60(12) *Ruling on a petition for waiver or variance.* An order granting or denying a waiver or variance must conform to the following:

a. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or rule provision to which the order pertains, a statement of the relevant facts and reasons upon which the action is based and a description of the narrow and precise scope and operative time period of a waiver or variance, if one is issued.

b. If a petition requested the deletion of identifying details, then the order must either redact the details prior to the placement of the order in the public record file referenced in subrule 7.60(17) or set forth the grounds for denying the deletion of identifying details as requested.

c. Conditions. The director may condition the grant of a waiver or variance on any conditions which the director deems to be reasonable and appropriate in order to protect the public health, safety and welfare.

7.60(13) *Time period for waiver or variance; extension.* Unless otherwise provided, an order granting a petition for waiver or variance will be effective for 12 months from the date the order granting the waiver or variance is issued. Renewal of a granted waiver or variance is not automatic. To renew the waiver or variance beyond the 12-month period, the petitioner must file a new petition requesting a waiver or variance. The renewal petition will be governed by the provisions in this rule and must be filed prior to the expiration date of the previously issued waiver or variance or extension of waiver or variance. Even if the order granting the waiver or variance was issued in a contested case proceeding, any request for an extension shall be filed with and acted upon by the director. However, renewal petitions must request an extension of a previously issued waiver or variance. Granting the extension of the waiver or variance is at the director's sole discretion and must be based upon whether the factors set out in subrules 7.60(4) and 7.60(5) remain valid.

7.60(14) *Time for ruling.* The director shall grant or deny a petition for waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees in writing to a later date or the director indicates in a written order that it is impracticable to issue the order within the 120-day period.

7.60(15) *When deemed denied.* Failure of the director to grant or deny a waiver or variance within the 120-day or the extended time period shall be deemed a denial of that petition.

7.60(16) *Service of orders.* Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

7.60(17) *Record keeping.* The department is required to maintain a record of all petitions for waiver or variance and rulings granting or denying petitions for waiver or variance.

a. *Petitions for waiver or variance.* The department shall maintain a record of all petitions for waiver or variance available for public inspection. Such records will be indexed and filed and made available for public inspection at the clerk of the hearings section for the department at the address previously set forth in subrule 7.60(9).

b. *Report of orders granting or denying a waiver or variance.* All orders granting or denying a waiver or variance shall be summarized in a semiannual report to be drafted by the department and submitted to the administrative rules coordinator and the administrative rules review committee.

7.60(18) *Cancellation of waiver or variance.* A waiver or variance issued pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the director issues an order finding any of the following:

a. The person who obtained the waiver or variance order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver or variance; or

b. The alternative means for ensuring that public health, safety, and welfare will be adequately protected after issuance of the waiver or variance order have been demonstrated to be insufficient, and no other means exist to protect the substantial legal rights of any person; or

c. The person who obtained the waiver or variance has failed to comply with all of the conditions in the waiver or variance order.

7.60(19) *Violations.* A violation of a condition in a waiver or variance order shall be treated as a violation of the particular rule or rule provision for which the waiver or variance was granted. As a result, the recipient of a waiver or variance under this rule who violates a condition of the waiver or variance may be subject to the same remedies or penalties as a person who violates the rule or rule provision at issue.

7.60(20) *Defense.* After an order granting a waiver or variance is issued, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked, unless subrules 7.60(18) and 7.60(19) are applicable.

7.60(21) *Hearing and appeals.* Appeals from a decision granting or denying a waiver or variance in a contested case proceeding shall be in accordance with 701—Chapter 7 governing hearings and appeals from decisions in contested cases. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver or variance request, unless a different time is provided by rule or statute, such as provided in the area of license revocation (see 701—7.55(17A)).

The provisions of Iowa Code sections 17A.10 to 17A.18A and the department rules 701—Chapter 7 regarding contested case proceedings shall apply to any petition for waiver or variance of a rule or provisions in a rule filed within a contested case proceeding. A petition for waiver or variance of a rule provision in a rule outside of a contested case proceeding will not be considered under the statutes or the department's rules relating to contested case proceedings. Instead, the director's decision on the petition for waiver or variance is considered to be "other agency action."

This rule is intended to implement 2000 Iowa Acts, House File 2206.

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Breast pumps
Breathing machines
*Cannula systems
Cardiac electrodes
Cardiopulmonary equipment
*Catheter trays
Chair lifts
Clamps
Clip-on ash trays
Commode chairs
Connectors
Contact lens cases
Contact lens solution
Convoluted pads
Corrective pessaries
Cotton balls
Diagnostic kits
Dialysis chairs
Dialysis supplies
*Dialyzers
Dietetic scales
Disposable diapers
Disposable gloves
Disposable underpads
Donor chairs
Dressings
Incontinent garments
Incubators
Infrared lamps
Inhalators
*Insulin infusion devices
Iron lungs
Irrigation apparatus
*Irrigation solutions
*IV administering sets
IV connectors
*IV solutions
*IV tubing
*Kidney dialysis machines
Laminar flow equipment
Latex gloves
Leukopheresis pumps
Lymphedema pumps
Manometer trays
Massagers
Maternity belts
Medigrade tubing
Modulung oxygenators
Moist heat pads
*Myelogram trays
Myringotomy tubes
Steri-peel
Stools
*Stopcocks (intravenous)
Suction equipment
Sunlamps
Surgical bandages
Surgical equipment
Suspensories
Sutures
Thermometers
Toilet aids
Tourniquets
Transfer boards
*Transfusion sets
Tube sealers
Underpads
Urinals
Vacutainers
Vacuum units
Vaporizers
*Venous blood sets
Vibrators
Whirlpools
X-ray film

*Sales of these medical devices are exempt as of July 1, 1993.

20.9(4) *"Prescribed"* shall mean a written prescription or an oral prescription, later reduced to writing, issued by:

a. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.

b. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.

c. Persons licensed by the state board of podiatry to engage in the practice of podiatry in Iowa.

d. Persons licensed by the state board of dentistry to practice dentistry in Iowa.

e. Persons licensed prior to May 10, 1963, to practice osteopathy in Iowa.

f. Persons licensed by the optometry examiners as therapeutically certified optometrists.

g. Persons licensed by the board of chiropractic examiners to practice chiropractic in Iowa when dispensing in accordance with Iowa Code chapter 151.

h. Any other person authorized under Iowa law to dispense prescription drugs or medical devices requiring a prescription.

i. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

20.9(5) *Power devices.* Sales or rental of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. This exemption does not include batteries which can be used to operate a number of devices.

This rule is intended to implement Iowa Code sections 422.45(15) and 423.4(4).

701—20.10(422,423) Sales and rentals covered by Medicaid and Medicare. Between July 1, 1992, and June 30, 1993, gross receipts from the sale or rental of drugs, devices, equipment and supplies ("medications") which are covered by Title XVIII (Medicare) or Title XIX (Medicaid) of the federal Social Security Act are exempt from tax.

A "covered sale or rental" is one for which any portion of the cost of medications is paid by the state of Iowa or the federal government as required by the Medicaid or Medicare programs. A sale or rental is "covered" even if a user of medications is required to pay a certain percentage or fixed amount of its cost. Covered sales or rentals include those for which a user of medications is reimbursed the cost of a purchase or rental; or sales or rentals for which any portion of the cost is paid by any private insurance company administering the Medicaid or Medicare programs on behalf of the state of Iowa or the federal government. The direct purchase or rental of any medications by the state of Iowa or the federal government is exempt from tax under existing law, and this rule is not applicable to it.

For an extensive list of medications, the purchase or rental of which is covered by Medicaid, see 441—Chapter 78, Iowa Administrative Code.

701—20.11(422,423) Reporting. Retailers are required to keep records of and report the actual total gross sales for each filing or reporting period. A deduction may be taken for all tax-exempt sales but a record must be kept to substantiate all deductions taken.

Certain retailers finding it difficult to maintain detailed records of their taxable and nontaxable retail sales may alleviate this difficulty by the use of a formula method which will reasonably approximate the actual taxable receipts.

Written approval must be obtained from the audit and compliance division of the department to use a formula method. If a retailer requests an alternate formula, the retailer shall first list the reasons why an alternate formula is necessary and, secondly, shall outline the proposed formula in detail. If approval is given, the department reserves the right to withdraw or require an update in procedure at any time.

The use of the formula is an authorization for reporting the most accurate amount of taxable and nontaxable gross receipts but the retailer shall be responsible for the actual tax liability. Additional assessments may be made if an audit discloses the formula is not producing the proper tax payments.

701—20.12(422,423) Exempt sales of clothing and footwear during two-day period in August. Tax is not due on the sale or use of a qualifying article of clothing or footwear if the sales price of the article is less than $100 and the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight of the following Saturday. For example, in the year 2000, this period begins at 12:01 a.m. on Friday, August 4, and ends at 12 midnight on Saturday, August 5. Eligible purchases of clothing and footwear are exempt from local option sales taxes as well as Iowa state sales tax.

20.12(1) *Definitions.* The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

"Accessories" include but are not limited to jewelry, handbags, purses, briefcases, luggage, wallets, watches, cufflinks, tie tacks and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

"Clothing or footwear" means an article of wearing apparel designed to be worn on or about the human body. For the purposes of this rule, the term does not include accessories or special clothing or footwear or articles of wearing apparel designed to be worn by animals.

"Special clothing or footwear" is clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when used for the athletic activity or protective use for which it is designed.

20.12(2) *Exempt sales.* The exemption applies to each article of clothing or footwear selling for less than $100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for $80 each, both items qualify for the exemption even though the customer's total purchase price ($160) exceeds $99.99. The exemption does not apply to the first $99.99 of an article of clothing or footwear selling for more than $99.99. For example, if a customer purchases a pair of pants costing $110, sales tax is due on the entire $110.

20.12(3) *Taxable sales.* This exemption does not apply to sales of the following goods or services:

a. Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and qualify for the exemption.

b. Accessories, including jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether they are worn on the body in a manner characteristic of clothing.

c. The rental of any clothing or footwear. For example, this exemption does not apply to rentals of formal wear, costumes, diapers, and bridal gowns, but would apply to sales of the above items.

d. Taxable services performed on the clothing or footwear, such as garment and shoe repair, dry cleaning or laundering, and alteration services. Sales tax is due on alterations to clothing, even though the alteration service may be performed, invoiced and paid for at the same time as the clothing is being purchased. If a customer purchases a pair of pants for $90 and pays $15 to have the pants cuffed, the $90 charge for the pants is exempt, but tax is due on the $15 alteration charge.

e. Purchases of items used to make, alter, or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, belt buckles, and zippers.

20.12(4) *Special situations.*

a. *Articles normally sold as a unit.* Articles that are normally sold as a unit must continue to be sold in that manner if the exemption is to apply; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for $150, the pair cannot be split in order to sell each shoe for $75 to qualify for the exemption. If a suit is normally priced at $225 and sold as a unit on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than $100 in order to qualify for the exemption. However, components that are normally priced as separate articles (e.g., slacks and sport coats, and suit coats and suit pants sold separately prior to the two-day period) may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than $100.

b. *Sales of exempt clothing combined with gifts of taxable merchandise.* When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item being sold is the tie, which is exempt from tax if sold for less than $100 during the exemption period.

c. *Layaway sales.* A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the merchandise. Under Iowa sales tax law, a sale of tangible personal property occurs when a purchaser takes delivery of tangible personal property in return for a consideration. Therefore, if a customer takes delivery of qualifying clothing or footwear during the exemption period (usually by taking possession of it; see rule 701—16.22(422,423) for general information on layaway sales) that sale of eligible clothing will qualify for the exemption.

20.12(5) *Calculating taxable and exempt gross receipts—discounts, coupons, buying at a reduced price, and rebates.*

a. Discounts. A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to $99.99 or less, the item may qualify for the exemption. For example, a customer buys a $150 dress and a $100 blouse from a retailer offering a 10 percent discount. After applying the 10 percent discount, the final sales price of the dress is $135, and the blouse is $90. The dress is taxable (it is over $99.99), and the blouse is exempt (it is less than $99.99). See rule 701—15.6(422,423) for a definition of the word "discount" and a description of which retailers' reductions in price are discounts which reduce the taxable sales prices of items and which are not.

b. Coupons. When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount, regardless of whether the retailer is reimbursed for the amount represented by the coupon. Therefore, a retailer's coupon can be used to reduce the sales price of an item to $99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at $110 with a coupon worth $20 off, the final sales price of the shoes is $90, and the shoes qualify for the exemption. A manufacturer's coupon cannot be used to reduce the sales price of an item. See 701—subrule 15.6(3).

c. Buy one, get one free or for a reduced price or "two for the price of one" sales. The total price of items advertised as "buy one, get one free," or "buy one, get one for a reduced price," or "two for the price of one" cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

EXAMPLE 1. A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at $120; the second pair of pants is free. Tax is due on $120. Having advertised that the second pair is free, the store cannot ring up each pair of pants for $60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50 percent off, selling each pair of $120 pants for $60, each pair of pants qualifies for the exemption.

EXAMPLE 2. A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for $100; the second pair is sold for $50 (half price). Tax is due on the $100 shoes, but not on the $50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for $75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25 percent off, thereby selling each pair of $100 shoes for $75, each pair of shoes qualifies for the exemption.

EXAMPLE 3. A retailer advertises shirts as "buy two for the price of one" for $140. Tax is due on $140. Each shirt cannot be rung up as costing $70. However, as described in examples 1 and 2 above, the $140 cost of each shirt can be discounted to bring the price of each shirt within the exemption's limitation.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for $110 and receives a $12 rebate from the manufacturer. The retailer must collect tax on the $110 sales price of the sweater. See 701—subrule 15.6(2) for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for (as explained in rule 701—15.13(422,423)) are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

20.12(6) *Treatment of various transactions associated with sales.*

a. *Rain checks.* Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

b. *Exchanges.*

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period and later exchanges the item for the same item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

EXAMPLE. A customer purchases a $35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the $35 price of the shirt.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period and after the exemption period has ended returns the item and receives credit on the purchase of a different item, the appropriate sales tax will apply to the sale of the newly purchased item.

EXAMPLE. A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for a $35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the $35 price of the jacket.

(3) If a customer purchases an item of eligible clothing or footwear during the exemption period and later during the exemption period returns the item and purchases a similar but nonexempt item, the purchase of the second item is not exempt from tax.

EXAMPLE. During the exemption period, a customer purchases a $90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $90 dress for a $150 dress. Tax is due on the $150 dress. The $90 credit from the returned item cannot be used to reduce the sales price of the $150 item to $60 for exemption purposes.

(4) If a customer purchases an item of eligible clothing or footwear before the exemption period and during the exemption period returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if it is purchased during the exemption period and otherwise meets the qualifications for exemption.

EXAMPLE. Before the exemption period, a customer purchases a $60 dress. Later, during the exemption period, the customer exchanges the $60 dress for a $95 dress. Tax is not due on the $95 dress because it was purchased during the exemption period and otherwise meets the qualifications for the exemption.

20.12(7) *Nonexclusive list of exempt items.* The following is a nonexclusive list of clothing or footwear, sales of which are exempt from tax during the two-day period in August:

Adult diapers
Aerobic clothing
Antique clothing
Aprons—household
Athletic socks
Baby bibs
Baby clothes—generally
Baby diapers
Baseball caps
Bathing suits
Belts with buckles attached
Blouses
Boots—general purpose
Bow ties
Bowling shirts
Bras
Bridal apparel—sold not rented
Camp clothing
Caps—sports and others
Chefs' uniforms
Children's novelty costumes
Choir robes
Clerical garments
Coats
Corsets
Costumes—Halloween, Santa Claus, etc., sold not rented
Coveralls
Cowboy boots
Diapers—cloth and disposable
Dresses
Dress gloves
Dress shoes
Ear muffs
Employee uniforms other than those primarily designed for athletic activity or protective use
Formal clothing—sold not rented
Fur coats and stoles
Galoshes
Garters and garter belts
Girdles
Gloves—cloth, dress and leather
Golf clothing—caps, dresses, shirts and skirts
Graduation caps and gowns—sold not rented
Gym suits and uniforms
Hats
Hiking boots
Hooded (sweat) shirts
Hosiery, including support hose
Jackets
Jeans
Jerseys for other than athletic wear
Jogging apparel
Knitted caps or hats
Lab coats
Leather clothing
Leg warmers
Leotards and tights
Lingerie
Men's formal wear—sold not rented
Neckwear, e.g., scarves
Nightgowns and nightshirts
Overshoes
Pajamas
Pants
Panty hose
Prom dresses
Ponchos
Raincoats and hats
Religious clothing
Riding pants
Robes
Rubber thongs—"flip-flops"
Running shoes without cleats
Safety shoes (adaptable for street wear)
Sandals
Shawls
Shirts
Shoe inserts and

laces
Stockings
Suits
Support hose
Suspenders
Sweatshirts
Sweatsuits
Swim trunks
Tennis dresses
Tennis skirts
Ties
Tights
Trousers
Tuxedos (except cufflinks)—sold not rented
Underclothes
Underpants
Undershirts
Uniforms—generally
Veils
Vests—general, for wear with suits
Walking shoes
Windbreakers
Work clothes

20.12(8) *Nonexclusive list of taxable items.* The following is a nonexclusive list of items, sales of which are taxable during the two-day period in August:

Accessories—generally
Alterations of clothing
Athletic supporters
Backpacks
Ballet shoes
Barrettes
Baseball cleats
Baseball gloves
Belt buckles sold without belts
Belts for weight lifting
Belts needing buckles but sold without them
Bicycle shoes with cleats
Billfolds
Blankets
Boutonnieres
Bowling shoes—rented and sold
Bracelets
Buttons
Chest protectors
Clothing repair
Coin purses
Corsages
Dry cleaning services
Elbow pads
Employee uniforms primarily designed for athletic activities or protective use
Fabric sales
Fishing boots (waders)
Football pads
Football pants
Football shoes
Goggles
Golf gloves
Ice skates
In-line skates
Insoles
Jewelry
Key cases and chains
Knee pads
Laundry services
Life jackets and vests
Luggage
Monogramming services
Pads—elbow, knee, and shoulder, football and hockey
Patterns
Protective gloves and masks
Purses
Rental of clothing
Rental of shoes or skates
Repair of clothing
Roller blades
Safety clothing
Safety glasses
Safety shoes—not adaptable for street wear
Shoes with cleats or spikes
Shoulder pads for dresses and jackets
Shower caps
Skates—ice and roller
Swim fins, masks and goggles
Ski boots, masks, suits and vests

Special protective clothing or footwear not adaptable for street wear
Sports helmets
Sunglasses—except prescription
Sweatbands—arm, wrist and head
Tap dance shoes
Thread
Vests—bulletproof
Weight lifting belts
Wrist bands
Yard goods
Yarn
Zippers

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, House File 2351.

These rules are intended to implement Iowa Code chapters 422 and 423.

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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.

701—107.16(422B) Recovery of fees. Beginning on and after July 1, 2000, the department will charge all jurisdictions imposing local option sales and service taxes a fee to recover direct costs incurred by the department on and after July 1, 2000, in the administration of the local option sales and service taxes. The term "local option sales and service taxes" includes local option sales and service taxes imposed pursuant to Iowa Code chapter 422B, as implemented by 701—Chapter 107, and also includes local option school infrastructure sales and service taxes imposed pursuant to Iowa Code chapter 422E and implemented by 701—Chapter 108.

107.16(1) *How fees are determined.* Fees to be imposed on local option sales and service tax jurisdictions are for recovery of direct costs incurred by the department beginning on and after July 1, 2000, in the collection and distribution of the local option sales and service tax. "Direct costs" include, but are not limited to, costs related to taxpayer contacts and presentations, return processing, additional data entry, increased error processing, estimation, audits, and distribution of revenues. Fees do not include such indirect costs as policy and systems development, general agency administrative costs and collection costs.

107.16(2) *Computation of fees for each county.* Fees imposed to recover direct costs of administering local option sales and service taxes by the department shall be based on the number of times the county occurs on the returns processed by the department during the 2001 fiscal year. An "occurrence" is defined as an entry on a quarterly sales tax return reporting local option sales and service tax for a county. Each occurrence represents the total taxable transactions for a county for the given tax period. The department will divide the cost to be recovered into four quarterly amounts. The number of occurrences in each quarter will be divided into the quarterly cost to arrive at a cost per occurrence. This amount is multiplied by the number of occurrences for a county which will determine the amount to be charged to each county.

107.16(3) *Allocation of costs to eligible jurisdictions within a county.* The department will apply charges for each eligible jurisdiction within each county against the estimated local option sales and service tax payments due each eligible jurisdiction for the months of October, January, April, and July of each fiscal year. For the purpose of this rule, an eligible jurisdiction is an area entitled to receive local option sales and service taxes. Each city or unincorporated area shall receive the same proportionate shares of the cost as received in revenues for that jurisdiction. Computation for the distribution of costs will be based on the formula used for distribution of revenues for each jurisdiction. For additional information regarding estimated payments see 701—107.10(422B).

This rule is intended to implement 2000 Iowa Acts, House File 2545, section 28.

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◊Two ARCs

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.
6. 701—107.16(422B) Recovery of fees.

This rule is intended to implement Iowa Code section 422E.3 and 2000 Iowa Acts, House File 2545, section 28.

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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CHAPTERS 109 to 112
Reserved

CHAPTER 113
Rescinded, effective 10/15/86

CHAPTERS 114 to 119
Reserved

◊Two ARCs

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

PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)