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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

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CHAPTER 19
SERVICE SUPPLIED BY GAS UTILITIES
[Prior to 10/8/86, Commerce Commission [250]]

199—19.1(476) General information.

19.1(1) *Authorization of rules.* Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers necessary to carry out the provisions of this law.

Iowa Code chapter 479 provides that the Iowa utilities board shall have full authority and power to promulgate rules as it deems proper and expedient in the supervision of the transportation or transmission and underground storage of gas within the state of Iowa.

The application of the rules in this chapter to municipally owned utilities furnishing gas is limited by Iowa Code section 476.1B.

19.1(2) *Application of rules.* The rules shall apply to any gas utility operating within the state of Iowa as defined in Iowa Code chapter 476 and shall supersede any tariff on file with this board which is in conflict with these rules. These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities. A request to waive the application of any rule on a permanent or temporary basis may be made in accordance with rule 199—1.3(17A,474,476,78GA,HF2206). The adoption of these rules shall in no way preclude the board from altering or amending them, pursuant to statute, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions. These regulations shall in no way relieve any utility from any of its duties under the laws of this state.

19.1(3) *Definitions.* The following words and terms, when used in these rules shall have the meaning indicated below:

The abbreviations used, and their meanings, are as follows:

Btu—British thermal unit

LP-Gas—Liquefied Petroleum Gas

psig—Pounds per Square Inch, Gauge

W.C.—Water Column

“*Appliance*” refers to any device which utilizes gas fuel to produce light, heat or power.

“*Board*” means the Iowa utilities board.

“*Complaint*” as used in these rules is a statement or question by anyone, whether a utility customer or not, alleging a wrong, grievance, injury, dissatisfaction, illegal action or procedure, dangerous condition or action, or utility failure to fulfill an obligation.

“*Cubic foot*” of gas has the following meanings:

1. Where gas is supplied and metered to customers at the pressure (as defined in 19.7(2)) normally used for domestic customers’ appliances, a cubic foot of gas shall be that quantity of gas which, at the temperature and pressure existing in the meter, occupies one cubic foot, except that where a temperature compensated meter is used, the temperature base shall be 60°F.

2. When gas is supplied to customers at other than the pressure in (1) above, the utility shall specify in its rules the base for measurement of a cubic foot of gas (see 19.2(4)“c” (6)). Unless otherwise stated by the utility, such cubic foot of gas shall be that quantity of gas which, at a temperature of 60°F and a pressure of 14.73 pounds per square inch absolute, occupies one cubic foot.

3. The standard cubic foot of gas for testing the gas itself for heating value shall be that quantity of gas, saturated with water vapor, which, at a temperature of 60°F and a pressure of 30 inches of mercury, occupies one cubic foot. (Temperature of mercury = 32°F acceleration due to gravity = 32.17 ft. per second per second density = 13.595 grams per cubic centimeter.)

"Customer" means any person, firm, association, or corporation, any agency of the federal, state or local government, or legal entity responsible by law for payment for the gas service or heat from the gas utility.

"Delinquent" or *"delinquency"* means an account for which a service bill or service payment agreement has not been paid in full on or before the last day for timely payment.

"Gas," unless otherwise specifically designated, means manufactured gas, natural gas, other hydrocarbon gases, or any mixture of gases produced, transmitted, distributed or furnished by any gas utility.

"Gas plant" means all facilities including all real estate, fixtures and property owned, controlled, operated or managed by a gas utility for the production, storage, transmission and distribution of gas and heat.

"Heating and calorific values." The following values shall be used:

1. *"British thermal unit"* (Btu) is the quantity of heat that must be added to one avoirdupois pound of pure water to raise its temperature from 58.5°F to 59.5°F under standard pressure.

2. *"Dry calorific value"* of a gas (total or net) is the value of the total or the net calorific value of the gas divided by the volume of dry gas in a standard cubic foot.

NOTE: The amount of dry gas in a standard cubic foot is .9826 cubic foot.

3. *"Net calorific value"* of a gas is the number of British thermal units evolved by the complete combustion, at constant pressure, of one standard cubic foot of gas with air, the temperature of the gas, air, and products of combustion being 60°F and all water formed by the combustion reaction remaining in the vapor state.

NOTE: The net calorific value of a gas is its total calorific value minus the latent heat of evaporation at standard temperature of the water formed by the combustion reaction.

4. *"Therm"* means 100,000 British thermal units.

5. *"Total calorific value"* of a gas is the number of British thermal units evolved by the complete combustion, at constant pressure, of one standard cubic foot of gas with air, the temperature of the gas, air and products of combustion being 60°F and all water formed by the combustion reaction condensed to the liquid state.

"Interruption of service" means any disturbance of the gas supply whereby gas service to 50 customers or more in one segment or in a portion of a distribution system cannot be maintained.

"Loss factor" as used in rule 19.10(476) means test-year purchases less test-year sales. A five-year average of purchases less sales may be used if the test year is determined by the board to be abnormal.

"Main" means a gas pipe, owned, operated, or maintained by a utility, which is used for the purpose of transmission or distribution of gas, but does not include "service line".

"Meter," without other qualification, shall mean any device or instrument which is used by a utility in measuring a quantity of gas.

"Meter shop" is a shop where meters are inspected, repaired and tested, and may be at a fixed location or may be mobile.

"Pressure," unless otherwise stated, is expressed in pounds per square inch above atmospheric pressure, i.e., gauge pressure (abbreviation-psig).

"Rate-regulated utility" means any utility as defined in the definition of "utility" below which is subject to rate regulation provided for in Iowa Code chapter 476.

“*Service line*” means a distribution line that transports gas from a common source of supply to a customer meter or the connection to a customer’s piping, whichever is farther downstream, or the connection to a customer’s piping if there is not a customer meter. A customer meter is the meter that measures the transfer of gas from a utility to a customer.

“*Tap*” or “*town border station*” means the delivery point or measuring station at which a gas distribution utility receives gas from a natural gas transmission company.

“*Tariff*” means the entire body of rates, tolls, rentals, charges, classifications, rules, procedures, policies, etc., adopted and filed with the board by a gas utility in fulfilling its role of furnishing gas service.

“*Timely payment*” is a payment on a customer’s account made on or before the date shown on a current bill for service or on a form which records an agreement between the customer and a utility for a series of partial payments to settle a delinquent account, as the date which determines application of a late payment charge to the current bill or future collection efforts.

“*Utility*” means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing gas or heat to the public for compensation.

199—19.2(476) Records, reports, and tariffs.

19.2(1) Location and retention of records. Unless otherwise specified in this chapter, all records required by these rules shall be kept and preserved in accordance with the applicable provisions of Chapter 18 of the board’s rules, Utility Records.

19.2(2) Tariffs to be filed with the board. The schedules of rates and rules of rate-regulated gas utilities shall be filed with the board and shall be classified, designated, arranged and submitted so as to conform to the requirements of this chapter. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules.

Utilities which are not subject to the rate regulation provided for by Iowa Code chapter 476 shall not be required to file schedules of rates, rules, or contracts primarily concerned with a rate schedule with the board, but nothing contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the board in the performance of the board’s duties upon request to do so by the board.

19.2(3) Form and identification. All tariffs shall conform to the following rules:

a. The tariff shall be printed, typewritten or otherwise reproduced on 8½- × 11- inch sheets of durable white paper so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side suitable for binding. In the case of utilities subject to regulation by any federal agency the format of sheets of tariff as filed with the board may be the same format as is required by the federal agency provided that the rules of the board as to title page; identity of superseding, replacing or revision sheets; identity of amending sheets; identity of the filing utility, issuing official, date of issue, effective date; and the words, “Gas Tariff Filed with Board” shall apply in the modification of the federal agency format for the purposes of filing with this board.

b. The title page of every tariff and supplement shall show:

- (1) The first page shall be the title page which shall show:

(Name of Public Utility)
Gas Tariff
Filed with
Iowa Utilities Board
(date)

(This requirement does not apply to tariffs or amendments filed with the board prior to April 1, 1982.)

(2) When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on the upper right corner of its title page that it is a revision of a tariff on file and the number being superseded or replaced, for example:

Tariff No. _____
Supersedes Tariff No. _____

(This requirement does not apply to tariffs or amendments filed with the board prior to April 1, 1982.)

(3) When a new part of a tariff eliminates an existing part of a tariff it shall so state and clearly identify the part eliminated.

(4) Any tariff modifications as defined in "3" above replacing tariff sheets shall be marked in the right margin with symbols as herein described to indicate the place, nature and extent of the change in text.

Symbol	Meaning
(C)	A change in regulation
(D)	A discontinued rate, treatment or regulation
(I)	An increased rate or new treatment resulting in increased rate
(N)	A new rate, treatment or regulation
(R)	A reduced rate or new treatment resulting in a reduced rate
(T)	A change in text but no change in rate, treatment or regulation

c. All sheets except the title page shall have, in addition to the above-stated requirements, the following information:

(1) Name of utility under which shall be set forth the words "Filed with Board." If the utility is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

- (2) Issuing official and issue date.
- (3) Effective date (to be left blank by rate-regulated utilities).

d. All sheets except the title page shall have the following form:

(Company Name)
Gas Tariff
Filed with board

(Part identification)
(This sheet identification)
(Canceled sheet identification, if any)

(Content of tariff)

Issued: (Date)
Issued by: (Name, title)

Effective:
(Proposed Effective Date:)

The issued date is the date the tariff or the amended sheet content was adopted by the utility.
The effective date will be left blank by rate-regulated utilities and shall be determined by the board.
The utility may propose an effective date.

19.2(4) Content of tariffs. A tariff filed with the board shall contain:

a. A table of contents containing a list of rate schedules and other sections in the order in which they appear showing the sheet number of the first page of each section.

b. All rates of utilities subject to rate regulation for service with indication of each rate for the type of gas and the class of customers to which each rate applies. There shall also be shown the prices per unit of service, the number of units per billing period to which the prices apply, the period of billing, the minimum bill, the method of measuring demands and consumptions, including the method of calculating or estimating loads or minimums, delivery pressure, and any special terms or conditions applicable. All rates should be separated into "gas" and "nongas" components, and books and records shall be maintained on this basis. Books and records shall be available to the board for audits upon request. The gas components will be the result of the utility's periodic review of gas procurement practices (rule 19.11(476)) and PGA (rule 19.10(476)) proceeding. The nongas components will be established through rate case proceedings under Iowa Code section 476.3 or 476.6. The period during which the net amount may be paid before the account becomes delinquent shall be specified. In any case where net and gross amounts are billed, the difference between net and gross is a late payment charge and shall be so specified.

Customer charges for all special services relating to providing the basic utility service including, but not limited to, reconnect charge and different categories of service calls shall be specified.

c. A copy of the utility's rules, or terms and conditions, describing the utility's policies and practices in rendering service shall include:

(1) A statement as to the equivalent total heating value of the gas in Btu's per cubic foot on which their customers are billed. If necessary, this may be listed by district, division or community.

(2) The list of the items which the utility furnishes, owns, and maintains on the customer's premises, such as service pipe, meters, regulators, vents and shut-off valves.

(3) General statement indicating the extent to which the utility will provide service in the adjustment of customer appliances at no additional customer charge.

(4) General statement of the utility's policy in making adjustments for wastage of gas when such wastage occurs without the knowledge of the customer.

(5) A statement indicating the minimum number of days allowed for payment after the due date of the customer's bill before service will be discontinued for nonpayment.

(6) A statement indicating the volumetric measurement base to which all sales of gas at other than standard delivery pressure are corrected.

(7) Forms of standard contracts required of customers for the various types of service available.

(8) All tariffs must provide that, notwithstanding any other provision of this tariff or contract with reference thereto, all rates and charges contained in this tariff or contract with reference thereto may be modified at any time by a subsequent filing made pursuant to the provisions of Iowa Code chapter 476.

(9) A copy of each type of customer bill.

(10) Definitions of classes of customer.

(11) Rules for extending service in accordance with 19.3(10).

(12) Rules with which prospective customers must comply as a condition of receiving service, and the terms of contracts required.

(13) Rules governing the establishment and maintenance of credit by customers for payment of service bills.

- (14) Rules governing disconnecting and reconnecting service.
- (15) Notice required from customer for having service discontinued.
- (16) Rules covering temporary, emergency, auxiliary, and stand-by service.
- (17) Rules shall show any limitations on loads and cover the type of equipment which may or may not be connected.
- (18) Rate-regulated utilities shall include a list of service areas and the applicable rates in such form as to facilitate ready determination of the rates available in each municipality and in such unincorporated communities as have service.
- (19) Rules on meter reading, billing periods, bill issuance, timely customer payment, notice of delinquency and service disconnection for nonpayment of bill.
- (20) Rules on how a customer or prospective customer should file a complaint with the utility, and how the complaint will be processed.
- (21) Rules on how a customer, disconnected customer or potential customer for residential service may negotiate for a payment agreement on amount due, determination of even payment amounts, and time allowed for payments.
- (22) If a sliding scale or automatic adjustment is applicable to regulated rates or charges of billed customers, the manner and method of such adjustment calculation shall be covered through a detailed explanation.

19.2(5) Annual, periodic and other reports to be filed with the board.

a. System map verification. A utility shall file annually with the board a verification that it has a correct set of utility system maps for each operating or distribution area. The maps shall show:

- (1) Peak shaving facilities location.
- (2) Feeder and distribution mains indicating size and pressure.
- (3) System metering (town border stations and other supply points).
- (4) Regulator stations in system indicating inlet and outlet pressures.
- (5) Calorimeter location.
- (6) State boundary crossing.
- (7) Franchise area.
- (8) Names of all communities (post offices) served.

b. Incident reports. A utility shall notify the utilities board of any event involving release of gas, failure of equipment, or facility operations, which results in any of the following:

- (1) A death or personal injury necessitating in-patient hospitalization.
- (2) Estimated property damage of \$15,000 or more to the property of the utility and to others, including cost of gas lost, if known.
- (3) Emergency shutdown of a liquefied natural gas (LNG) facility.
- (4) An interruption of service as defined in subrule 19.1(3).
- (5) Any other incident considered significant by the utility.

The utilities board shall be notified by telephone, as soon as is practical, of any reportable incident by calling (515)281-5546. The notification shall include the following information:

- 1. Name of the utility and of the person making the report and their telephone numbers.
- 2. The location of the incident.
- 3. The time of the incident.

4. The number of deaths or personal injuries and the extent of those injuries, if any.
5. Initial estimate of damages.
6. Number of services interrupted, if applicable.
7. A summary of the significant information available to the utility regarding the probable cause of the incident and extent of damages.

Within 30 days of the date of the incident, the utility shall file a written report with the utilities board. The report shall include the information required for telephone notice, the probable cause as determined by the utility, and the amount of monetary damages. If significant additional information becomes available at a later date, a supplemental report shall be filed.

Copies of the report forms and responses to data requests submitted to the U.S. Department of Transportation Office of Pipeline Safety or to the National Transportation Safety Board shall be filed with the utilities board.

c. *Construction programs.* Rescinded IAB 11/19/97, effective 12/24/97.

d. *Reports of gas service.* Each utility shall compile a monthly record of gas service. The record shall be completed within 30 days after the end of the month covered. The compilation is to be kept available, for inspection by the board or its staff, at the utility's principal office within the state of Iowa. Such record shall contain:

- (1) The daily and monthly average of total heating values of gas in accordance with 19.7(6).
- (2) The monthly acquisition and disposition of gas.
- (3) Interruptions of service occurring during the month in accordance with 19.7(7). If there were no interruptions, then it should be so stated.
- (4) The number of customer pressure investigations made and the results.
- (5) The number of customer meters tested and test results tabulated as follows: The number that falls into limits 0 to + 2%, + 2 to + 4%, 0 to - 2%, - 2 to - 4%, over + 4%, under - 4%, and "Does Not Register" in accuracy.
- (6) Progress on leak survey programs including the number of leaks found classified as to hazard and nature, and if known, the cause and type of pipe involved.
- (7) Number of district regulators checked and nature of repairs required.
- (8) Number of house regulators checked and nature of repairs required.
- (9) Description of any unusual operating difficulties.
- (10) Type of odorant and monthly average pounds per million cubic feet used in each individual distribution system.

A summary of the 12 monthly gas service records for each calendar year shall be attached to and submitted with the utility's annual fiscal plant and statistical report to the board.

e. *Filing published meter and service installation rules.* A copy of the utility's current rules, if any, published or furnished by the utility for the use of engineers, architects, plumbing contractors, etc., covering meter and service installation shall be filed with the board.

f. *Filing customer bill forms.* A copy of each type of customer bill form in current use shall be filed with the board.

g. *Reports to federal agencies.* Copies of reports submitted pursuant to 49 CFR Part 191 as amended through February 1, 2003, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," shall be filed with the board. Utilities operating in states besides Iowa shall provide to the board data for Iowa only.

h. *Change in rate.* A notification to the board shall be made of any planned change in rate of service by a utility even though the change in rate of service is provided for in its tariff filing with the board. This information shall reflect the amount of increase or decrease and the effective date of application. An up-to-date tariff sheet shall be supplied to the Iowa utilities board for its copy of the tariff showing the current rates.

i. *List of persons authorized to receive board inquiries.* Each utility shall file with the board a list of names, titles, addresses, and telephone numbers of persons authorized to receive, act upon, and respond to communications from the board in connection with: (1) general management duties; (2) customer relations (complaints); (3) engineering operations; (4) meter tests and repairs; (5) emergencies during nonoffice hours; (6) pipeline permits (gas). Such information shall be kept current as changes or corrections are made.

j. *Residential customer statistics.* Each rate-regulated gas utility shall file with the board on or before the fifteenth day of each month one copy of the following residential customer statistics for the preceding month:

- (1) Number of accounts;
- (2) Number of accounts certified as eligible for energy assistance since the preceding October 1;
- (3) Number of accounts past due;
- (4) Number of accounts eligible for energy assistance and past due;
- (5) Total revenue owed on accounts past due;
- (6) Total revenue owed on accounts eligible for energy assistance and past due;
- (7) Number of disconnection notices issued;
- (8) Number of disconnection notices issued on accounts eligible for energy assistance;
- (9) Number of disconnections for nonpayment;
- (10) Number of reconnections;
- (11) Number of accounts determined uncollectible; and
- (12) Number of accounts eligible for energy assistance and determined uncollectible.

k. *Monthly, periodic and annual reports.* Each utility shall file such other monthly, periodic and annual reports as are requested by the board. Monthly and periodic reports shall be due in the board's office within 30 days after the end of the reporting period. All annual reports shall be filed with this board by April 1 of each year for the preceding calendar year.

This rule is intended to implement Iowa Code section 476.2.

199—19.3(476) General service requirements.

19.3(1) Disposition of gas. The meter and any service line pressure regulator shall be owned by the utility. The utility shall place a visible seal on all meters and service line regulators in customer use, such that the seal must be broken to gain entry.

a. All gas sold by a utility shall be on the basis of meter measurement except:

- (1) Where the consumption of gas may be readily computed without metering; or
- (2) For temporary service installations.

b. The amount of all gas delivered to multioccupancy premises within a single building, where units are separately rented or owned, shall be measured on the basis of individual meter measurement for each unit, except in the following instances:

- (1) Where gas is used in centralized heating, cooling or water-heating systems;
- (2) Where a facility is designated for elderly or handicapped persons;
- (3) Where submetering or resale of service was permitted prior to 1966; or
- (4) Where individual metering is impractical. "Impractical" means: (1) where conditions or structural barriers exist in the multioccupancy building that would make individual meters unsafe or physically impossible to install; (2) where the cost of providing individual metering exceeds the long-term benefits of individual metering; or (3) where the benefits of individual metering (reduced and controlled energy consumption) are more effectively accomplished through a master meter arrangement.

If a multioccupancy building is master-metered, the end-user occupants may be charged for natural gas as an unidentified portion of the rent, condominium fee, or similar payment, or, if some other method of allocating the cost of the gas service is used, the total charge for gas service shall not exceed the total gas bill charged by the utility for the same period.

c. Master metering to multiple buildings is prohibited, except for multiple buildings owned by the same person or entity. Multioccupancy premises within a multiple building complex may be master-metered pursuant to this paragraph only if the requirements of paragraph 19.3(1) "b" have been met.

d. For purposes of this subrule, a "master meter" means a single meter used in determining the amount of natural gas provided to a multioccupancy building or multiple buildings.

e. This rule shall not be construed to prohibit any utility from requiring more extensive individual metering than otherwise required by this rule if pursuant to tariffs filed with and approved by the board.

f. All gas consumed by the utility shall be on the basis of meter measurement except where consumption may be readily computed without metering or where metering is impractical.

19.3(2) Condition of meter. Rescinded IAB 11/12/03, effective 12/17/03. See 199 IAC 19.6(7).

19.3(3) Meter reading records. The meter reading records shall show:

a. Customer's name, address, rate schedule, or identification of rate schedule.

b. Identifying number or description of the meter(s).

c. Meter readings.

d. If the reading has been estimated.

e. Any applicable multiplier or constant, or reference thereto.

19.3(4) Meter charts. All charts taken from recording meters shall be marked with the initial and final date and hour of the record, the meter identification, customer's name and location and the chart multiplier.

19.3(5) Meter register. If it is necessary to apply a multiplier to the meter readings, the multiplier must be marked on the face of the meter register or stenciled in weather resistant paint upon the front cover of the meter. Where remote meter reading is used, whether outdoor on-premises or off-premises-automated, the customers shall have a readable meter register at the meter as a means of verifying the accuracy of bills presented to them.

19.3(6) Prepayment meters. Prepayment meters shall not be geared or set so as to result in the charge of a rate or amount higher than would be paid if a standard type meter were used, except under such special rate schedule as may be filed under 19.2(4).

19.3(7) Meter reading and billing interval. Readings of all meters used for determining charges and billings to customers shall be scheduled at least monthly and for the beginning and termination of service. Bills to larger customers may, for good cause, be rendered weekly or daily for a period not to exceed one month. Intervals other than monthly shall not be applied to smaller customers, or to larger customers after the initial month provided above, without an exemption from the board. A waiver request must include the information required by 199—1.3(17A,474,476,78GA, HF2206). If the board denies a waiver, or if a waiver is not sought with respect to a large volume customer after the initial month, that customer's bill shall be rendered monthly for the next 12 months, unless prior approval is received from the board for a shorter interval. The group of larger customers to which shorter billing intervals may be applied shall be specified in the utility's tariff sheets, but shall not include residential customers.

An effort shall be made to obtain readings of the meters on corresponding days of each meter-reading period. The utility rules may permit the customer to supply the meter readings by telephone or on a form supplied by the utility. The utility may arrange for customer meter reading forms to be delivered to the utility by United States mail, electronically, or by hand delivery. Unless the utility has a plan to test check meter readings, a utility representative shall physically read the meter at least once each 12 months and when the utility is notified there is a change of customer.

The utility may arrange for the meter to be read by electronic means. Unless the utility has a plan to test check electronic meter readings, a utility representative shall physically read the meter at least once every 12 months.

19.3(8) Readings and estimates. When a customer is connected or disconnected or the meter reading date causes a given billing period to deviate by more than 10 percent (counting only business days) from the normal meter reading period, such bill shall be prorated on a daily basis.

When access to meters cannot be gained, the utility may leave with the customer a meter reading form. The customer may provide the meter reading by telephone, electronic mail (if it is allowed by the utility), or by mail. If the meter reading information is not returned in time for the billing operation, an estimated bill may be rendered. If an actual meter reading cannot be obtained, the utility may render an estimated bill without reading the meter or supplying a meter reading form to the customer. Only in unusual cases or when approval is obtained from the customer shall more than three consecutive estimated bills be rendered.

The utility shall incorporate normalized weather data in its calculation of an estimated bill.

Utilities shall file with the board their procedures for calculating estimated bills, including their procedures for determining the reasonable degree-day data to use in the calculations. Utilities shall inform the board when changes are made to the procedures for calculating estimated bills.

19.3(9) Temporary service. When the utility renders a temporary service to a customer it may require that the customer bear all the cost of installing and removing the service in excess of any salvage realized.

19.3(10) Extensions and service line extensions to customers.

a. Definitions. The following definitions shall apply to the terms as used in these rules.

"Advances for construction costs," as used in these subrules, are cash payments, or surety bonds, or equivalent surety made to the utility by an applicant for an extension, portions of which may be refunded depending on any subsequent connections made to the extension. Cash payments, surety bonds, or equivalent sureties shall include a grossed-up amount for the income tax effect of such revenue.

"Agreed-upon attachment period," as used in this subrule, means a period of not less than 30 days nor more than one year mutually agreed upon by the utility and the applicant within which the customer will attach. If no time period is mutually agreed upon, the agreed-upon attachment period shall be deemed to be 30 days.

"Contribution in aid of construction," as used in this subrule, means a nonrefundable cash payment grossed-up for the income tax effect of such revenue covering the costs of an extension that are in excess of utility-funded allowances. The amount of tax shall be reduced by the present value of the tax benefits to be obtained by depreciating the property in determining the tax liability.

"Customer advances for construction records," as used in this subrule, means a separate record established and maintained by the utility, which includes, by depositor, the amount of advance for construction provided by the customer, whether the advance is by cash or surety bond, or equivalent surety and if by surety bond or equivalent surety, all relevant information concerning the bond or surety, the amount of the refund, if any, to which the depositor is entitled, the amount of refund, if any, which has been made to the customer, the amount unrefunded, and the construction project or work order the extension was installed on.

"Estimated annual revenues," as used in this subrule, shall be calculated based upon the following factors, including, but not limited to: The size of the facility to be used by the customer, the size and type of equipment to be used by the customer, the average annual amount of service required by the equipment, and the average number of hours per day and days per year the equipment will be in use.

"Estimated base revenues," as used in this subrule, shall be calculated by subtracting the cost of purchased gas from estimated annual revenues.

"Estimated construction costs," as used in the subrule, shall be calculated using average costs in accordance with good engineering practices and upon the following factors: Amount of service required or desired by the customer requesting the extension; size, location, and characteristics of the extension, including appurtenances; and whether the ground is frozen or whether other adverse conditions exist. The average cost per foot shall be computed utilizing the prior calendar year costs, to the extent such cost basis does not exceed the current costs using current construction cost methodologies, resources and material, and working conditions, divided by the total feet of extensions by size of pipe for the prior calendar year. In no event shall estimated construction costs include costs associated with facilities built for the convenience of the utility.

"Extension" means a distribution main extension.

"Service line extension," as used in this subrule, means the piping that extends from the gas main to the meter set riser.

"Similarly situated customer" is a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are similar to other customers with approximately the same annual consumption or service requirements.

"Utility," as used in the subrule, means a rate-regulated utility.

b. Distribution main extensions.

(1) Plant additions. The utility will provide all gas plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served, or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, no more than 30 days prior to commencement of construction, the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer, which requires an advance by the customer to make plant additions, shall be available for board inspection. The utility shall allow the customer or developer, at the customer's or developer's option, to provide a nonrefundable contribution in aid of construction instead of a refundable advance for construction, under subparagraphs 19.3(10) "b"(2) and (3).

(2) Advances for construction costs for distribution main extensions for customers who will attach within the agreed-upon attachment period. Where the customer will attach within the agreed-upon attachment period after completion of the distribution main extension, the following shall apply:

1. The utility shall finance and make the extension for a customer without requiring an advance for construction if the estimated construction costs to provide a distribution main extension is less than or equal to the three times the estimated base revenue calculated on the basis of similarly situated customers.

2. If the estimated construction cost to provide a distribution main extension is greater than three times the estimated base revenue calculated on the basis of similarly situated customers, the applicant for such an extension shall contract with the utility and deposit an advance for construction equal to the estimated construction cost less three times the estimated base revenue to be produced by the customer no more than 30 days prior to commencement of construction.

(3) Advances for construction costs for distribution main extensions for customers who will not attach within the agreed-upon attachment period. Where the customer will not attach within the agreed-upon attachment period after completion of the distribution main extension, the applicant for the extension shall contract with the utility and deposit no more than 30 days prior to the commencement of construction an advance for construction equal to the estimated construction cost.

Advance payments for plant additions or extensions which are subject to refund for a ten-year period may be made by cash, surety bond, or equivalent surety. In the event a surety bond or an equivalent surety is used, the bonded amount shall have added to it a surcharge equal to the annual interest rate paid by the utility on customer bill deposits times the bonded amount. The bond shall be called by the utility at the end of one year or when the earned refunds are equal to the bonded amount, less the surcharge, whichever occurs first. If, upon termination of the surety bond, there are sufficient earned refunds to offset the amount of the surety bond, less the surcharge, the depositors shall provide the utility the amount of the surcharge. If, upon termination of the surety bond, there are not sufficient earned refunds to offset the full amount of the surety bond, less the surcharge, the depositors shall provide the utility a cash deposit equal to the amount of the surety bond, less refunds accumulated during the bonded period, plus the surcharge, or the depositor may pay the interest on the previous year's bond and rebond the balance due to the utility for a second or third one-year period. Upon receipt of such cash deposit, the utility shall release the surety bond. The cash deposit, less the surcharge, shall be subject to refund by the utility for the remainder of the ten-year period.

(4) Refunds. When the customer has chosen to make an advance for construction rather than a contribution in aid of construction, the utility shall refund to the depositor for a period of ten years from the date of the original advance a pro-rata share for each service attachment to the distribution main extension. The pro-rata refund shall be computed in the following manner:

1. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the distribution main extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

2. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the distribution main extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated base revenue of the customer attaching to the extension.

3. In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

c. *Service line extensions.* The utility shall finance and construct a service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the service extension to the riser is up to 50 feet on private property or 100 feet on private property if polyethylene plastic pipe is used.

Where the length of the service extension exceeds 50 feet on private property or 100 feet if polyethylene plastic pipe is used, the applicant shall be required to provide a contribution in aid of construction, within 30 days after completion, for that portion of the service extension on the private property, exclusive of the riser, in excess of 50 feet or in excess of 100 feet if polyethylene plastic pipe is used. The contribution in aid of construction for that portion of the extension shall be computed as follows:

(Estimated Construction Costs) ×

$$\frac{(\text{Total Length in Excess of 50 Feet}) \text{ or } (\text{Total Length in Excess of 100 Feet})}{(\text{Total Length of Service Extension})}$$

d. *Extensions not required.* Utilities shall not be required to make extensions as described in this rule, unless the extension shall be of a permanent nature.

e. *Extensions permitted.* This rule shall not be construed as prohibiting any utility from making a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors.

19.3(11) Cooperation and advance notice. In order that full benefit may be derived from these rules and in order to facilitate their proper application, all utilities shall observe the following cooperative practices:

a. Each utility shall give to other public utilities in the same general territory advance notice of any construction or change in construction or in operating conditions of its facilities concerned or likely to be concerned, in situations of proximity, provided, however, that the requirements of this rule shall not apply in case of routine extensions or minor changes in the local underground distribution facilities.

b. Each utility shall assist in promoting conformity with these rules. An arrangement should be set up between all utilities whose facilities may occupy the same general territory, providing for the interchange of pertinent data and information including that relative to proposed and existing construction and changes in operating conditions concerned or likely to be concerned in situations of proximity.

This rule is intended to implement 42 U.S.C.A. §8372, 10 CFR 516.30, and Iowa Code section 476.8.

199—19.4(476) Customer relations.

19.4(1) Customer information. Each utility shall:

a. Maintain up-to-date maps, plans or records of its entire transmission and distribution systems, with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving customers in its service area.

b. Assist the customer or prospective customer in selecting the most economical rate schedule available for the proposed type of service.

c. Notify customers affected by a change in rates or schedule classification in the manner provided in the rules of practice and procedure before the board. (199—7.4(476)IAC)

d. Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for public inspection.

e. Upon request, inform its customers as to the method of reading meters.

f. State, on the bill form, that tariff and rate schedule information is available upon request at the utility's local business office.

g. Upon request, transmit a statement of either the customer's actual consumption, or degree day adjusted consumption, at the company's option, of natural gas for each billing period during the prior 12 months.

h. Furnish such additional information as the customer may reasonably request.

i. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice for municipal utilities shall include the following statement: "If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard form contained herein shall file its proposed form in its tariff for approval. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

19.4(2) Customer deposits.

a. Each utility may require from any customer or prospective customer a deposit intended to guarantee partial payment of bills for service. Each utility shall allow a person other than the customer to pay the customer's deposit. In lieu of a cash deposit, the utility may accept the written guarantee of a surety or other responsible party as surety for an account. Upon termination of a guarantee contract, or whenever the utility deems the contract insufficient as to amount or surety, a cash deposit or a new or additional guarantee may be required for good cause upon reasonable written notice.

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

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

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

19.4(3) Interest on customer deposits. Interest shall be paid by the rate-regulated utility to each customer required to make a deposit. On or after April 21, 1994, rate-regulated utilities shall compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent, relative to an account treated as an uncollectible account, is the most recent date the account became delinquent.

19.4(4) Customer deposit records. Each utility shall keep records to show:

- a. The name and address of each depositor.
- b. The amount and date of the deposit.
- c. Each transaction concerning the deposit.

199—19.5(476) Engineering practice.

19.5(1) Requirement for good engineering practice. The gas plant of the utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice in the gas industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

19.5(2) Standards incorporated by reference.

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

(1) 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through February 1, 2003.

(2) 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," as amended through February 1, 2003.

(3) 49 CFR Part 193, "Liquefied Natural Gas Facilities: Federal Safety Standards," as amended through February 1, 2003.

(4) 49 CFR Part 199, "Drug and Alcohol Testing," as amended through February 1, 2003.

(5) ASME B31.8 1999, "Gas Transmission and Distribution Piping Systems."

(6) ANSI/NFPA No. 59-2001, "Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants."

b. The following publications are adopted as standards of accepted good practice for gas utilities:

(1) ANSI Z223.1/NFPA 54-1999, "National Fuel Gas Code."

(2) ANSI A225/NFPA 501A-2000, "Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities."

19.5(3) Adequacy of gas supply. The natural gas regularly available from supply sources supplemented by production or storage capacity must be sufficiently large to meet all reasonable demands for firm gas service.

19.5(4) Gas transmission and distribution facilities. The utility's gas transmission and distribution facilities shall be designed, constructed and maintained as required to reliably perform the gas delivery burden placed upon them. Each utility shall be capable of emergency repair work on a scale consistent with its scope of operation and with the physical conditions of its transmission and distribution facilities.

In appraising the reliability of the utility's transmission and distribution system, the board will consider, as principal factors, the condition of the physical property and the size, training, supervision, availability, equipment and mobility of the maintenance forces.

19.5(5) Inspection of gas plant. Each utility shall adopt a program of inspection of its gas plant in order to determine the necessity for replacement and repair. The frequency of the various inspections shall be based on the utility's experience and accepted good practice. Each utility shall keep sufficient records to give evidence of compliance with its inspection program.

199—19.6(476) Metering.

19.6(1) Inspection and testing program. Each utility shall adopt a written program for the inspection and testing of its meters to determine the necessity for adjustment, replacement or repair. The frequency of inspection and methods of testing shall be based on the utility's experience, manufacturer's recommendations, and accepted good practice. The board considers the publications listed in 19.6(3) to be representative of accepted good practice. Each utility shall maintain inspection and testing records for each meter and associated device until three years after its retirement.

19.6(2) Program content. The written program shall, at minimum, address the following subject areas:

a. Classification of meters by capacity, type, and any other factor considered pertinent.

b. Checking of new meters for acceptable accuracy before being placed in service.

c. Testing of in-service meters, including any associated instruments or corrective devices, for accuracy, adjustments or repairs. This may be accomplished by periodic tests at specified intervals or on the basis of a statistical sampling plan, but shall include meters removed from service for any reason.

d. Periodic calibration or testing of devices or instruments used by the utility to test meters.

e. Leak testing of meters before return to service.

f. The limits of meter accuracy considered acceptable by the utility.

g. The nature of meter and meter test records maintained by the utility.

19.6(3) Accepted good practice. The following publications are considered to be representative of accepted good practice in matters of metering and meter testing:

a. American National Standard for Gas Displacement Meters (500 Cubic Feet Per Hour Capacity and Under), ANSI B109.1-2000.

b. American National Standard for Diaphragm Type Gas Displacement Meters (Over 500 Cubic Feet Per Hour Capacity), ANSI B109.2-2000.

c. American National Standard for Rotary Type Gas Displacement Meters, ANSI B109.3-2000.

d. Measurement of Gas Flow by Turbine Meters, ANSI/ASME MFC-4M-1997.

e. Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, ANSI/API 2530-1991.

19.6(4) Meter adjustment. All meters and associated metering devices shall, when tested, be adjusted as closely as practicable to the condition of zero error.

19.6(5) Request tests. Upon request by a customer, a utility shall test the meter servicing that customer. A test need not be made more frequently than once in 18 months.

A written report of the test results shall be mailed to the customer within ten days of the completed test and a record of each test shall be kept on file at the utility's office. The utility shall give the customer or a representative of the customer the opportunity to be present while the test is conducted.

If the test finds the meter is accurate within the limits accepted by the utility in its meter inspection and testing program, the utility may charge the customer \$25 or the cost of conducting the test, whichever is less. The customer shall be advised of any potential charge before the meter is removed for testing.

19.6(6) Referee tests. Upon written request by a customer or utility, the board will conduct a referee test of a meter. A test need not be made more frequently than once in 18 months. The customer request shall be accompanied by a \$30 deposit in the form of a check or money order made payable to the utility.

Within 5 days of receipt of the written request and payment, the board shall forward the deposit to the utility and notify the utility of the requirement for a test. The utility shall, within 30 days after notification of the request, schedule the date, time and place of the test with the board and customer. The meter shall not be removed or adjusted before the test. The utility shall furnish all testing equipment and facilities for the test. If the tested meter is found to be more than 2 percent fast or 2 percent slow, the deposit will be returned to the party requesting the test and billing adjustments shall be made as required in 19.4(13). The board shall issue its report within 15 days after the test is conducted, with a copy to the customer and the utility.

19.6(7) Condition of meter. No meter that is known to be mechanically defective, has an incorrect correction factor, or has not been tested and adjusted, if necessary, in accordance with 19.6(2) "b," "c," and "e," shall be installed or continued in service. The capacity of the meter and the index mechanism shall be consistent with the gas requirements of the customer.

199—19.7(476) Standards of quality of service.

19.7(1) Purity requirements. All gas supplied to customers shall be substantially free of impurities which may cause corrosion of mains or piping or from corrosive or harmful fumes when burned in a properly designed and adjusted burner.

19.7(2) Pressure limits. The maximum allowable operating pressure for a low-pressure distribution system shall not be so high as to cause the unsafe operation of any connected and properly adjusted low-pressure gas-burning equipment.

19.7(3) Adequacy for pressure. Each utility shall have a substantially accurate knowledge of the pressures inside its piping. Periodic pressure measurements shall be taken during periods of high demand at remote locations in distribution systems to determine the adequacy of service. Records of such measurements including the date, time, and location of the measurement shall be maintained not less than two years.

19.7(4) Standards for pressure measurements.

a. Secondary standards. Each utility shall own or have access to a dead weight tester. This instrument must be maintained in an accurate condition.

b. Working standards. Each utility must have or have access to water manometers, laboratory quality indicating pressure gauges, and field-type dead weight pressure gauges as necessary for the proper testing of the indicating and recording pressure gauges used in determining the pressure on the utility's system. Working standards must be checked periodically by comparison with a secondary standard.

19.7(5) Handling of standards. Extreme care must be exercised in the handling of standards to ensure that their accuracy is not disturbed. Each standard shall be accompanied at all times by a certificate or calibration card, duly signed and dated, on which are recorded the corrections required to compensate for errors found at the customary test points at the time of the last previous test.

19.7(6) Heating value.

a. Awareness. Each utility shall have a substantially accurate knowledge of the heating value of the gas being delivered to customers at all times.

b. Natural and LP-gas. The heating value of natural gas and undiluted, commercially pure LP-gas shall be considered as being not under the control of the utility. The utility shall determine the allowable range of monthly average heating values within which its customers' appliances may be expected to function properly without repeated readjustment of the burners. If the monthly average heating value is above or below the limits of the allowable range for three successive months, the customers' appliances must be readjusted in accordance with 19.4(18)"c."

c. Peak shaving or other mixed gas. The heating value of gas in a distribution system which includes gas from LP or LNG peak shaving facilities, or gas from a source other than a pipeline supplier, shall be considered within the control of the utility. The average daily heating value of mixed gas shall be at least 95 percent of that normally delivered by the pipeline supplier. All mixed gas shall have a specific gravity of less than 1.000, and heating value shall not be so high as to cause improper operation of properly adjusted customer equipment.

d. Heating value determination and records. Unless acceptable heating value information is available for all periods from other sources, including the pipeline supplier, the utility shall provide and maintain equipment, or shall have a method of computation, by which the heating value of the gas in a distribution system can be accurately determined. The type, accuracy, operation and location of equipment, and the accuracy of computation methods, shall be in accordance with accepted industry practices and equipment manufacturer's recommendations and shall be subject to review by the board.

19.7(7) Interruptions of service.

a. Each utility shall make reasonable efforts to avoid interruptions of service, but when interruptions occur, service shall be reestablished within the shortest time practicable, consistent with safety. Each utility shall maintain records for not less than two years of interruptions of service as defined in 19.1(3) and shall periodically review these records to determine steps to be taken to prevent recurrence.

b. Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers. Interruptions shall be preceded by adequate notice to those who will be affected.

199—19.8(476) Safety.

19.8(1) Acceptable standards. As criteria of accepted good safety practice the board will use the applicable provisions of the standard listed in 19.5(2).

19.8(2) Protective measures. Each utility shall exercise reasonable care to reduce hazards inherent in connection with utility service to which its employees, its customers, and the general public may be subjected and shall adopt and execute a safety program designed to protect the public, fitted to the size and type of its operations. The utility shall give reasonable assistance to the board in the investigation of the cause of accidents and in the determination of suitable means of preventing accidents. Each utility shall maintain a summary of all reportable accidents arising from its operations.

19.8(3) Turning on gas. Each utility upon the installation of a meter and turning on gas or the act of turning on gas alone shall take the necessary steps to assure itself that there exists no flow of gas through the meter which is a warning that the customer's piping or appliances are not safe for gas turn on (Ref: Sec. 4.2 and Appendix D, ANSI Z223.1/NFPA 54-1999).

19.8(4) Gas leaks. A report of a gas leak shall be considered as an emergency requiring immediate attention.

19.8(5) Odorization. Any gas distributed to customers through gas mains or gas services or used for domestic purposes in compressor plants, which does not naturally possess a distinctive odor to the extent that its presence in the atmosphere is readily detectable at all gas concentrations of one-fifth of the lower explosive limit and above, shall have an odorant added to it to make it so detectable. Odorization is not necessary, however, for such gas as is delivered for further processing or use where the odorant would serve no useful purpose as a warning agent. Suitable tests must be made to determine whether the odor meets the standards of subrule 19.5(2). Prompt remedial action shall be taken if odorization levels do not meet the prescribed limits for detectability.

199—19.9(476) Energy conservation strategies. Rescinded IAB 11/12/03, effective 12/7/03.

199—19.10(476) Purchased gas adjustment (PGA).

19.10(1) *Purchased gas adjustment clause.* Purchased gas adjustments shall be computed separately for each customer classification or grouping previously approved by the board. Purchased gas adjustments shall use the same unit of measure as the utility's tariffed rates. Purchased gas adjustments shall be calculated using factors filed in annual or periodic filings according to the following formula:

$$PGA = \frac{(C \times Rc) + (D \times Rd) + (N \times Rn) + (Z \times Rz)}{S} + Rb + E - K$$

PGA is the purchased gas adjustment per unit.

S is the anticipated yearly gas commodity sales volume for each customer classification or grouping.

C is the volume of applicable commodity purchased or transported for each customer classification or grouping required to meet sales, S, plus the expected lost and unaccounted for volumes.

Rc is the weighted average of applicable commodity prices or rates to be in effect September 1 corresponding to purchases C.

D is the total volume of applicable gas or transportation demand purchases required to meet sales, S, for each customer classification or grouping.

Rd is the weighted average of applicable demand rates to be in effect September 1 corresponding to purchases D.

N is the total quantity of applicable annual entitlement to meet sales, S, for each customer classification or grouping.

Rn is the weighted average of applicable entitlement rates to be in effect September 1 corresponding to annual entitlement quantity N.

Z is the total quantity of applicable storage service purchases required to meet sales, S, for each customer classification or grouping.

Rz is the weighted average of applicable storage service rates to be in effect September 1 corresponding to purchases Z.

Rb is the amount necessary to obtain the anticipated balance for the remaining PGA year calculated by taking the anticipated PGA balance divided by the forecasted volumes for the months of October through August of the PGA year.

E is the per unit overcollection or undercollection adjustment as calculated under subrule 19.10(7).

K is the base cost of gas as set forth in the utility's tariff.

The components of the formula shall be determined as follows for each grouping:

a. The actual sales volumes S for the prior 12-month period ending June 30, with the necessary degree day adjustments, and further adjustments approved by the board.

Unless a utility receives prior board approval to use another methodology, a utility shall use the same weather normalization methodology used in prior approved PGA and rate case.

b. The annual expected lost and unaccounted for factors shall be calculated by determining the actual difference between sales and purchases for the prior PGA year but in no case will this factor be less than 0.

c. The purchases C, D, N and Z which will be necessary to meet requirements as determined in 19.10(1).

d. The purchased gas adjustments shall be adjusted prospectively to reflect the final decision issued by the board in a periodic review proceeding.

19.10(2) Annual purchased gas adjustment filing. Each rate-regulated utility shall file on or before August 1 of each year, for the board's approval, a purchased gas adjustment for the 12-month period beginning September 1 of that year.

The annual filing shall restate each factor of the formula stated in subrule 19.10(1).

The annual filing shall be based on customer classifications and groupings previously approved by the board unless new classifications or groupings are proposed.

The annual filing shall include all worksheets and detailed supporting data used to determine the purchased gas adjustment volumes and factors including sales and purchase data from bills, invoices, internal reports and supplier and customer contracts. Information already on file with the board may be incorporated by reference in the filing.

19.10(3) Periodic changes to purchased gas adjustment clause. Periodic purchased gas adjustment filings shall be based on the purchased gas adjustment customer classifications and groupings previously approved by the board. Changes in the customer classification and grouping on file are not automatic and require prior approval by the board.

Periodic filings shall include all worksheets and detailed supporting data used to determine the amount of the adjustment.

Changes in factors S or C may not be made in periodic purchased gas filings except to recognize changes between pipeline and nonpipeline purchases. A change in factors D, N, or Z may be made in periodic filings and will be deemed approved if it conforms to the annual purchased gas filing or if it conforms to the principles set out in 19.10(5) and 19.10(6).

The utility shall implement automatically all purchased gas adjustment changes which result from changes in Rc, Rd, Rn, or Rz equal to or greater than .5 cents per ccf or therm immediately with concurrent board notification with adequate information to calculate and support the change. Purchased gas adjustment changes of less than .5 cents per ccf or therm shall be required with concurrent board notification if the last purchased gas adjustment change occurred 30 days or more prior to the change. The purchased gas adjustment shall be calculated separately for each customer classification or grouping.

Unless otherwise ordered by the board, a rate-regulated utility's purchased gas adjustment rate factors shall be adjusted as purchased gas costs change and shall recover from the customers only the actual costs of purchased gas and other currently incurred charges associated with the delivery, inventory or reservation of natural gas. Such periodic changes shall become effective with usage on or after the date of change.

If a supplier's entitlement charge is zero, the same percentage of current demand charges shall be allocated to each customer class or grouping as the average of demand charges allocated during the last 12-month period for which entitlement rates were not zero. "Current demand charges" means the amount $(D \times Rd)$ used in computing the formula set out in 19.10(1).

19.10(4) Factor Rb. Starting with the 1993-1994 PGA year, each company has the option of filing an Rb calculation with its October-January PGA filings but will be required to file an Rb calculation with its February filing and subsequent monthly filings in the PGA year. If anticipated revenues exceed or fall short of anticipated costs by more than one-half of 1 percent, the PGA adjustment necessary to obtain the anticipated balance shall constitute the amount to be reflected as factor Rb in the PGA calculation. The adjustment shall be for services rendered in the remaining months of the same PGA year unless a subsequent determination under this paragraph requires a change. If the anticipated PGA balance represents costs in excess of revenues, factor Rb shall be assigned a positive value; if the anticipated balance represents revenues in excess of costs, factor Rb shall be assigned a negative value.

19.10(5) Take-or-pay adjustment. Rescinded IAB 11/12/03, effective 12/17/03.

19.10(6) *Allocations of changes in contract demand obligations.* Any change in contractual demand obligations to pipelines or other gas suppliers serving Iowa must be reported to the board within 30 days of receipt. The change must be applied on a pro-rata basis to all customer classifications or groupings, unless another method has been approved by the board. Where a change has been granted as a result of the utility's request based on the needs of specified customers, that change may be allocated to the specified customers. Where the board has approved anticipated sales levels for one or more customer classifications or groupings, those levels may limit the pro-rata reduction for those classifications or groupings.

19.10(7) *Reconciliation of underbillings and overbillings.* The utility shall file with the board on or before October 1 of each year a purchased gas adjustment reconciliation for the 12-month period which began on September 1 of the previous year. This reconciliation shall be the actual net invoiced costs of purchased gas less the actual revenue billed through its purchased gas adjustment clause net of the prior year's reconciliation dollars for each customer classification or grouping. Actual net costs for purchased gas shall be the applicable invoice costs from all appropriate sources associated with the time period of usage.

Negative differences in the reconciliation shall be considered overbilling by the utility and positive differences shall be considered underbilling. This reconciliation shall be filed with all worksheets and detailed supporting data for each particular purchased gas adjustment clause. Penalty purchases shall only be includable where the utility clearly demonstrates a net savings.

The take-or-pay reconciliation shall be the actual net invoiced costs of take-or-pay less the actual revenue billed through its take-or-pay factors for each customer class or grouping. Actual net costs for take-or-pay shall be the applicable invoice costs from all appropriate sources associated with the time period of usage.

a. Any underbilling determined from the reconciliation shall be collected through ten-month adjustments to the appropriate purchased gas adjustment. The underbilling generated from each purchased gas adjustment clause shall be divided by the anticipated sales volumes for the prospective ten-month period beginning November 1 (based upon the sales determination in subrule 19.10(1)).

The quotient, determined on the same basis as the utility's tariff rates, shall be added to the purchased gas adjustment for the prospective ten-month period beginning November 1.

Any underbillings determined from the take-or-pay reconciliation shall be collected through ten-month adjustments to appropriate take-or-pay adjustment. The underbilling shall be divided by the anticipated sales volumes or transport volumes for the prospective ten-month period beginning November 1 (based upon the volumes determined in subrule 19.10(5)).

- b. All contracts and gas supply arrangements executed or in effect for obtaining gas and all supply arrangements planned for the future 12-month and 3-year periods.
- c. An organizational description of the officer or division responsible for gas procurement and a summary of operating procedures and policies for procuring and evaluating gas contracts.
- d. A summary of the legal and regulatory actions taken to minimize purchased gas costs.
- e. All studies or investigation reports considered in gas purchase contract or arrangement decisions during the plan periods.
- f. A complete list of all contracts executed since the last procurement review.
- g. A list of other unbundled services available (for example, storage services if offered).
- h. A description of the supply options selected and an evaluation of the reasonableness and prudence of its decisions. This evaluation should show the relationship between forecast and procurement.

19.11(2) *Gas requirement forecast.* Rescinded IAB 4/3/91, effective 3/15/91.

19.11(3) *Annual review proceeding.* Rescinded IAB 2/9/00, effective 3/15/00.

19.11(4) *Evaluation of the plan.* The burden shall be on the utility to prove it is taking all reasonable actions to minimize its purchased gas costs. The board will evaluate the reasonableness and prudence of the gas procurement plan.

19.11(5) *Disallowance of costs.* The board shall disallow any purchased gas costs in excess of costs incurred under responsible and prudent policies and practices. The PGA factor shall be adjusted prospectively to reflect the disallowance.

19.11(6) *Executive summary.* On or before August 1, 2003, each natural gas utility shall file an executive summary and index of all standard and special contracts in effect for the purchase, sale or interchange of gas. On or before August 1 each year thereafter, each natural gas utility shall file an update of the executive summary and index showing the standard and special contracts in effect on that date for the purchase, sale or interchange of gas. The executive summary shall include the following information:

- a. The contract number;
- b. The start and end date;
- c. The parties to the contract;
- d. The total estimated dollar value of the contract;
- e. A description of the type of service offered (including volumes and price).

This rule is intended to implement Iowa Code section 476.6(15).

199—19.12(476) Flexible rates.

19.12(1) *Purpose.* This subrule is intended to allow gas utility companies to offer, at their option, incentive or discount rates to their sales and transportation customers.

19.12(2) *General criteria.*

a. Natural gas utility companies may offer discounts to individual customers, to selected groups of customers, or to an entire class of customer. However, discounted rates must be offered to all directly competing customers in the same service territory. Customers are direct competitors if they make the same end product (or offer the same service) for the same general group of customers. Customers that only produce component parts of the same end product are not directly competing customers.

b. In deciding whether to offer a specific discount, the utility shall evaluate the individual customer's, group's, or class's situation and perform a cost-benefit analysis before offering the discount.

c. Any discount offered should be such as to significantly affect the customer's or customers' decision to stay on the system or to increase consumption.

d. The consequences of offering the discount should be beneficial to all customers and to the utility. Other customers should not be at risk of loss as a result of these discounts; in addition, the offering of discounts shall in no way lead to subsidization of the discounted rates by other customers in the same or different classes.

19.12(3) *Tariff requirements.* If a company elects to offer flexible rates, the utility shall file for review and approval tariff sheets specifying the general conditions for offering discounted rates. The tariff sheets shall include, at a minimum, the following criteria:

a. The cost-benefit analysis must demonstrate that offering the discount will be more beneficial than not offering the discount.

b. The ceiling for all discounted rates shall be the approved rate on file for the customer's rate class.

c. The floor for the discount sales rates shall be equal to the cost of gas. Therefore, the maximum discount allowed under the sales or transportation tariffs is equal to the nongas costs of serving the customer.

d. No discount shall be offered for a period longer than five years, unless the board determines upon good cause shown that a longer period is warranted.

e. Discounts should not be offered if they will encourage deterioration in the load characteristics of the customer receiving the discount.

f. Customer charges may be discounted.

19.12(4) *Reporting requirements.* Each natural gas utility electing to offer flexible rates shall file annual reports with the board within 30 days of the end of each 12 months. Reports shall include the following information:

a. Section 1 of the report concerns discounts initiated in the last 12 months. For all discounts initiated in the last 12 months, the report shall include:

- (1) The identity of the new customers (by account number, if necessary);
- (2) The value of the discount offered;
- (3) The cost-benefit analysis results;
- (4) The cost of alternate fuels available to the customer, if relevant;
- (5) The volume of gas sold to or transported for the customer in the preceding 12 months; and
- (6) A copy of all new or revised flexible rate contracts executed between the utility and its customers.

b. Section 2 of the report relates to overall program evaluation. For all discounts currently being offered, the report shall include:

- (1) The identity of each customer (by account number, if necessary);
- (2) The total volume of gas sold or transported in the last 12 months to each customer at discounted rates, by month;
- (3) The volume of gas sold or transported to each customer in the same 12 months of the preceding year, by month;
- (4) The dollar value of the discount in the last 12 months to each customer, by month;
- (5) The dollar value of volumes sold or transported to each customer for each of the previous 12 months; and
- (6) If customer charges are discounted, the dollar value of the discount shall be separately reported.

c. Section 3 of the report concerns discounts denied or discounts terminated. For all customers specifically evaluated and denied or having a discount terminated in the last 12 months, the report shall include:

- (1) Customer identification (by account number, if necessary);
- (2) The volume of gas sold or transported in the last 12 months to each customer, by month;
- (3) The volume of gas sold or transported to each customer in the same 12 months of the preceding year, by month; and
- (4) The dollar value of volumes sold or transported to each customer for each of the past 12 months.

d. No report is required if the utility had no customers receiving a discount during the relevant period and had no customers which were evaluated for the discount and rejected during the relevant period.

19.12(5) Rate case treatment. In a rate case, 50 percent of any identifiable increase in net revenues will be used to reduce rates for all customers; the remaining 50 percent of the identifiable increase in net revenues may be kept by the utility. If there is a decrease in revenues due to the discount, the utility's test year revenues will be adjusted to remove the effects of the discount by assuming that all sales or transportation services or customer charges were provided at full tariffed rate for the customer class. Determining the actual amount will be a factual determination to be made in the rate case.

199—19.13(476) Transportation service.

19.13(1) Purpose. This subrule requires gas distribution utility companies to transport natural gas owned by an end-user on a nondiscriminatory basis, subject to the capacity limitations of the specific system. System capacity is defined as the maximum flow of gas the relevant portion of the system is capable of handling. Capacity availability shall be determined using the total current firm gas flow, including both system and transportation gas.

19.13(2) End-user rights. The end-user purchasing transportation services from the utility shall have the following rights and be subject to the following conditions:

a. The end-user shall have the right to receive, pursuant to agreement, 100 percent of the gas delivered by it or on its behalf to the transporting utility (adjusted for a reasonable volume of lost, unaccounted-for, and company-used gas).

b. The volumes which the end-user is entitled to receive shall be subject to curtailment or interruption due to limitations in the system capacity of the transporting utility. Curtailment of the transportation volumes will take place according to the priority class, subdivision, or category which the end-user would have been assigned if it were purchasing gas from the transporting utility.

c. During periods of curtailment or interruption, the party is entitled to a credit equal to the difference between the volumes delivered to the utility and those received by the end-user, adjusted for lost, unaccounted-for, and company-used gas. The credit shall be available at any time, within the conditions of the agreement.

d. The end-user shall be responsible for all costs associated with any additional plant required for providing transportation services to the end-user.

19.13(3) Transportation service charges. Transportation service shall be offered to at least the following classes:

- a. Interruptible service with system supply reserve.
- b. Interruptible service without system supply reserve.
- c. Firm service with system supply reserve.
- d. Firm service without system supply reserve.

19.13(4) *Transportation service charges and rates.* All rates and charges for transportation shall be based on the cost of providing the service.

a. "System supply reserve" service shall entitle the end-user to return to the system service to the extent of the capacity purchased. The charge shall be at least equal to the administrative costs of monitoring the service, plus any other costs (including but not limited to gas demand costs which are directly assignable to the end-user).

b. End-users without system supply reserve service may only return to system service by paying an additional charge and are subject to the availability of adequate system capacity. An end-user wishing to receive transportation service without system supply reserve must pay the utility for the discounted value of any contract between the utility and the end-user remaining in effect at the time of beginning transportation service. The discounted values shall include all directly assignable and identifiable costs (including but not limited to gas costs).

c. The utility may require a reconnection charge when an end-user receiving transportation service without system supply reserve service requests to return to the system supply. The end-user shall return to the system and receive service under the appropriate classification as determined by the utility.

d. The end-user electing to receive transportation service shall pay reasonable rates for any use of the facilities, equipment, or services of the transporting utility.

e. Small volume transportation service. On or before February 1, 1999, each utility shall file transportation tariffs which reflect the following:

(1) Administrative fees shall be no higher than customer charges;

(2) Telemetering, daily metering, and daily balancing requirements shall not be required unless a utility demonstrates to the board that the particular customer's potential imbalances could affect the integrity of the system;

(3) Means of resolving monthly imbalances shall be described;

(4) Rates, terms, and conditions for marketer's use of the utility's pipeline capacity and storage shall be provided;

(5) Billing arrangements may be negotiated between marketer, utility, and customer. A customer may select from the following three billing patterns: single billing from the marketer with reimbursement of tariff rates to the utility; single billing from the utility which includes the marketer's gas cost; or separate billing by the marketer for gas supply and by the utility for transportation.

f. Optional plan filing. Instead of filing the tariffs required by paragraph 19.13(4) "e," a utility may submit for the board's consideration a plan which sets out specific provisions for implementing transportation service for small volume customers. On or before September 1, 1998, a utility electing this option must file a notice of intent to submit a plan. A utility's plan must, at a minimum, address the following issues:

(1) Customer education;

(2) Load aggregation;

(3) Transition costs;

(4) Code of conduct—affiliates of regulated utility;

(5) Code of conduct—marketer participants;

(6) Obligation to serve;

(7) Social programs;

(8) Uncollectibles;

(9) Customer minimums for participation;

(10) Customer switching;

(11) Telemetering and daily metering;

(12) Balancing;

(13) Rates, terms, and conditions for marketer use of pipeline capacity and storage;

(14) Billing.

(7) A toll-free telephone number for the end user to call for information and to make complaints regarding the CNGP.

(8) A toll-free telephone number for the end user to contact the CNGP in the event of an emergency.

(9) A toll-free telephone number for the end user to notify the public utility of an emergency regarding delivery service.

(10) The tariffed transportation charges and supplier refunds, where a combined bill is provided to the customer.

c. *Disclosure.* Each prospective end user must receive in writing, prior to initiation of service, all terms and conditions of service and all rights and responsibilities of the end user associated with the offered service. The information required by this paragraph may be provided electronically, at the customer's option.

d. *Notice of service termination.* Notice must be provided to the end user and the public utility at least 12 calendar days prior to service termination. If the notice of service termination is rescinded, the CNGP must notify the public utility. CNGPs are prohibited from physically disconnecting the end user or threatening physical disconnection for any reason.

e. *Transfer of accounts.* CNGPs are prohibited from transferring the account of any end user to another supplier except with the consent of the end user. This provision does not preclude a CNGP from transferring all or a portion of its accounts pursuant to a sale or transfer of all or a substantial portion of a CNGP's business in Iowa, provided that the transfer satisfies all of the following conditions:

(1) The transferee will serve the affected end users through a certified CNGP;

(2) The transferee will honor the transferor's contracts with the affected end users;

(3) The transferor provides written notice of the transfer to each affected end user prior to the transfer;

(4) Any affected end user is given 30 days to change supplier without penalty; and

(5) The transferor provides notice to the public utility of the effective date of the transfer.

f. *Bond requirement.* The board may require the applicant to file a bond or other demonstration of its financial capability to satisfy claims and expenses that can reasonably be anticipated to occur as part of operations under its certificate, including the failure to honor contractual commitments. The adequacy of the bond or demonstration shall be determined by the board and reviewed by the board from time to time. In determining the adequacy of the bond or demonstration, the board shall consider the extent of the services to be offered, the size of the provider, and the size of the load to be served, with the objective of ensuring that the board's financial requirements do not create unreasonable barriers to market entry.

g. *Replacement cost for supply failure.* Each individual rate-regulated public utility shall file for the board's review tariffs establishing replacement cost for supply failure. Replacement cost revenue will be credited to the rate-regulated public utility's system purchased gas adjustment.

199—19.15(476) Customer contribution fund.

19.15(1) *Applicability and purpose.* This rule applies to each gas public utility, as defined in Iowa Code sections 476.1 and 476.1B. Each utility shall maintain a program plan to assist the utility's low-income customers with weatherization and to supplement assistance received under the federal low-income home energy assistance program for the payment of winter heating bills.

19.15(2) *Program plan.* Each utility shall have on file with the board a detailed description of its program plan. At a minimum, the plan shall include the following information:

a. A list of the members of the governing board, council, or committee established to determine the appropriate distribution of the funds collected. The list shall include the organization each member represents;

b. A sample of the customer notification with a description of the method and frequency of its distribution;

- c. A sample of the authorization form provided to customers; and
- d. The date of implementation.

Program plans for new customer contribution funds shall be rejected if not in compliance with this rule.

19.15(3) Notification. Each utility shall notify all customers of the fund at least twice a year. The method of notice which will ensure the most comprehensive notification to the utility's customers shall be employed. Upon commencement of service and at least once a year, the notice shall be mailed or personally delivered to all customers. The other required notice may be published in a local newspaper(s) of general circulation within the utility's service territory. A utility serving fewer than 6,000 customers may publish their semiannual notices locally in a free newspaper, utility newsletter or shopper's guide instead of a newspaper. At a minimum the notice shall include:

- a. A description of the availability and the purpose of the fund;
- b. A customer authorization form. This form shall include a monthly billing option and any other methods of contribution.

19.15(4) Methods of contribution. The utility shall provide for contributions as monthly pledges, as well as one-time or periodic contributions. Each utility may allow persons or organizations to contribute matching funds.

19.15(5) Annual report. On or before September 30 of each year, each utility shall file with the board a report of all the customer contribution fund activity for the previous fiscal year beginning July 1 and ending June 30. The report shall be in a form provided by the board and shall contain an accounting of the total revenues collected and all distributions of the fund. The utility shall report all utility expenses directly related to the customer contribution fund.

19.15(6) Binding effect. A pledge by a customer or other party shall not be construed to be a binding contract between the utility and the pledgor. The pledge amount shall not be subject to delayed payment charges by the utility.

199—19.16(476) Reserve margin.

19.16(1) Applicability. All rate-regulated gas utility companies may maintain a reserve of natural gas in excess of their historic peaks and recover the cost of the reserve from their customers through the purchased gas adjustment.

19.16(2) Definitions.

a. *Gas available to meet demand.* All firm gas contracted for by a utility, excluding the delivery-capacity of liquefied natural gas and propane storage facilities, shall be considered as gas available to meet demand.

b. *Contract demand.* The amount of firm gas a utility is entitled to take on a daily basis, pursuant to contract.

c. *Base period demand.* The maximum peak of the previous seven heating seasons (12-month period ending June 30) shall form the base period demand to establish a utility's maximum peak demand.

19.16(3) Contract demand levels of less than 25,000 Mcf per day. A reserve margin of 9 percent or less in excess of the base period demand will be presumed reasonable.

19.16(4) Contract demand levels of more than 25,000 Mcf per day. A reserve margin of 5 percent or less in excess of the base period demand will be presumed reasonable.

19.16(5) Rebuttable presumption. All gas available to meet demand in excess of an amount needed to meet the base period demand plus the reserve is presumed to be unjust and unreasonable unless a factual showing to the contrary is made during the periodic review of gas proceeding. All gas available to meet demand less than an amount of base period demand plus the reserve is presumed to be just and reasonable unless a factual showing to the contrary can be made during the periodic review of gas proceeding.

19.16(6) Allocation of cost of the reserve. Fifty percent of the reserve cost shall be collected as a demand charge allocation to noncontractual firm customers. The remaining 50 percent shall be collected as a throughput charge on customers excluding transportation customers who have elected no system supply reserve.

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CHAPTER 20
SERVICE SUPPLIED BY ELECTRIC UTILITIES
[Prior to 10/8/86, Commerce Commission[250]]

199—20.1(476) General information.

20.1(1) *Authorization of rules.* Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, content and filing of reports, documents and other papers necessary to carry out the provisions of this law.

Iowa Code chapter 478 provides that the Iowa utilities board shall have power to make and enforce rules relating to the location, construction, operation and maintenance of certain electrical transmission lines.

The application of the rules in this chapter to municipally owned utilities furnishing electricity is limited by Iowa Code section 476.1B, and the application of the rules in this chapter to electric utilities with fewer than 10,000 customers and to electric cooperative associations is limited by the provisions of Iowa Code section 476.1A.

20.1(2) *Application of rules.* The rules shall apply to any electric utility operating within the state of Iowa subject to Iowa Code chapter 476, and to the construction, operation and maintenance of electric transmission lines to the extent provided in Iowa Code chapter 478, and shall supersede all tariffs on file with the board which are in conflict with these rules.

These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities.

A request to waive the application of any rule on a permanent or temporary basis may be made in accordance with 199—1.3(17A,474,476,78GA,HF2206).

The adoption of these rules shall in no way preclude the board from altering or amending them pursuant to statute or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions.

These rules shall in no way relieve any utility from any of its duties under the laws of this state.

20.1(3) *Definitions.* The following words and terms when used in these rules, shall have the meaning indicated below:

"Acid Rain Program" means the sulfur dioxide and nitrogen oxides air pollution control program established pursuant to Title IV of the Act under 40 CFR Parts 72-78.

"Act" means the Clean Air Act, 42 U.S.C. Section 7401, et seq., as amended by Pub. L. 101-549, November 15, 1990.

"Affected unit" means a unit or source that is subject to any emission reduction requirement or limitation under the Acid Rain Program, or a unit or source that opts in under 40 CFR Part 74.

"Allowance" means an authorization, allocated by the United States Environmental Protection Agency (EPA) under the Acid Rain Program, to emit up to one ton of sulfur dioxide, during or after a specified calendar year.

"Allowance futures contract" is an agreement between a futures exchange clearinghouse and a buyer or seller to buy or sell an allowance on a specified future date at a specified price.

"Board" means the utilities board.

"Complaint" as used in these rules is a statement or question by anyone, whether a utility customer or not, alleging a wrong, grievance, injury, dissatisfaction, illegal action or procedure, dangerous condition or action, or utility obligation.

"Compliance plan" means the document submitted for an affected source to the Environmental Protection Agency which specifies the methods by which each affected unit at the source will meet the applicable emissions limitation and emissions reduction requirements.

"Customer" means any person, firm, association, or corporation, any agency of the federal, state or local government, or legal entity responsible by law for payment for the electric service or heat from the electric utility.

"Delinquent" or *"delinquency"* means an account for which a service bill or service payment agreement has not been paid in full on or before the last day for timely payment.

"Distribution line" means any single or multiphase electric power line operating at nominal voltage in either of the following ranges: 2,000 to 26,000 volts between ungrounded conductors or 1,155 to 15,000 volts between grounded and ungrounded conductors, regardless of the functional service provided by the line.

"Economy energy" is energy bought or sold in a transaction wherein the supplier's incremental cost is less than the buyer's decremental cost, and the differential in cost is shared in an equitable manner by the supplier and buyer.

"Electric plant" includes all real estate, fixtures and property owned, controlled, operated or managed in connection with or to facilitate production, generation, transmission, or distribution, in providing electric service or heat by an electric utility.

"Electric service" is furnishing to the public for compensation any electricity, heat, light, power, or energy.

"Energy" means electric energy measured in kilowatt hours.

"Firm power" is power and associated energy intended to be available at all times during the period covered by the commitment.

"Gains and losses from allowance sales" are calculated as the difference between the sale price of allowances sold during the month and the weighted average unit cost of inventoried allowances.

"Meter" means, unless otherwise qualified, a device that measures and registers the integral of an electrical quantity with respect to time.

"Meter shop" is a shop where meters are inspected, repaired and tested, and may be at a fixed location or may be mobile.

"Operating reserve" is a reserve generating capacity required to ensure reliability of generation resources.

"Operational control energy" is energy supplied by a selling utility to a buying utility for the improvement of electric system operation.

"Outage energy" is energy purchased during emergency or scheduled maintenance outages of generation or transmission facilities, or both.

"Participation power" means power and associated energy or energy which is purchased or sold from a specific unit or units on the basis that its availability is subject to prorate or other specified reduction if the units are not operated at full capacity.

"Peaking power" is power and associated energy intended to be available at all times during the commitment and which is anticipated to have low load factor use.

"Power" means electric power measured in kilowatts.

"Price hedging" means using futures contracts or options to guard against unfavorable price changes.

"Rate-regulated utility" means any utility, as defined in 20.1(3), which is subject to board rate regulation under Iowa Code chapter 476.

"Secondary line" means any single or multiphase electric power line operating at nominal voltage less than either 2,000 volts between ungrounded conductors or 1,155 volts between grounded and ungrounded conductors, regardless of the functional service provided by the line.

“*Service limitation*” means the establishment of a limit on the amount of power that may be consumed by a residential customer through the installation of a service limiter on the customer’s meter.

“*Service limiter*” means a circuit breaker device that limits a residential customer’s power consumption to 15 amps at 120 volts (or some higher level of usage approved by the board) and that either resets itself automatically or can be reset by the customer.

“*Speculation*” means using futures contracts or options to profit from expectations of future price changes.

“*Tariff*” means the entire body of rates, tolls, rentals, charges, classifications, rules, procedures, policies, etc., adopted and filed with the board by an electric utility in fulfilling its role of furnishing service.

“*Timely payment*” is a payment on a customer’s account made on or before the date shown on a current bill for service, or on a form which records an agreement between the customer and a utility for a series of partial payments to settle a delinquent account, as the date which determines application of a late payment charge to the current bill or future collection efforts.

“*Transmission line*” means any single or multiphase electric power line operating at nominal voltages in excess of either 26,000 volts between ungrounded conductors or 15,000 volts between grounded and ungrounded conductors, regardless of the functional service provided by the line.

“*Utility*” means any person, partnership, business association or corporation, domestic or foreign, owning or operating any facilities for providing electric service or heat to the public for compensation.

“*Weighted average unit cost of inventoried allowances*” equals the dollars in inventory at the end of the month divided by the total allowances available for use at the end of the month.

“*Wheeling service*” is the service provided by a utility in consenting to the use of its transmission facilities by another party for the purpose of scheduling delivery of power or energy, or both.

20.1(4) Abbreviations. The following abbreviations may be used where appropriate:

ANSI—American National Standards Institute, 1430 Broadway, New York, New York 10018.

DOE—Department of Energy, Washington, D.C. 20426.

EPA—United States Environmental Protection Agency.

FCC—Federal Communications Commission, 1919 M Street, Washington, D.C. 20554.

FERC—Federal Energy Regulatory Commission, Washington, D.C. 20426.

NARUC—National Association of Regulatory Utility Commissioners, P.O. Box 684, Washington, D.C. 20044.

NBS—National Bureau of Standards, Washington, D.C. 20234.

NFPA—National Fire Protection Association, 470 Atlantic Ave., Boston, Massachusetts 02210.

199—20.2(476) Records, reports, and tariffs.

20.2(1) Location and retention of records. Unless otherwise specified by this chapter, all records required by these rules shall be kept and preserved in accordance with the applicable provisions of 199—Chapter 18.

20.2(2) Tariffs to be filed with the board. The schedules of rates and rules of rate-regulated electric utilities shall be filed with the board and shall be classified, designated, arranged and submitted so as to conform to the requirements of this chapter. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules.

Utilities which are not subject to the rate regulation provided for by Iowa Code chapter 476 shall not be required to file schedules of rates, rules, or contracts primarily concerned with a rate schedule with the board and shall not be subject to the provisions related to rate regulations, but nothing contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the board in the performance of the board's duties upon request to do so by the board.

20.2(3) Form and identification. All tariffs shall conform to the following rules:

a. The tariff shall be printed, typewritten or otherwise reproduced on 8½- × 11- inch sheets of durable white paper so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side suitable for binding. In the case of utilities subject to regulation by any federal agency the format of sheets of tariff as filed with the board may be the same format as is required by the federal agency provided that the rules of the board as to title page; identity of superseding, replacing or revision sheets; identity of amending sheets; identity of the filing utility, issuing official, date of issue, effective date; and the words "Tariff with board" shall apply in the modification of the federal agency format for the purposes of filing with this board.

b. The title page of every tariff and supplement shall show:

(1) The first page shall be the title page which shall show:

(Name of Public Utility)

Electric Tariff

Filed with

Iowa Utilities Board

(Date)

(This requirement does not apply to tariffs or amendments filed with the board prior to July 1, 1981.)

(2) When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on the upper right corner of its title page that it supersedes a tariff on file and the number being superseded or replaced, for example:

TARIFF NO. _____

SUPERSEDES TARIFF NO. _____

(This requirement does not apply to tariffs or amendments filed with the board prior to July 1, 1981.)

(3) When a new part of a tariff eliminates an existing part of a tariff it shall so state and clearly indicate the part eliminated.

(4) Any tariff modifications as defined above shall be marked in the right-hand margin of the replacing tariff sheet with symbols as here described to indicate the place, nature and extent of the change in text.

—Symbols—

(C)—Changed regulation

(D)—Discontinued rate or regulation

(I)—Increase in rate or new treatment resulting in increased rate

(N)—New rate, treatment or regulation

(R)—Reduction in rate or new treatment resulting in reduced rate

(T)—Change in text only

c. All sheets except the title page shall have, in addition to the above-stated requirements, the following information:

(1) Name of utility under which shall be set forth the words "Filed with board." If the utility is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

(2) Issuing official and issue date.

(3) Effective date (to be left blank by rate-regulated utilities).

d. All sheets except the title page shall have the following form:

(Company Name)

(Part identification)

Electric Tariff

(This sheet identification)

Filed with board

(Canceled sheet identification, if any)

(Content or tariff)

Issued: (Date)

Effective:

Issued by: (Name, title)

(Proposed Effective Date:)

The issued date is the date the tariff or the amended sheet content was adopted by the utility.

The effective date will be left blank by rate-regulated utilities and shall be determined by the board.

The utility may propose an effective date.

20.2(4) Content of tariffs.

a. A table of contents containing a list of rate schedules and other sections in the order in which they appear showing the sheet numbers of the first page of each rate schedule or other section. In the event the utility filing the tariff elects to segregate a section such as general rules from the section containing the rate schedules or other sections, it may at its option prepare a separate table of contents for each such segregated section.

b. A preliminary statement containing a brief general explanation of the utility's operations.

c. All rates for service with indication for each rate of the type and voltage of service and the class of customers to which each rate applies. There shall also be shown any limitations on loads and type of equipment which may be connected, the net prices per unit of service and the number of units per billing period to which the net prices apply, the period of billing, the minimum bill, any effect of transformer capacity upon minimum bill or upon the number of kWh in any step of the rate, method of measuring demands, method of calculating or estimating loads in cases where transformer capacity has a bearing upon minimum bill or size of rate steps, level payment plan, and any special terms or conditions applicable. The period during which the net amount may be paid before the account becomes delinquent shall be specified. In any case where net and gross amounts are billed, the difference between net and gross is a late payment charge and shall be so specified.

d. The voltage and type of service, (direct current or single or polyphase alternating current) supplied in each municipality, but without reference required to any particular part thereof.

e. Forms of standard contracts required of customers for the various types of service available.

f. If service to other utilities or municipalities is furnished at a standard filed rate, either a copy of each signed contract or a copy of the standard uniform contract form together with a summary of the provisions of each signed contract. The summary shall show the principal provisions of the contract and shall include the name and address of the customer, the points where energy is delivered, rate, term, minimum, load conditions, voltage of delivery and any special provisions such as rentals. Standard contracts for such sales as that of energy for resale, street lighting, municipal athletic field lighting, and for water utilities may be filed in summary form as above outlined.

g. Copies of special contracts for the purchase, sale, or interchange of electrical energy. All tariffs must provide that, notwithstanding any other provision of this tariff or contract with reference thereto, all rates and charges contained in this tariff or contract with reference thereto may be modified at any time by a subsequent filing made pursuant to the provisions of Iowa Code chapter 476.

h. A list of all communities in which service is furnished.

i. The list of service areas and the rates shall be filed in a form to facilitate ready determination of the rates available in each municipality and in unincorporated communities that have service. If the utility has various rural rates, the areas where the same are available shall be indicated.

- j. Definitions of classes of customers.
- k. Extension rules for extending service to new customers indicating what portion of the extension or cost thereof will be furnished by the utility; and if the rule is based on cost, the items of cost included.
- l. Type of construction which the utility requires the customer to provide if in excess of the Iowa electric safety code or the requirements of the municipality having jurisdiction, whichever may be the most stringent in any particular.
- m. Specification of such portion of service as the utility furnishes, owns, and maintains, such as service drop, service entrance cable or conductors, conduits, service entrance equipment, meter and socket. Indication of the portions of interior wiring such as range or water heater connection, furnished in whole or in part by the utility, and statement indicating final ownership and responsibility for maintaining equipment furnished by utility.
- n. Statement of the type of special construction commonly requested by customers which the utility allows to be connected, and terms upon which such construction will be permitted, with due provision for the avoidance of unjust discrimination as between customers who request special construction and those who do not. This applies, for example, to a case where a customer desires underground service in overhead territory.
- o. Rules with which prospective customers must comply as a condition of receiving service, and the terms of contracts required.
- p. Rules governing the establishment and maintenance of credit by customers for payment of service bills.
- q. Rules governing the procedure followed in disconnecting and reconnecting service.
- r. Notice required from a customer for having service discontinued.
- s. Rules covering temporary, emergency, auxiliary and stand-by service.
- t. Rules covering the type of equipment which may or may not be connected, including rules such as those requiring demand-limiting devices or power-factor corrective equipment.
- u. General statement of the method used in making adjustments for wastage of electricity when accidental grounds exist without the knowledge of the customer.
- v. Statements of utility rules on meter reading, bill issuance, customer payment, notice of delinquency, and service discontinuance for nonpayment of bill.
- w. Rules for extending service in accordance with 20.3(13).
- x. If a sliding scale or automatic adjustment is applicable to regulated rates and charges of billed customers, the manner and method of such adjustment calculation shall be covered through a detailed explanation.
- y. Rules on how a customer or prospective customer should file a complaint with the utility, and how the complaint will be processed.
- z. Rules on how a customer, disconnected customer or potential customer for residential service may negotiate for a payment agreement on amount due, determination of even payment amounts, and time allowed for payments.

20.2(5) *Annual, periodic and other reports to be filed with the board.*

- a. System map verification. The utility shall file annually a verification that it has a currently correct set of utility system maps in accordance with general requirement 20.3(11) and a statement as to the location of the utility's offices where such maps are accessible and available for examination by the board or its agents. The verification and map location information shall also be reported to the board upon other occasions when significant changes occur in either the maps or location of the maps.
- b. Accident reports. Rescinded IAB 12/11/91, effective 1/15/92. See 199—25.5(476,478).

c. Rescinded IAB 11/13/02, effective 12/18/02.

d. Electric service record. Each utility shall compile a monthly record of electric service showing the production, acquisition and disposition of electric energy, the number of customer terminal voltage investigations made, the number of customer meters tested and such other information as may be required by the board. The monthly "Electric Service" record shall be compiled not later than 30 days after the end of the month covered and such record shall, upon and after compilation, be kept available for inspection by the board or its staff at the utility's principal office within the state of Iowa. A summary of the 12 monthly "Electric Service" records for each calendar year shall be attached to and submitted with the utility's annual report to the board.

e. The utility shall keep the board informed currently by written notice as to the location at which the utility keeps the various classes of records required by these rules.

f. A copy of the utility's current rules, if any, published or furnished by the utility for the use of engineers, architects, electrical contractors, etc., covering meter and service installations shall be filed with the board.

g. A copy of each type of customer bill form in current use shall be filed with the board.

h. A copy of the adjustment calculation shall be provided the board prior to each billing cycle on the forms adopted by the board.

i. Rescinded IAB 1/9/91, effective 2/13/91.

j. Residential customer statistics. Each rate-regulated electric utility shall file with the board on or before the fifteenth day of each month one copy of the following residential customer statistics for the preceding month:

- (1) Number of accounts;
- (2) Number of accounts certified as eligible for energy assistance since the preceding October 1;
- (3) Number of accounts past due;
- (4) Number of accounts eligible for energy assistance and past due;
- (5) Total revenue owed on accounts past due;
- (6) Total revenue owed on accounts eligible for energy assistance and past due;
- (7) Number of disconnection notices issued;
- (8) Number of disconnection notices issued on accounts eligible for energy assistance;
- (9) Number of disconnections for nonpayment;
- (10) Number of reconnections;
- (11) Number of accounts determined uncollectible; and
- (12) Number of accounts eligible for energy assistance and determined uncollectible.

k. List of persons authorized to receive board inquiries. Each utility shall file with the board a list of names, titles, addresses, and telephone numbers of persons authorized to receive, act upon, and respond to communications from the board in connection with: (1) general management duties; (2) customer relations (complaints); (3) engineering operations; (4) meter tests and repairs; (5) emergencies during nonoffice hours; (6) franchises for electric lines; (7) certificates for electric generating plants. Such information shall be kept current as changes or corrections are made.

This rule is intended to implement Iowa Code section 476.2.

199—20.3(476) General service requirements.

20.3(1) Disposition of electricity. The meter and associated instrument transformers shall be owned by the utility. The wiring between the instrument transformers and the meter shall be owned or controlled by the utility. The utility shall place a visible seal on all meters in customer use, such that the seal must be broken to gain entry.

a. All electricity sold by a utility shall be on the basis of meter measurement except:

- (1) Where the consumption of electricity may be readily computed without metering; or
- (2) For temporary service installations.

b. The amount of all electricity delivered to multioccupancy premises within a single building, where units are separately rented or owned, shall be measured on the basis of individual meter measurement for each unit, except in the following instances:

- (1) Where electricity is used in centralized heating, cooling, water-heating, or ventilation systems;
- (2) Where a facility is designated for elderly or handicapped persons;
- (3) Where submetering or resale of service was permitted prior to 1966; or
- (4) Where individual metering is impractical. "Impractical" means: (1) where conditions or structural barriers exist in the multioccupancy building that would make individual meters unsafe or physically impossible to install; (2) where the cost of providing individual metering exceeds the long-term benefits of individual metering; or (3) where the benefits of individual metering (reduced and controlled energy consumption) are more effectively accomplished through a master meter arrangement.

If a multioccupancy building is master-metered, the end-user occupants may be charged for electricity as an unidentified portion of the rent, condominium fee, or similar payment, or, if some other method of allocating the cost of the electric service is used, the total charge for electric service shall not exceed the total electric bill charged by the utility for the same period.

c. Master metering to multiple buildings is prohibited, except for multiple buildings owned by the same person or entity. Multioccupancy premises within a multiple building complex may be master-metered pursuant to this paragraph only if the requirements of paragraph 20.3(1)"b" have been met.

d. For purposes of this subrule, a "master meter" means a single meter used in determining the amount of electricity provided to a multioccupancy building or multiple buildings.

e. This rule shall not be construed to prohibit any utility from requiring more extensive individual metering than otherwise required by this rule if pursuant to tariffs filed with and approved by the board.

f. All electricity consumed by the utility shall be on the basis of meter measurement except where consumption may be readily computed without metering, or where metering is impractical.

20.3(2) Condition of meter. Rescinded IAB 11/12/03, effective 12/17/03.

20.3(3) Meter reading records. The meter reading records shall show:

- a. Customer's name, address, and rate schedule or identification of rate schedule.
- b. Identification of the meter or meters either by permanently marked utility number or by manufacturer's name, type number and serial number.
- c. Meter readings.
- d. If the reading has been estimated.
- e. Any applicable multiplier or constant.

20.3(4) Meter charts. All charts taken from recording meters shall be marked with the initial and final date and hour of the record, the meter identification, customer's name and location and the chart multiplier.

20.3(5) Meter register. If it is necessary to apply a multiplier to the meter readings, the multiplier must be marked on the face of the meter register or stenciled in weather resistant paint upon the front cover of the meter. Customers shall have continuous visual access to meter registers as a means of verifying the accuracy of bills presented to them and for implementing such energy conservation initiatives as they desire, except in the individual locations where the utility has experienced vandalism to windows in the protective enclosures. Where remote meter reading is used, whether outdoor on premises or off premises automated, the customer shall also have readable meter registers at the meter.

Where magnetic tape or other delayed processing means is used the utility may comply by having readable kWh registers only, visually accessible.

In instances in which the utility has determined that readable access, to locations existing July 1, 1981, will create a safety hazard, the utility is exempted from the access provisions above.

In instances when a building owner has determined that unrestricted access to tenant metering installation would create a vandalism or safety hazard the utility is exempted from the access provision above.

Continuing efforts should be made to eliminate or minimize the number of restricted locations. The utility should assist affected customers in obtaining meter register information.

20.3(6) *Meter reading and billing interval.* Readings of all meters used for determining charges and billings to customers shall be scheduled at least monthly and for the beginning and termination of service. Bills to larger customers may, for good cause, be rendered weekly or daily for a period not to exceed one month. Intervals other than monthly shall not be applied to smaller customers, or to larger customers after the initial month provided above, without a waiver from the board. A waiver request must include sufficient information to comply with 199—1.3(17A,474,476,78GA,HF2206). If the board denies a waiver, or if a waiver is not sought with respect to a high demand customer after the initial month, that customer's meter shall be read monthly for the next 12 months. The group of larger customers to which shorter billing intervals may be applied shall be specified in the utility's tariff sheets, but shall not include residential customers.

An effort shall be made to obtain readings of the meters on corresponding days of each meter-reading period. When the meter reading date causes a given billing period to deviate by more than 10 percent (counting only business days) from the normal meter reading period, such bills shall be prorated on a daily basis.

The utility may permit the customer to supply the meter readings by telephone or on a form supplied by the utility. The utility may arrange for customer meter reading forms to be delivered to the utility by United States mail, electronically, or by hand delivery. The utility may arrange for the meter to be read by electronic means. Unless the utility has a plan to test check meter readings, a utility representative shall physically read the meter at least once each 12 months.

In the event that the utility leaves a meter reading form with the customer when access to meters cannot be gained and the form is not returned in time for the billing operation, an estimated bill may be rendered.

If an actual meter reading cannot be obtained, the utility may render an estimated bill without reading the meter or supplying a meter reading form to the customer. Only in unusual cases or when approval is obtained from the customer shall more than three consecutive estimated bills be rendered.

20.3(7) *Demand meter registration.* When a demand meter is used for billing, the meter installation should be designed so that the highest expected annual demand reading to be used for billing will appear in the upper half of the meter's range.

20.3(8) *Service areas.* Service areas are defined by the boundaries on service area maps, available for viewing during regular business hours at the board's offices, and available for purchase at the cost of reproduction. These service area maps are adopted as part of this rule and are incorporated in this rule by this reference.

20.3(9) *Petition for modification of service area and answers.* An exclusive service area is subject to modification through a contested case proceeding which may be commenced by filing a petition for modification of service area with the board. The board may commence a service area modification proceeding on its own motion.

Any electric utility or municipal corporation may file a petition for modification of service area which shall contain a legal description of the service area desired, a designation of the utilities involved in each boundary section, and a justification for the proposed service area modification. The justification shall include a detailed statement of why the proposed modification is in the public interest. A map showing the affected areas which complies with subrule 20.3(11)"a" shall be attached to the petition as an exhibit. The petition shall be delivered by the United States Postal Service or personal service and shall be considered as filed with the agency on the date of the postmark or the date of personal service.

Copies of the petition shall be served on all utilities involved and the consumer advocate. Those utilities and the consumer advocate shall be parties of record to the proceeding.

All parties shall file an answer which complies with 199—subrule 7.5(1).

20.3(10) Certificate of authority. Any electric utility or municipal corporation requesting a service territory modification pursuant to subrule 20.3(9) which would result in service to a customer by a utility other than the utility currently serving the customer must also petition the board for a certificate of authority under Iowa Code section 476.23. The electric utility or municipal corporation shall pay the party currently serving the customer a reasonable price for the facilities serving the customer.

20.3(11) Maps.

a. Each utility shall maintain a current map or set of maps showing the physical location of electric lines, stations, and electric transmission facilities for its service areas. The maps shall include the exact location of the following:

- (1) Generating stations with capacity designation.
- (2) Purchased power supply points with maximum contracted capacity designation.
- (3) Purchased power metering points if located at other than power delivery points.
- (4) Transmission lines with size and type of conductor designation and operating voltage designation.
- (5) Transmission-to-transmission voltage transformation substations with transformer voltage and capacity designation.
- (6) Transmission-to-distribution voltage transformation substations with transformer voltage and capacity designation.
- (7) Distribution lines with size and type of conductor designation, phase designation and voltage designation.
- (8) All points at which transmission, distribution or secondary lines of the utility cross Iowa state boundaries.
- (9) All current information required in Iowa Code section 476.24(1).
- (10) All county boundaries and county names.
- (11) Natural and artificial lakes which cover more than 50 acres and all rivers.
- (12) Any additional information required by the board.

b. All maps shall be available for examination at the utility's designated offices during the utility's regular office hours. The maps shall be drawn with clean, uniform lines to a scale of one inch per mile. A large scale shall be used where it is necessary to clarify areas where there is a heavy concentration of facilities. All cartographic details shall be clean cut, and the background shall contain little or no coloration or shading.

20.3(12) Rescinded, IAB 6/29/88, effective 8/3/88.

20.3(13) Extensions and service line extensions to customers.

a. *Definitions.* The following definitions shall apply to the terms used in this rule:

"Advances for construction costs," as used in these subrules, are cash payments, or surety bonds, or an equivalent surety made to the utility by an applicant for an extension, portions of which may be refunded depending on any subsequent connections made to the extension. Cash payments, surety bonds, or equivalent sureties shall include a grossed-up amount for the income tax effect of such revenue.

"Agreed-upon attachment period," as used in this subrule, means a period of not less than 30 days nor more than one year mutually agreed upon by the utility and the applicant within which the customer will attach. If no time period is mutually agreed upon, the agreed-upon attachment period shall be deemed to be 30 days.

"Contribution in aid of construction," as used in this subrule, means a nonrefundable cash payment grossed-up for the income tax effect of such revenue covering the costs of an extension that are in excess of utility-funded allowances. The amount of tax shall be reduced by the present value of the tax benefits to be obtained by depreciating the property in determining the tax liability.

“*Customer advances for construction records*,” as used in this subrule, means a separate record established and maintained by the utility, which includes, by depositor, the amount of advance for construction provided by the customer, whether the advance is by cash, surety bond, or equivalent surety, and if by surety bond or equivalent surety, all relevant information concerning the bond, the amount of the refund, if any, to which the depositor is entitled, the amount of refund, if any, which has been made to the customer, the amount unrefunded, and the construction project or work order the extension was installed on.

“*Equivalent overhead transformer cost*,” as used in this subrule, is that transformer capitalized cost, or fraction thereof, that would be required for similarly situated customers served by a pole-mounted or platform-mounted transformer(s). For each overhead service, it shall be the capitalized cost of the transformer(s) divided by the number of customers served by that transformer(s). For each underground service, it shall be the capitalized cost of an overhead transformer(s) with the same voltage and volt-ampere rating divided by the number of customers served by that transformer(s).

“*Estimated annual revenues*,” as used in this subrule, shall be calculated based upon the following factors, including, but not limited to: The size of the facility to be used by the customer, the size and type of equipment to be used by the customer, the average annual amount of service required by the equipment, and the average number of hours per day and days per year the equipment will be in use.

“*Estimated base revenues*,” as used in this subrule, shall be calculated by subtracting the fuel expense costs as described in the uniform system of accounts as adopted by the board from the estimated annual revenues.

“*Estimated construction costs*,” as used in the subrule, shall be calculated using average costs in accordance with good engineering practices and upon the following factors: amount of service required or desired by the customer requesting the extension; size, location, and characteristics of the extension, including appurtenances, except equivalent overhead transformer cost; and whether the ground is frozen or whether other adverse conditions exist. The average cost per foot shall be computed utilizing the prior calendar year costs, to the extent such cost basis does not exceed the current costs using current construction cost methodologies, resources and material, and working conditions, divided by the total feet of extensions by type of service for the prior calendar year. In no event shall estimated construction costs include costs associated with facilities built for the convenience of the utility.

“*Extension*” means a distribution or secondary line extension other than a service line extension.

“*Point of attachment*” is that point of first physical attachment of the utilities’ service drop (overhead) or service lateral (underground) conductors to the customer’s service entrance conductors. For overhead services it shall be the point of tap or splice to the service entrance conductors. For underground services it shall be the point of tap or splice to the service entrance conductors in a terminal box or meter or other enclosure with adequate space inside or outside the building wall. If there is no terminal box, meter, or other enclosure with adequate space, it shall be the point of entrance into the building.

“*Service line extension*” shall mean any secondary line extension on private property serving a single customer or point of attachment of electric service.

“*Similarly situated customer*” is a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are similar to other customers with approximately the same annual consumption or service requirements.

“Utility” as used in the subrules, means a rate-regulated utility.

b. Distribution or secondary lines other than service lines.

(1) Plant additions. The utility will provide all electric plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served, or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, no more than 30 days prior to commencement of construction, the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for board inspection. The utility shall allow the customer or developer, at the customer's or developer's option, to provide a nonrefundable contribution in aid of construction instead of a refundable advance for construction, under subparagraphs 20.3(13)“b”(2) and (3).

(2) Advances for construction costs for extensions for customers who will attach within the agreed-upon attachment period. Where the customer will attach within the agreed-upon attachment period after completion of the extension, the following shall apply:

1. If the estimated construction cost to provide an extension is less than or equal to three times the estimated base revenue calculated on the basis of similarly situated customers, the utility shall finance and make the extension without requiring an advance for construction.

2. If the estimated construction cost to provide an extension is greater than three times the estimated base revenue calculated on the basis of similarly situated customers, the applicant for the extension shall contract with the utility and deposit an advance for construction equal to the estimated construction cost less three times the estimated base revenue to be produced by the customer no more than 30 days prior to commencement of construction.

(3) Advances for construction costs for extensions for customers who will not attach within the agreed-upon attachment period. Where the customer will not attach within the agreed-upon attachment period after completion of the extension, the applicant for the extension shall contract with the utility and deposit no more than 30 days prior to the commencement of construction an advance for construction equal to the estimated construction cost.

Advance payments for plant additions or extensions which are subject to refund for a ten-year period may be made by cash, surety bond, or equivalent surety. In the event a surety bond or an equivalent surety is used, the bonded amount shall have added to it a surcharge equal to the annual interest rate paid by the utility on customer bill deposits times the bonded amount. The bond shall be called by the utility at the end of one year or when the earned refunds are equal to the bonded amount, less the surcharge, whichever occurs first. If, upon termination of the surety bond, there are sufficient earned refunds to offset the amount of the surety bond, less the surcharge, the depositors shall provide the utility the amount of the surcharge. If, upon termination of the surety bond, there are not sufficient earned refunds to offset the full amount of the surety bond, less the surcharge, the depositors shall provide the utility a cash deposit equal to the amount of the surety bond, less refunds accumulated during the bonded period, plus the surcharge, or the depositor may pay the interest on the previous year's bond and rebond the balance due to the utility for a second or third one-year period. Upon receipt of such cash deposit, the utility shall release the surety bond. The cash deposit, less the surcharge, shall be subject to refund by the utility for the remainder of the ten-year period.

(4) Refunds. When the customer has chosen to make an advance for construction rather than a contribution in aid of construction, the utility shall refund to the depositor for a period of ten years from the date of the original advance a pro-rata share for each service attachment to the extension. The pro-rata refund shall be computed in the following manner:

1. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

2. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated base revenue of the customer attaching to the extension.

3. In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

c. Service line extensions. The utility shall finance and construct either an overhead or underground service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the overhead extension to the first point of attachment is up to 50 feet on private property or where the cost of the underground extension to the meter or service disconnect is less than or equal to the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.

Where the length of the overhead service extension exceeds 50 feet on private property, the applicant shall be required to provide a contribution in aid of construction for that portion of the service extension on the private property, exclusive of the point of attachment, within 30 days after completion. The contribution in aid of construction for that portion of the service extension shall be computed as follows:

$$\begin{aligned} & (\text{Estimated Construction Costs}) \times \\ & \frac{(\text{Total Length in Excess of 50 Feet})}{(\text{Total Length of Service Extension})} \end{aligned}$$

Where the cost of the underground service extension exceeds the estimated cost of constructing an equivalent overhead service extension of up to 50 feet, the applicant shall be required to provide a contribution in aid of construction within 30 days after completion equal to the difference between the estimated cost of constructing the underground service extension and the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.

A utility may adopt a tariff or rule that allows the utility to finance and construct a service line extension of more than 50 feet if the tariff or rule applies equally to all customers or members.

d. Extensions not required. Utilities shall not be required to make extensions as described in this rule, unless the extension shall be of a permanent nature.

e. Extensions permitted. This rule shall not be construed as prohibiting any utility from making a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors.

This rule is intended to implement Iowa Code section 476.8.

199—20.4(476) Customer relations.**20.4(1) Customer information.** Each utility shall:

- a. Maintain up-to-date maps, plans, or records of its entire transmission and distribution systems, together with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving prospective customers in its service area.
- b. Assist the customer or prospective customer in selecting the most economical rate schedule available for the customer's proposed type of service.
- c. Notify customers affected by a change in rates or schedule classification in the manner provided in the rules of practice and procedure before the board. [199—7.4(476)IAC]
- d. Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for inspection.
- e. Upon request, inform its customers as to the method of reading meters.
- f. State, on the bill form, that tariff and rate schedule information is available upon request at the utility's local business office.
- g. Upon request, transmit a statement of either the customer's actual consumption, or degree day adjusted consumption, at the company's option, of electricity for each billing during the prior 12 months.
- h. Furnish such additional information as the customer may reasonably request.

20.4(2) Customer contact employee qualifications. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice for municipal utilities shall include the following statement: "If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice for non-rate-regulated rural electric cooperatives shall include the following statement: "If your complaint is related to the (utility name) service rather than its rates, and (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450."

The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard form contained herein shall file its proposed form in its tariff for approval. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

20.4(3) Customer deposits.

- a. Each utility may require from any customer or prospective customer a deposit intended to guarantee partial payment of bills for service. Each utility shall allow a person other than the customer to pay the customer's deposit. In lieu of a cash deposit, the utility may accept the written guarantee of a surety or other responsible party as surety for an account. Upon termination of a guarantee contract, or whenever the utility deems the contract insufficient as to amount or surety, a cash deposit or a new or additional guarantee may be required for good cause upon reasonable written notice.

20.6(4) Meter adjustment. All meters and associated metering devices shall, when tested, be adjusted as closely as practicable to the condition of zero error.

20.6(5) Request tests. Upon request by a customer, a utility shall test the meter servicing that customer. A test need not be made more frequently than once in 18 months.

A written report of the test results shall be mailed to the customer within ten days of the completed test and a record of each test shall be kept on file at the utility's office. The utility shall give the customer or a representative of the customer the opportunity to be present while the test is conducted.

If the test finds the meter is accurate within the limits accepted by the utility in its meter inspection and testing program, the utility may charge the customer \$25 or the cost of conducting the test, whichever is less. The customer shall be advised of any potential charge before the meter is removed for testing.

20.6(6) Referee tests. Upon written request by a customer or utility, the board will conduct a referee test of a meter. A test need not be made more frequently than once in 18 months. The customer request shall be accompanied by a \$30 deposit in the form of a check or money order made payable to the utility.

Within five days of receipt of the written request and payment, the board shall forward the deposit to the utility and notify the utility of the requirement for a test. The utility shall, within 30 days after notification of the request, schedule the date, time and place of the test with the board and customer. The meter shall not be removed or adjusted before the test. The utility shall furnish all testing equipment and facilities for the test. If the tested meter is found to be more than 2 percent fast or 2 percent slow, the deposit will be returned to the party requesting the test and billing adjustments shall be made as required in 20.4(14). The board shall issue its report within 15 days after the test is conducted, with a copy to the customer and the utility.

20.6(7) Condition of meter. No meter that is known to be mechanically or electrically defective, or to have incorrect constants, or that has not been tested and adjusted if necessary in accordance with these rules shall be installed or continued in service. The capacity of the meter and the index mechanism shall be consistent with the electricity requirements of the customer.

199—20.7(476) Standards of quality of service.

20.7(1) Standard frequency. The standard frequency for alternating current distribution systems shall be 60 cycles per second. The frequency shall be maintained within limits which will permit the satisfactory operation of customer's clocks connected to the system.

20.7(2) Voltage limits retail. Each utility supplying electric service to ultimate customers shall provide service voltages in conformance with the standard at 20.5(2) "f."

20.7(3) Voltage balance. Where three-phase service is provided the utility shall exercise reasonable care to assure that the phase voltages are in balance. In no case shall the ratio of maximum voltage deviation from average to average voltage exceed .02.

20.7(4) Voltage limits, service for resale. The nominal voltage shall be as mutually agreed upon by the parties concerned. The allowable variation shall not exceed 7.5 percent above or below the agreed-upon nominal voltage without the express approval of the board.

20.7(5) Exceptions to voltage requirements. Voltage outside the limits specified will not be considered a violation when the variations:

- a. Arise from the action of the elements.
- b. Are infrequent fluctuations not exceeding five minutes, duration.
- c. Arise from service interruptions.
- d. Arise from temporary separation of parts of the system from the main system.
- e. Are from causes beyond the control of the utility.
- f. Do not exceed 10 percent above or below the standard nominal voltage, and service is at a distribution line or transmission line voltage with the retail customer providing voltage regulators.

20.7(6) Voltage surveys and records. Voltage measurements shall be made at the customer's entrance terminals. For single-phase service the measurement shall be made between the grounded conductor and the ungrounded conductors. For three-phase service the measurement shall be made between the phase wires.

20.7(7) Each utility shall make a sufficient number of voltage measurements, using recording voltmeters, in order to determine if voltages are in compliance with the requirements as stated in 20.7(2), 20.7(3), 20.7(4). All voltmeter records obtained under 20.7(7) shall be retained by the utility for at least two years and shall be available for inspection by the board's representatives. Notations on each chart shall indicate the following:

- a. The location where the voltage was taken.
- b. The time and date of the test.
- c. The results of the comparison with a working standard indicating voltmeter.

20.7(8) Equipment for voltage measurements.

a. *Secondary standard indicating voltmeter.* Each utility shall have available at least one indicating voltmeter maintained with error no greater than 0.25 percent of full scale.

b. *Working standard indicating voltmeters.* Each utility shall have at least two indicating voltmeters maintained so as to have as-left errors of no greater than 1 percent of full scale.

c. *Recording voltmeters.* Each utility must have readily available at least two portable recording voltmeters with a rated accuracy of 1 percent of full scale.

20.7(9) Rescinded IAB 12/11/91, effective 1/15/92.

20.7(10) Extreme care must be exercised in the handling of standards and instruments to assure that their accuracy is not disturbed. Each standard shall be accompanied at all times by a certificate or calibration card, duly signed and dated, on which are recorded the corrections required to compensate for errors found at the customary test points at the time of the last previous test.

20.7(11) Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers, and interruptions planned for longer than one hour shall be preceded by adequate notice to those who will be affected.

20.7(12) Power quality monitoring. Each utility shall investigate power quality complaints from its customers and determine if the cause of the problem is on the utility's systems. In addressing these problems, each utility shall implement to the extent reasonably practical the practices outlined in the standard given at 20.5(2)"h."

20.7(13) Harmonics. A harmonic is a sinusoidal component of the 60 cycles per second fundamental wave having a frequency that is an integral multiple of the fundamental frequency. When excessive harmonics problems arise, each electric utility shall investigate and take actions to rectify the problem. In addressing harmonics problems, the utility and the customer shall implement to the extent practicable and in conformance with prudent operation the practices outlined in the standard at 20.5(2)"i."

This rule is intended to implement Iowa Code sections 476.2 and 476.8.

199—20.8(476) Safety.

20.8(1) *Protective measures.* Each utility shall exercise reasonable care to reduce those hazards inherent in connection with its utility service and to which its employees, its customers, and the general public may be subjected and shall adopt and execute a safety program designed to protect the public and fitted to the size and type of its operations.

20.8(2) *Accident investigation and prevention.* The utility shall give reasonable assistance to the board in the investigation of the cause of accidents and in the determination of suitable means of preventing accidents.

20.8(3) *Reportable accidents.* Each utility shall maintain a summary of all reportable accidents, as defined in 199—25.5(476,478), arising from its operations.

20.8(4) *Grounding of secondary distribution system.* Unless otherwise specified by the board, each utility shall comply with, and shall encourage its customers to comply with, the applicable provisions of the acceptable standards listed in 20.5(2) for the grounding of secondary circuits and equipment.

Ground connections should be tested for resistance at the time of installation. The utility shall keep a record of all ground resistance measurements.

The utility shall establish a program of inspection so that all artificial grounds installed by it shall be inspected within reasonable periods of time.

199—20.9(476) Electric energy sliding scale or automatic adjustment. A rate-regulated utility's sliding scale or automatic adjustment of the unit charge for electric energy shall be an energy clause.

20.9(1) *Applicability.* A rate-regulated utility's sliding scale or automatic adjustment of electric utility energy rates shall recover from consumers only those costs which:

Are incurred in supplying energy;

Are beyond direct control of management;

Are subject to sudden important change in level;

Are an important factor in determining the total cost to serve; and

Are readily, precisely, and continuously segregated in the accounts of the utility.

20.9(2) *Energy clause for rate-regulated utility.* Prior to each billing cycle, a rate-regulated utility shall determine and file for board approval the adjustment amount to be charged for each energy unit consumed under rates set by the board. The filing shall include all journal entries, invoices (except invoices for fuel, freight, and transportation), worksheets, and detailed supporting data used to determine the amount of the adjustment. The estimated amount of fossil fuel should be detailed to reflect the amount of fuel, transportation, and other costs.

The journal entries should reflect the following breakdown for each type of fuel: actual cost of fuel, transportation, and other costs. Items identified as other costs should be described and their inclusion as fuel costs should be justified. The utility shall also file detailed supporting data:

1. To show the actual amount of sales of energy by month for which an adjustment was utilized, and

2. To support the energy cost adjustment balance utilized in the monthly energy adjustment clause filings.

a. The energy adjustment shall provide for change of the price per kilowatt hour consumed under rates set by the board based upon the formulas provided below. The calculation shall be:

$$E_0 = \frac{EC_0 + EC_1}{EQ_0 + EQ_1} + \frac{A_1}{EJ_0 + EJ_1} - B$$

E_0 is the energy adjustment charge to be used in the next customer billing cycle rounded on a consistent basis to either the nearest 0.01¢/kWh or 0.001¢/kWh. For deliveries at voltages higher than secondary line voltages, appropriate factors should be applied to the adjustment charge to recognize the lower losses associated with these deliveries.

EC_0 is the estimated expense for energy in the month during which E_0 will be used.

EC_1 is the estimated expense for energy in the month prior to the month of EC_0 .

EQ_0 is the estimated electric energy to be consumed or delivered and entered in accounts 440, 442, 444-7, excluding energy from distinct interchange deliveries entered into account 447 and including intrautility energy service as included in accounts 448 and 929 of the Uniform System of Accounts during the month in which E_0 will be used.

EQ_1 is the estimated electric energy to be consumed or delivered and entered in accounts 440, 442, 444-7, excluding energy from distinct interchange deliveries entered in account 447 and including intrautility energy service as included in accounts 448 and 929 of the Uniform System of Accounts during the month prior to EQ_0 .

EJ_0 is the estimated electric energy to be consumed under rates set by the board in the month during which the energy adjustment charge (E_0) will be used in bill calculations.

EJ_1 is the estimated electric energy to be consumed under rates set by the board in the month prior to the month of EJ_0 .

A_1 is the beginning of the month energy cost adjustment account balance for the month of estimated consumption EJ_1 . This would be the most recent month's balance available from actual accounting data.

B is the amount of the electric energy cost included in the base rates of a utility's rate schedules.

b. The estimated energy cost ($EC_0 + EC_1$) shall be the estimated cost associated with EQ_0 and EQ_1 determined as the cost of:

(1) Fossil and nuclear fuel consumed in the utility's own plants and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants. Fossil fuel shall include natural gas used for electric generation and the cost of fossil fuel transferred from account 151 to account 501 or 547 of the Uniform System of Accounts for Electric Utilities. Nuclear fuel shall be that shown in account 518 of the Uniform System of Accounts except that if account 518 contains any expense for fossil fuel which has already been included in the cost of fossil fuel, it shall be deducted from the account. (Paragraph C of account 518 includes the cost of other fuels used for ancillary steam facilities.)

(2) The cost of steam purchased, or transferred from another department of the utility or from others under a joint facility operating agreement, for use in prime movers producing electric energy (accounts 503 and 521).

(3) A deduction shall be made of the expenses of producing steam chargeable to others, to other utility departments under a joint operating agreement, or to other electric accounts outside the steam generation group of accounts (accounts 504 and 522).

b. A utility purchasing its total electric energy requirements may establish an energy cost adjustment account for which the cumulative balance is the excess or deficiency arising from the difference between commission-recognized energy cost recovery and the amount recovered through application of energy charges on jurisdictional consumption.

For a utility electing to use an energy cost adjustment account the calculation shall be:

$$E_0 = \frac{C_2 + C_3 + C_4}{Q_2 + Q_3 + Q_4} + \frac{A_2}{J_2 + J_3 + J_4} - B$$

E_0 is the energy adjustment charge to be used in the next customer billing cycle rounded on a consistent basis to either the nearest 0.01¢/kWh or 0.001¢/kWh. For deliveries at voltages higher than secondary line voltages, appropriate factors should be applied to the adjustment charge to recognize the lower losses associated with these deliveries.

C_2 , C_3 and C_4 are the charges by the wholesale suppliers as recorded in account 555 offset by energy revenues from distinct interchange deliveries entered in account 447 of the Uniform System of Accounts for the first three of the four months prior to the month in which E_0 will be used.

Q_2 , Q_3 and Q_4 are the total electric energy delivered by the utility system, excluding energy from distinct interchange deliveries entered in account 447 during each of the months in which the expenses C_2 , C_3 and C_4 were incurred.

A_2 is the end of the month energy cost adjustment account balance for the month of consumption J_2 . This would be the most recent month's balance available from actual accounting data.

J_2 , J_3 and J_4 are electric energy consumed under rates set by the board in the months corresponding to C_2 , C_3 and C_4 .

B is the amount of the electric energy cost included in the base rates of a utility's rate schedules.

c. The end of the month energy cost adjustment account balance (A) shall be the cumulative balance of any excess or deficiency which arises out of the difference between board recognized energy cost recovery and the amount recovered through application of energy charges to consumption under rates set by the board.

Each monthly entry (D) into the energy cost adjustment account shall be the dollar amount determined from solution of the following equation (with proper adjustment for those deliveries at high voltage which for billing purposes recognized the lower losses associated with the high voltage deliveries).

$$D = \left[C_2 \times \frac{J_2}{Q_2} \right] - \left[J_2 \times (E_2 + B) \right]$$

C_2 is the prior month charges by the wholesale suppliers as recorded in account 555 of the Uniform System of Accounts offset by energy revenues from distinct interchange deliveries entered in account 447.

J_2 is the electric energy consumed under jurisdictional rates in the prior month.

Q_2 is the electric energy delivered by the utility system, excluding energy from distinct interchange deliveries entered in account 447 in the prior month.

E_2 is the energy adjustment charge used for billing in the prior month.

B is the amount of the electric energy cost included in the base rates of a utility's rate schedules.

d. A utility with special conditions may petition the board for a waiver which would recognize its unique circumstances.

e. A utility which does not own generation and proposes a new sliding scale or automatic adjustment clause of electric utility rates shall conform such clause with the rules.

20.9(4) *Annual review of energy clause.* On or before each May 1, the board will notify each utility as to the two months of the previous calendar year for which fuel, freight, and transportation invoices will be required. Two copies of these invoices shall be filed with the board no later than the subsequent November 1.

This rule is intended to implement Iowa Code section 476.6(11).

199—20.10(476) Ratemaking standards.

20.10(1) *Coverage.* Standards for ratemaking shall apply to all rate-regulated utilities in the state of Iowa. The board may, by rule or by order in specific cases, exempt a utility or class of utilities from any or all ratemaking standards. The standards are recommended to all service-regulated utilities in this jurisdiction.

20.10(2) *Cost of service.* Rates charged by an electric utility for providing electric service to each class of electric consumers shall be designed, to the maximum extent practicable, to reasonably reflect the costs of providing electric service to the class. The methods used to determine class costs of service shall to the maximum extent practical permit identification of differences in cost-incurrence, for each class of electric consumers, attributable to daily and seasonal time of use of service, and permit identification of differences in cost-incurrence attributable to differences in demand, energy, and customer components of cost.

The design of rates should reasonably approximate a pricing methodology for any individual utility that would reflect the price system that would exist in a competitive market environment. For purposes of determining revenue requirements among customer classes, embedded costs shall be preferred. For purposes of determining rate designs within customer classes, long-run marginal cost approaches are preferred although embedded cost approaches may be considered reasonable.

Nothing in this rule shall authorize or require the recovery by an electric utility of revenues in excess of, or less than, the amount of revenues otherwise determined to be lawful by the board.

Guidelines for use in evaluating the acceptability of methods of class cost of service estimation include, but are not limited to, the following:

a. All usage of customer, demand, and energy components of service shall be considered new usage.

b. Customer classes shall be established on the primary basis of reasonably similar usage patterns within classes, even if this requires disaggregation or recombination of traditional customer classes.

c. Generating capacity estimates or allocations among and within classes shall recognize that utility systems are designed to serve both peak and off-peak demand, and shall attribute costs based upon both peak period demand and the contribution of off-peak period demand in determining generation mix. Generating capacity estimates and allocations among and within classes shall be based on load data for each class as described in 199—subrule 35.9(2).

d. Transmission and distribution capacity estimates or allocations among and within classes shall be demand-related based upon system usage patterns, and the load imposed by a class on the transmission or distribution capacity in question.

e. Customer cost component estimates or allocations shall include only costs of the distribution system from and including transformers, meters and associated customer service expenses.

f. Methods of cost estimates or allocations among customer classes shall recognize the differences in voltage levels and other service characteristics, and line losses among customer classes.

g. Methods of class cost of service determination which are consistent with zero customer, demand, or energy component costs or major categories of these, such as generation, transmission or distribution, shall be considered unacceptable methods.

h. Long-run marginal cost methods of class cost of service determination shall clearly reflect changes in total costs to the utility with respect to changes in the outputs of customer, demand, or energy components of electric services.

i. The use of an inverse elasticity approach to adjust long-run marginal cost-based rates to the revenue requirement shall be unacceptable. Other approaches will be considered on a case-by-case basis.

20.10(3) Declining block rates. The energy-related cost component of a rate, or the amount attributable to the energy-related cost component of a rate, charged by an electric utility for providing electric service during any period to any class of electric consumers, shall not decrease as kilowatt-hour consumption by such class increases during the period except to the extent that the utility demonstrates that the energy costs of providing electric service to such class decrease as consumption increases during the period.

20.10(4) Time-of-day rates. The rates charged by any electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the cost of providing electric service to that class of electric consumers at different times of the day unless such rates are not cost-effective with respect to the class. These rates are cost-effective with respect to a class if the long-run benefits of the rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering costs and other costs associated with the use of the rates. Cost-based time-of-day rates shall be offered on an optional basis to electric consumers who do not otherwise qualify for the rates if consumers agree to pay the additional metering costs and other costs associated with the use of the rates.

20.10(5) Seasonal rates. The rates charged by an electric utility for providing electric service to each class of electric consumers may be on a seasonal basis which reflects the costs of providing service to the class of consumers at different seasons of the year to the extent that costs vary seasonally for the utility, if the board determines that seasonal rates are appropriate in an individual case.

20.10(6) Interruptible rates. Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which the consumer is a member.

20.10(7) Load management techniques. Rescinded IAB 11/12/03, effective 12/17/03.

20.10(8) *Other energy conservation strategies.* Rescinded IAB 11/12/03, effective 12/17/03.

20.10(9) *Pilot projects.* Rescinded IAB 11/12/03, effective 12/17/03.

199—20.11(476) Customer notification of peaks in electric energy demand. Each electric utility shall inform its customers of the significance of reductions in consumption of electricity during hours of peak demand.

20.11(1) Annual notice. Each electric utility shall provide its customers, on an annual basis, with a written notice explaining how growth in demand affects a utility's investment costs and why reduction of customer usage during periods of peak demand may help delay or reduce the amount of future rate increases. The notice shall be delivered to its customers between May 1 and June 15 of each year if peak demand is likely to occur during the months of June through September. If peak demand usually occurs during the months of October through February, the notice shall be delivered to its customers between August 1 and September 15.

20.11(2) Notification plan. Each investor-owned utility shall have on file with the board a plan to notify its customers of an approaching peak demand on the day when peak demand is likely to occur.

a. The plan shall include the following:

(1) A provision for a general notice to be given customers prior to the time when peak demand is likely to occur as prescribed in 20.11(2)“b” and an explanation of when and how notice of an approaching peak in electric demand will be given to customers.

(2) A provision for direct notice to be given customers whose load reduction will have a significant impact on the utility’s peak. The utility shall provide for such notice to be given prior to the time when peak demand is likely to occur, as prescribed in 20.11(2)“b,” and shall explain the criteria used to identify customers to whom notice will be given and when and how notice will be given.

(3) A statement showing the total costs, with each component thereof itemized, projected to be associated with implementing the plan. Notice should be provided in the most efficient manner available. The board may reject a plan which includes excessive costs or which specifies an ineffective method of customer notification and may direct development of a new plan.

(4) The text of the general and direct message to be given in the general notice to customers. The message shall, at a minimum, include the name of the utility or utilities providing the notice, an explanation that conditions exist which indicate a peak in demand is approaching, and a statement that reduction in usage of electricity during the period of peak demand will ease the burden placed on the utility’s system by growth in peak demand and may help delay or reduce the amount of future rate increases.

(5) A designation of the U.S. weather station(s), situated within the utility’s service territory, whose temperature readings and predictions will be used by the utility in applying the standard in 20.11(2)“b.”

(6) A provision for joint delivery, by two or more utilities, of the general notice to customers in regions of the state where U.S. weather station(s) predict conditions specified in 20.11(2)“b” will exist on the same day.

b. For purposes of this rule, peak demand is likely to occur on a nonholiday weekday between June 15 and September 15 when the following conditions exist:

(1) The utility’s designated weather station predicts the temperature will rise above 95° Fahrenheit (35° Celsius), and the designated weather station officially recorded a temperature above 95° Fahrenheit (35° Celsius) on the previous day, or

(2) The utility’s designated weather station predicts the temperature will rise to above 90° Fahrenheit (33° Celsius) on a day following at least two consecutive days of temperatures above 95° Fahrenheit (35° Celsius), as officially recorded by the designated weather station, but

(3) If a utility can demonstrate it would have been required to provide between June 15 and September 15 a peak alert notice to customers, because of the existence of the conditions set forth in 20.11(2)“b”(1) or 20.11(2)“b”(2), on more than six days in any one of the preceding ten years, the utility may substitute a 97° Fahrenheit (36° Celsius) standard in lieu of the 95° Fahrenheit (35° Celsius) standard in the subrule.

20.11(3) Implementation of notification plan. The utility shall implement the approved plan on each day of the year when peak demand is likely to occur, as prescribed by 20.11(2)“b.”

20.11(4) Permissive notices. The standard for implementing peak alert notification in subrule 20.11(2) is a minimum standard and does not prohibit a utility or association of utilities from issuing a notice requesting customers to reduce usage at any other time.

20.11(5) *Annual report.* Each electric utility required by subrule 20.11(2) to file a plan for customer notification shall file, on or before April 1 of each year, a report stating the number of notices given its customers, the dates when notices were issued, the annual cost of providing both general and direct notice to customers and measures of kilowatt hour demand at the time when notice was given and at hourly intervals thereafter until kilowatt hour demand decreases to the level at which it was measured when the notice was issued. The annual report shall also include a statement of any problems experienced by the utility in providing customer notification of a peak demand and a proposal to modify the plan, if necessary, to make customer notification more effective. Modifications must be approved by the board before they are implemented.

199—20.12(476) *New structure energy conservation standards.* Rescinded IAB 11/12/03, effective 12/17/03.

199—20.13(476) *Periodic electric energy supply and cost review* [476.6(16)].

20.13(1) *Procurement plan.* The board shall periodically conduct a contested case proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's electric fuel procurement and contracting practices. By January 31 each year the board will notify a rate-regulated utility if the utility will be required to file an electric fuel procurement plan. In the years in which it does not conduct a contested case proceeding, the board may require a utility to file certain information for the board's review. In years in which a full proceeding is conducted, a rate-regulated utility providing electric service in Iowa shall prepare and file with the board on or before May 15 of each required filing year a complete electric fuel procurement plan for an annual period commencing June 1 or, in the alternative, for the annual period used by the utility in preparing its own fuel procurement plan. A utility's procurement plan shall be organized to include information as follows:

a. Index. The plan shall include an index of all documents and information required to be filed in the plan, and the identification of the board files in which the documents incorporated by reference are located.

b. Purchase contracts and arrangements. A utility's procurement plan shall include detailed summaries of the following types of contracts and agreements executed since the last procurement review:

- (1) All contracts and fuel supply arrangements for obtaining fuel for use by any unit in generation;
- (2) All contracts and arrangements for transporting fuel from point of production to the site where placed in inventory, including any unit generating electricity for the utility;

b. In deciding whether to offer a specific discount, the utility shall evaluate the individual customer's, group's, or class's situation and perform a cost-benefit analysis before offering the discount.

c. Any discount offered should be such as to significantly affect the customer's or customers' decision to stay on the system or to increase consumption.

d. The consequences of offering the discount should be beneficial to all customers and to the utility. Other customers should not be at risk of loss as a result of these discounts; in addition, the offering of discounts shall in no way lead to subsidization of the discounted rates by other customers in the same or different classes.

20.14(3) Tariff requirements. If a company elects to offer flexible rates, the utility shall file for review and approval tariff sheets specifying the general conditions for offering discounted rates. The tariff sheets shall include, at a minimum, the following criteria:

a. The cost-benefit analysis must demonstrate that offering the discount will be more beneficial than not offering the discount.

b. The ceiling for all discounted rates shall be the approved rate on file for the customer's rate class.

c. The floor for the discount rate shall be equal the energy costs and customer costs of serving the specific customer.

d. No discount shall be offered for a period longer than five years, unless the board determines upon good cause shown that a longer period is warranted.

e. Discounts should not be offered if they will encourage deterioration in the load characteristics of the customer receiving the discount.

20.14(4) Reporting requirements. Each rate-regulated electric utility electing to offer flexible rates shall file annual reports with the board within 30 days of the end of each 12 months. Reports shall include the following information:

a. Section 1 of the report concerns discounts initiated in the last 12 months. For all discounts initiated in the last 12 months, the report shall include:

- (1) The identity of the new customers (by account number, if necessary);
- (2) The value of the discount offered;
- (3) The cost-benefit analysis results;
- (4) The end-use cost of alternate fuels or energy supplies available to the customer, if relevant;
- (5) The energy and demand components by month of the amount of electricity sold to the customer in the preceding 12 months.

b. Section 2 of the report relates to overall program evaluation. Amount of electricity refers to both energy and demand components when the customer is billed for both elements. For all discounts currently being offered, the report shall include:

- (1) The identity of each customer (by account number, if necessary);
- (2) The amount of electricity sold in the last 12 months to each customer at discounted rates, by month;
- (3) The amount of electricity sold to each customer in the same 12 months of the preceding year, by month;
- (4) The dollar value of the discount in the last 12 months to each customer, by month; and
- (5) The dollar value of sales to each customer for each of the previous 12 months.

c. Section 3 of the report concerns discounts denied or discounts terminated. For all customers specifically evaluated and denied or having a discount terminated in the last 12 months, the report shall include:

- (1) Customer identification (by account number, if necessary);
- (2) The amount of electricity sold in the last 12 months to each customer, by month;
- (3) The amount of electricity sold to each customer in the same 12 months of the preceding year, by month; and
- (4) The dollar value of sales to each customer for each of the past 12 months.

d. No monthly report is required if the utility had no customers receiving a discount during the relevant period and had no customers which were evaluated for the discount and rejected during the relevant period.

20.14(5) Rate case treatment. In a rate case, 50 percent of any identifiable increase in net revenues will be used to reduce rates for all customers; the remaining 50 percent of the identifiable increase in net revenues may be kept by the utility. If there is a decrease in revenues due to the discount, the utility's test year revenues will be adjusted to remove the effects of the discount by assuming that all sales were made at full tariffed rates for the customer class. Determining the actual amount will be a factual determination to be made in the rate case.

199—20.15(476) Customer contribution fund.

20.15(1) Applicability and purpose. This rule applies to each electric public utility, as defined in Iowa Code sections 476.1, 476.1A, and 476.1B. Each utility shall maintain a program plan to assist the utility's low-income customers with weatherization and to supplement assistance received under the federal low-income home energy assistance program for the payment of winter heating bills.

20.15(2) Program plan. Each utility shall have on file with the board a detailed description of its current program plan. At a minimum, the plan shall include the following information:

- a. A list of the members of the governing board, council, or committee established to determine the appropriate distribution of the funds collected. The list shall include the organization each member represents;
- b. A sample of the customer notification with a description of the method and frequency of its distribution;
- c. A sample of the authorization form provided to customers;
- d. The date of implementation.

Program plans for new customer contribution funds shall be rejected if not in compliance with this rule.

20.15(3) Notification. Each utility shall notify all customers of the fund at least twice a year. The method of notice which will ensure the most comprehensive notification to the utility's customers shall be employed. Upon commencement of service and at least once a year, the notice shall be mailed or personally delivered to all customers. The other required notice may be published in a local newspaper(s) of general circulation within the utility's service territory. A utility serving fewer than 6000 customers may publish their semiannual notices locally in a free newspaper, utility newsletter or shopper's guide instead of a newspaper. At a minimum the notice shall include:

- a. A description of the availability and the purpose of the fund;
- b. A customer authorization form. This form shall include a monthly billing option and any other methods of contribution.

20.15(4) *Methods of contribution.* The utility shall provide for contributions as monthly pledges, as well as one-time or periodic contributions. Each utility may allow persons or organizations to contribute matching funds.

20.15(5) *Annual report.* On or before September 30 of each year, each utility shall file with the board a report of all the customer contribution fund activity for the previous fiscal year beginning July 1 and ending June 30. The report shall be in a form provided by the board and shall contain an accounting of the total revenues collected and all distributions of the fund. The utility shall report all utility expenses directly related to the customer contribution fund.

20.15(6) *Binding effect.* A pledge by a customer or other party shall not be construed to be a binding contract between the utility and the pledgor. The pledge amount shall not be subject to delayed payment charges by the utility.

199—20.16(476) *Exterior flood lighting.* Rescinded IAB 11/12/03, effective 12/17/03.

199—20.17(476) *Ratemaking treatment of emission allowances.*

20.17(1) *Applicability and purpose.* This rule applies to all rate-regulated utilities providing electric service in Iowa. Under Title IV of the Clean Air Act Amendments of 1990, each electric utility is required to hold sufficient emission allowances to offset sulfur dioxide emissions at all affected and new units. The acquisition and disposition of emission allowances will be treated for ratemaking purposes as defined in this rule.

20.17(2) *Definitions.* The following words and terms, when used in this rule, shall have the meaning indicated below:

“Auction allowances” are allowances acquired or sold through EPA’s annual allowance auction.

“Boot” means something acquired or forfeited to equalize a trade.

“Direct sale allowances” are allowances purchased from the EPA in its annual direct sale.

“Fair market value” is the amount at which an allowance could reasonably be sold in a transaction between a willing buyer and a willing seller other than in a forced or liquidation sale.

“Historical cost” is the amount of cash or its equivalent paid to acquire an asset.

“Original cost” is the historical cost of an asset to the person first devoting the asset to public service.

“Statutory allowances” are allowances allocated by the EPA at no cost to affected units under the Acid Rain Program either through annual allocations as a matter of statutory right and those for which a utility may qualify by using certain compliance options or effective use of conservation and renewables.

20.17(3) Valuing allowances for ratemaking purposes.

- a. Statutory allowances. Valued at zero cost to electric utility.
- b. Direct sale allowances. Valued at historical cost.
- c. Auction allowances. Valued at historical cost.
- d. Purchased allowances. Valued at historical cost.

20.17(4) Valuing allowance inventory accounts. Allowance inventory accounts shall be valued at the weighted average cost of all allowances eligible for use during that year.

20.17(5) Valuing allowances acquired as part of a package. Allowances acquired as part of a package with equipment, fuel, or electricity shall be valued at their fair market value at the time the allowances were acquired.

20.17(6) Valuing allowances acquired through exchanges.

a. *Exchanges without boot.* Electric utilities shall value allowances received in exchanges based on the recorded inventory value of the allowances relinquished.

b. *Exchanges with boot.* Electric utilities shall value allowances as the sum of the inventory cost of the allowances given up and the monetary consideration paid in boot for the newly acquired allowances. In determining the historical cost of allowances received, a gain (or loss) shall be recorded to the extent that the amount of boot received exceeds a proportionate share of the recorded weighted average inventory cost of the allowance surrendered. The proportionate share shall be based upon the ratio of the monetary consideration received (i.e., boot) to the total consideration received (monetary consideration plus the fair market value of the allowances received). The historical cost of the allowances received shall be equal to the amount derived by subtracting the difference between the boot received and the gain from the old inventory cost.

20.17(7) Valuing allowances transferred among affiliates.

a. Allowances transferred from a utility to a parent or unregulated subsidiary. Allowances shall be transferred at the higher of historical cost or fair market value.

b. Allowances transferred from an unregulated subsidiary or parent to a utility. Allowances shall be transferred at the lesser of original cost or fair market value.

c. Allowances transferred from a utility to an affiliated utility. Allowances shall be transferred at fair market value.

20.17(8) Expense recognition and recovery of allowance costs.

a. *Expense recognition.* Electric utilities shall charge allowances (including fractional amounts) to expense in the month in which related sulfur dioxide emissions occur.

b. *Expense recovery.* The expense associated with allowances used for compliance shall be passed through the energy adjustment as specified in rule 20.9(476).

c. *Allowance inventory shortage.* If a utility emits more sulfur dioxide in a month than it has allowances in inventory, the utility shall pass the estimated cost of acquiring the needed allowances through the energy adjustment. When the needed allowances are acquired, any difference between the estimated and actual cost of the allowances shall be passed through the energy adjustment as specified in rule 20.9(476).

20.17(9) Gains/losses from allowance transactions. The gains and losses from allowance transactions shall be passed through the energy adjustment as specified in rule 20.9(476).

20.17(10) Allowance futures contracts.

a. *Price hedging.* Electric utilities shall defer the costs or benefits from hedging transactions and include such amounts in inventory values when the related allowances are acquired, sold or otherwise disposed of. Where the costs or benefits of hedging transactions are not identifiable with specific allowances, the amounts shall be included in inventory values when the futures contract is closed.

b. *Speculation.* Allowance transactions entered into for the purpose of speculation shall not affect allowance inventory pricing.

20.17(11) *Working capital reserve of allowances.* A working capital reserve of allowances shall be established in each utility's rate case proceeding based on the probability of forced outages, fuel quality variability, variability in load growth, nuclear exposure, the price and availability of allowances on the national market, and any other factors that the board deems appropriate. The working capital reserve will earn at the utility's authorized rate of return.

20.17(12) *Allowances banked for future use.* Allowances banked for future use shall be considered plant held for future use in utility rate proceedings if a definitive plan and schedule for use of the allowances is deemed adequate by the board.

20.17(13) *Prudence of allowance transactions.* The prudence of allowance transactions shall be determined by the board in the periodic electric energy supply and cost review. The prudence review of allowance transactions and accompanying compliance plans shall be based on information available at the time the options or plans were developed. Costs recovered from ratepayers through the energy adjustment that are deemed imprudent by the board shall be refunded with interest to ratepayers through the energy adjustment as specified in rule 20.9(476).

199—20.18(476,478) Service reliability requirements for electric utilities.

20.18(1) *Applicability.* Rule 20.18(476,478) is applicable to investor-owned electric utilities and electric cooperative corporations and associations operating within the state of Iowa subject to Iowa Code chapter 476 and to the construction, operation, and maintenance of electric transmission lines by electric utilities as defined in subrule 20.18(4) to the extent provided in Iowa Code chapter 478.

20.18(2) *Purpose and scope.* Reliable electric service is of high importance to the health, safety, and welfare of the citizens of Iowa. The purpose of rule 20.18(476,478) is to establish requirements for assessing the reliability of the transmission and distribution systems and facilities that are under the board's jurisdiction. This rule establishes reporting requirements to provide consumers, the board, and electric utilities with methodology for monitoring reliability and ensuring quality of electric service within an electric utility's operating area. This rule provides definitions and requirements for maintenance of interruption data, retention of records, and report filing.

20.18(3) *General obligations.*

a. Each electric utility shall make reasonable efforts to avoid and prevent interruptions of service. However, when interruptions occur, service shall be reestablished within the shortest time practicable, consistent with safety.

b. The electric utility's electrical transmission and distribution facilities shall be designed, constructed, maintained, and electrically reinforced and supplemented as required to reliably perform the power delivery burden placed upon them in the storm and traffic hazard environment in which they are located.

c. Each electric utility shall carry on an effective preventive maintenance program and shall be capable of emergency repair work on a scale which its storm and traffic damage record indicates as appropriate to its scope of operations and to the physical condition of its transmission and distribution facilities.

d. In appraising the reliability of the electric utility's transmission and distribution system, the board will consider the condition of the physical property and the size, training, supervision, availability, equipment, and mobility of the maintenance forces, all as demonstrated in actual cases of storm and traffic damage to the facilities.

e. Each electric utility shall keep records of interruptions of service on its primary distribution system and shall make an analysis of the records for the purpose of determining steps to be taken to prevent recurrence of such interruptions.

f. Each electric utility shall make reasonable efforts to reduce the risk of future interruptions by taking into account the age, condition, design, and performance of transmission and distribution facilities and providing adequate investment in the maintenance, repair, replacement, and upgrade of facilities and equipment.

g. Any electric utility unable to comply with applicable provisions of rule 20.18(476,478) may file a waiver request pursuant to rule 199—1.3(17A,474,476,78GA,HF2206).

20.18(4) Definitions. Terms and formulas when used in rule 20.18(476,478) are defined as follows:

“*Customer*” means (1) any person, firm, association, or corporation, (2) any agency of the federal, state, or local government, or (3) any legal entity responsible by law for payment of the electric service from the electric utility which has a separately metered electrical service point for which a bill is rendered. Electrical service point means the point of connection between the electric utility’s equipment and the customer’s equipment. Each meter equals one customer. Retail customers are end-use customers who purchase and ultimately consume electricity.

“*Customer average interruption duration index (CAIDI)*” means the average interruption duration for those customers who experience interruptions during the year. It is calculated by dividing the annual sum of all customer interruption durations by the total number of customer interruptions.

$$\text{CAIDI} = \frac{\text{Sum of All Customer Interruption Durations}}{\text{Total Number of Customer Interruptions}}$$

“*Distribution system*” means that part of the electric system owned or operated by an electric utility and designed to operate at a nominal voltage of 25,000 volts or less.

“*Electric utility*” means investor-owned electric utilities and electric cooperative corporations and associations owning, controlling, operating, or using transmission and distribution facilities and equipment subject to the board’s jurisdiction.

“*GIS*” means a geospatial information system. This is an information management framework that allows the integration of various data and geospatial information.

“*Interrupting device*” means a device capable of being reclosed whose purpose is to interrupt faults and restore service or disconnect loads. These devices can be manual, automatic, or motor-operated. Examples may include transmission breakers, feeder breakers, line reclosers, motor-operated switches, fuses, or other devices.

“*Interruption*” means a loss of service to one or more customers or other facilities and is the result of one or more component outages. The types of interruption include momentary event, sustained, and scheduled. The following interruption causes shall not be included in the calculation of the reliability indices:

1. Interruptions intentionally initiated pursuant to the provisions of an interruptible service tariff or contract and affecting only those customers taking electric service under such tariff or contract;
2. Interruptions due to nonpayment of a bill;
3. Interruptions due to tampering with service equipment;
4. Interruptions due to denied access to service equipment located on the affected customer’s private property;
5. Interruptions due to hazardous conditions located on the affected customer’s private property;
6. Interruptions due to a request by the affected customer;
7. Interruptions due to a request by a law enforcement agency, fire department, other governmental agency responsible for public welfare, or any agency or authority responsible for bulk power system security;

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CHAPTER 21
SERVICE SUPPLIED BY WATER UTILITIES
 [Prior to 10/8/86, Commerce Commission[250]]

199—21.1(476) Application of rules.

21.1(1) *Application of rules.* The rules apply to any water utility operating within the state of Iowa under the jurisdiction of the Iowa utilities board and are established under Iowa Code chapter 476.

These rules are intended to promote service to the public, provide standards for uniform practices by utilities, and establish a basis for determining the reasonableness of the demands made by the public upon the utilities.

A utility or customer may file for a waiver of these rules in accordance with the provisions of 199—1.3(17A,474,476,78GA,HF2206).

These rules shall not relieve a utility from its duties under the laws of this state.

21.1(2) *Authorization of rules.* Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just, and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, content, and filing of reports, documents, and other papers necessary to carry out the provisions of this law.

199—21.2(476) Records and reports.

21.2(1) *Location and retention of records.* Unless otherwise specified in this chapter, all records required by these rules shall be kept and preserved in accordance with the applicable provisions of 199—Chapter 18.

21.2(2) *Tariffs.* The utility shall maintain its tariff filing in a current status.

The schedules of rates and rules of all rate-regulated utilities shall be filed with the board.

The form, identification and content of tariffs shall be in accordance with these rules.

a. Form and identification.

(1) The tariff shall be printed, typewritten or otherwise reproduced on 8½ × 11 inch sheets so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side suitable for binding.

(2) The title page of every tariff and supplement shall specify the following:

1. The first page shall be the title page, which will show:

Name of Public Utility

Water Tariff

Filed With

The Iowa Utilities Board

2. When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on the upper right corner of its title page that it is a revision of a tariff on file and the number being superseded or replaced; for example:

Tariff No. _____
 Supersedes Tariff No. _____

3. When a new part of a tariff revises, amends, or eliminates an existing part of a tariff, it shall so state and identify the part revised, amended or eliminated.

4. Any tariff modifications, as defined in "3" above, replacing tariff sheets shall be marked in the right margin with symbols as described below to indicate the place, nature and extent of the change in text:

Symbol	Meaning
(C)	A change in regulation.
(D)	A discontinued or deleted rate, treatment or regulation.
(I)	An increased rate or new treatment resulting in increased rate.
(N)	A new rate, treatment or regulation.
(R)	A reduced rate or new treatment resulting in a reduced rate.
(T)	A change in text but no change in rate, treatment or regulation.

- (3) All sheets except the title page shall have, in addition to the above requirements, the issue date.
 (4) All sheets except the title page shall have the following form:

(Company Name)	(Part Identification)
Water Tariff	(This sheet identification)
Filed with board	(Canceled sheet identification, if any)
	(Content of tariff)
Issued: (Date)	Effective Date:
	(Proposed Effective Date:)

The issued date is the date the tariff or the amended sheet content was adopted by the utility.

The effective date is to be left blank by the utility and shall be determined by the board. The utility may propose an effective date.

b. *Content of tariffs.* A tariff filed with the board shall contain:

- (1) Table of contents.
- (2) Rates, including all rates of utilities subject to rate regulation for service with indication for each rate of the type of water service and the class of customers to which each rate applies. There shall also be shown the prices per unit of service, and the number of units per billing period to which the prices apply, the period of billing, the minimum bill, method of measuring demands and consumptions, including method of calculating or estimating loads or minimums, and any special terms and conditions applicable. There shall be specified any discount for prompt payment or penalty for late payment and the period during which the net amount may be paid, and both shall be in accordance with subrule 21.4(4).

b. *Terms and conditions.* The utility shall extend service to new customers under the following terms and conditions:

(1) *Plant additions.* The utility will provide all water plants at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, no more than 30 days prior to commencement of construction, the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for board inspection.

(2) *Advances for construction costs for distribution main extensions for customers who will attach within 30 days.* Where the customer will attach within 30 days after completion of the distribution main extension, the following shall apply:

1. If the estimated construction cost to provide a distribution main extension is less than or equal to five times the estimated annual revenue calculated on the basis of similarly situated customers, the utility shall finance and make the main extension without requiring an advance for construction.

2. If the estimated construction cost to provide a distribution main extension is greater than five times the estimated annual revenue calculated on the basis of similarly situated customers, the applicant for such an extension shall contract with the utility and deposit an advance for construction equal to the estimated construction cost less five times the estimated annual revenue to be produced by the customer no more than 30 days prior to commencement of construction.

(3) *Advances for construction costs for distribution main extensions for customers who will not attach within the agreed-upon attachment period.* Where the customer will not attach within the agreed-upon attachment period after completion of the distribution main extension, the applicant for the extension shall contract with the utility and deposit no more than 30 days prior to the commencement of construction an advance for construction equal to the estimated construction cost.

Advance payments for plant additions or extensions which are subject to refund for a ten-year period may be made by cash, surety bond, or equivalent surety. In the event a surety bond or an equivalent surety is used, the bonded amount shall have added to it a surcharge equal to the annual interest rate paid by the utility on customer bill deposits times the bonded amount. The bond shall be called by the utility at the end of one year or when the earned refunds are equal to the bonded amount, less the surcharge, whichever occurs first. If, upon termination of the surety bond, there are sufficient earned refunds to offset the amount of the surety bond, less the surcharge, the depositors shall provide the utility the amount of the surcharge. If, upon termination of the surety bond, there are not sufficient earned refunds to offset the full amount of the surety bond, less the surcharge, the depositors shall provide the utility a cash deposit equal to the amount of the surety bond, less refunds accumulated during the bonded period, plus the surcharge, or the depositor may pay the interest on the previous year's bond and rebond the balance due to the utility for a second or third one-year period. Upon receipt of such cash deposit, the utility shall release the surety bond. The cash deposit, less the surcharge, shall be subject to refund by the utility for the remainder of the ten-year period.

c. *Refunds.* The utility shall refund to the depositor for a period of ten years from the date of the original advance, a pro-rata share for each service attachment to the distribution main extension. The pro-rata refund shall be computed in the following manner:

(1) If the combined total of three times estimated annual revenue for the depositor and each customer who has attached to the distribution main extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) If the combined total of three times estimated annual revenue for the depositor and each customer who has attached to the distribution main extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated annual revenue of the customer attaching to the extension.

(3) In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

d. Extensions not required. Utilities shall not be required to make extensions as described in this rule, unless the extension shall be of a permanent nature.

e. Extensions permitted. This rule shall not be construed as prohibiting any utility from making a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors.

This rule shall not be construed as prohibiting an individual, partnership, or company from constructing its own extension. An extension constructed by a nonutility entity must meet at a minimum the applicable portions of the standards in 21.5(1) and 21.5(2) and such other reasonable standards as the utility may employ in constructing extensions, so long as the standards do not mandate a particular supplier. All connections to the utility-owned equipment or facilities shall be made by the utility at the applicant's expense. At the time of attachment to the utility-owned equipment or facilities, the applicant shall transfer ownership of the extension to the utility and the utility shall book the original cost of construction of the extension as an advance for construction, and refunds shall be made to the applicant in accordance with 21.3(5)"c." The utility shall be responsible for the operation and maintenance of the extension after attachment.

If the utility requires the applicant to construct the extension to meet service requirements greater than those necessary to serve the applicant's service needs, the utility shall reimburse the applicant for the difference in cost between the extension specifications required by the utility and the extension specifications necessary to meet the applicant's service needs.

21.3(6) Service connections. In urban areas with well-defined streets, the utility shall control (supervise the installation and maintenance of) that portion of the service pipe from its main to and including the customer's meter. A curb stop shall be installed at a convenient place between the property line and the curb. All services shall include a curb stop and curb box or meter vault. In installations where meters are installed in meter vaults incorporating a built-in valve, and are installed between property line and curb, no separate curb stop and curb box is required.

21.3(7) Location of meters. Meters may be installed outside or inside as mutually agreed upon by the customer and utility.

a. Outside. Meters installed out-of-doors shall be readily accessible for maintenance and reading and so far as practicable the location should be mutually acceptable to the customer and the utility. The meter shall be installed so as to be unaffected by climatic conditions and reasonably secure from injury.

b. Inside. Meters installed inside the customer's building shall be located as near as possible to the point where the service pipe enters the building and at a point reasonably secure from injury and readily accessible for reading and testing. In cases of multiple buildings, such as two-family dwellings or apartment buildings, the meter(s) shall be located within the premises served or in a common location accessible to the customers and the utility.

199—21.4(476) Customer relations.

21.4(1) Customer information. Each utility shall:

a. Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility are available for public inspection.

b. Maintain up-to-date maps, plans, or records of its entire water system.

21.4(7) Refusal or disconnection of service. Service may be refused or discontinued only for the reasons listed below. Unless otherwise stated, the customer shall be permitted at least 12 days, excluding Sundays and legal holidays, following mailing of notice of disconnect in which to take necessary action before service is discontinued.

- a. Without notice in the event of an emergency.
- b. Without notice in the event of tampering with the equipment furnished and owned by the utility or obtaining water by fraudulent means.
- c. For violation of or noncompliance with the utility's rules on file with the board.
- d. For failure of the customer to permit the utility reasonable access to its equipment.
- e. For nonpayment of bill provided that the utility has: (1) Made a reasonable attempt to effect collection; (2) Given the customer written notice that the customer has at least 12 days, excluding Sundays and legal holidays, in which to make settlement of the account. In the event there is dispute concerning a bill for water service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid discontinuance of service for nonpayment of the disputed bill for up to 45 days after the rendering of the bill. The 45 days shall be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board.
- f. When a prospective customer is refused service, the utility shall notify the prospective customer promptly of the reason for the refusal to serve and of the applicant's right to appeal the utility's decision to the board.

21.4(8) Reconnection and charges. In all cases of discontinuance of service where the cause of discontinuance has been corrected, the utility shall promptly restore service to the customer. The utility may make a reasonable charge applied uniformly for reconnection of service.

21.4(9) Insufficient reasons for denying service. The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

- a. Nonpayment for service by someone who is no longer an occupant of the premises to be served, except in cases of immediate family occupation or cohabitation of adults at the premises.
- b. Failure to pay the bill of another customer as guarantor thereof.
- c. Failure to pay for a different type or class of public utility service.

21.4(10) Customer complaints. A "complaint" shall mean any objection to the charge, facilities, or quality of service of a utility.

- a. Each utility shall investigate promptly and thoroughly and keep a record of all complaints received from its customers that will enable it to review its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date resolved.
- b. All complaints caused by a major service interruption shall be summarized in a single report.
- c. A record of the original complaint shall be kept for a period of three years after final settlement of the complaint.

199—21.5(476) Engineering practice.

21.5(1) Requirement of good engineering practice. The design and construction of the utility's water plant shall conform to good standard engineering practice.

21.5(2) Inspection of water plant. Each utility shall adopt and follow a program of inspection of its water plant in order to determine the necessity for replacement and repair. The frequency of the various inspections shall be based on the utility's experience and accepted good practice.

199—21.6(476) Meter testing.

21.6(1) Periodic and routine tests. Each utility shall adopt schedules approved by the board for periodic and routine tests and repair of its meters.

21.6(2) Meter test facilities and equipment. Each utility furnishing metered water service shall provide the necessary standard facilities, instruments and other equipment for testing its meters, or mail for test of its meters by another utility or agency equipped to test meters subject to approval by the board.

21.6(3) Accuracy requirements. All meters used for measuring quantity of water delivered to a customer shall be in good mechanical condition. All meters shall be accurate to the following standards:

a. Test flow limits. For determination of minimum test flow and normal test flow limits, the company will use as a guide the appropriate standard specifications of the American Water Works Association for the various types of meters.

b. Accuracy limits. A meter shall not be placed in service if it registers less than 95 percent of the water passed through it at the minimum test flow, or overregisters or underregisters more than 1.5 percent at the intermediate or maximum limit.

21.6(4) Initial test and storage of meters. Every water meter shall be tested prior to its installation either by the manufacturer, the utility, or an organization equipped for meter testing.

If a meter is not stored as recommended by the manufacturer, the meter shall be tested immediately before installation.

21.6(5) As found tests. To determine the average meter error in accordance with these rules for periodic or complaint tests, meters shall be tested in the condition as found in the customer's service. Tests shall be made at intermediate and maximum rates of flow and the meter error shall be the algebraic average of the errors of the two tests.

21.6(6) Request tests. A utility shall test any water meter upon written request of a customer. The utility will not be required to perform request tests more than once each 18 months. The customer shall be given the opportunity to be present at the request tests.

21.6(7) Board-ordered tests. The board shall order tests of meters as follows:

a. Application. Upon written application to the board by a customer or a utility, a test shall be made of the customer's meter as soon as practicable.

b. Guarantee. The application shall be sent by certified or registered mail and accompanied by a certified check or money order made payable to the utility in the amount indicated below:

(1) Capacity of 80 gallons per minute or less	\$24
(2) Capacity over 80 gallons, up to 120 gallons per minute	\$26
(3) Capacity of over 120 gallons per minute	\$30

c. Conduct of test. On receipt of a request from a customer, the board shall forward the deposit to the utility and notify the utility of the requirement for the test. The utility shall not knowingly remove or adjust the meter until tested. The utility shall furnish all instruments, load devices and other facilities necessary for the test and shall perform the test and shall furnish verification of the accuracy of test instruments used.

d. Test results. If the tested meter is found to overregister to an extent requiring a refund under the provisions of 21.4(6)"a," the amount paid to the utility shall be returned to the customer by the utility.

e. Notification. The utility shall notify the customer in advance of the date and time of the board-ordered test.

f. Utility report. The utility shall make a written report of the results of test which shall be sent to the customer and to the board.

21.6(8) Sealing of meters. Upon completion of adjustment and test of any water meter the utility shall place a suitable register seal on the meter in a manner that adjustment or registration of the meter cannot be changed without breaking the seal.

21.6(9) Record of meter tests. Meter test records shall include:

- The date and reason for the test.
- The meter reading prior to any test.
- The accuracy as found at each of the flow rates required by 21.6(3)"a."
- The accuracy as left at each of the flow rates required by 21.6(3)"a."
- Statement of any repairs.
- If the meter test is made using a standard meter, the utility shall retain all data taken at the time of the test sufficient to permit the convenient checking of the test method, calculations, and traceability to the National Bureau of Standards' volumetric standardization.

The test records of each meter shall be retained for two consecutive periodic tests or at least for two years. A record of the test made at the time of the meter's retirement, if any, shall be retained for a minimum of three years.

199—21.7(476) Standards of quality of service.

21.7(1) Pressures. Under normal condition of water usage the pressure (pound per square inch gauge) at a customer's service line shall be not less than 25 PSIG and not more than 125 PSIG.

At regular intervals, a utility shall make a survey of pressures in its water system. The survey shall be of sufficient magnitude to indicate the quality of service being rendered at representative points on its system. Survey should be conducted during periods of high usage at or near the maximum usage during the year. The pressure charts for these surveys shall show the date and time of beginning and end of the test, and the test location. Records of these pressure surveys shall be maintained at the utility's principal office in the state and made available to the board upon request.

21.7(2) Interruption of supply.

a. A utility shall make a reasonable effort to prevent interruptions of service. When an emergency interruption occurs the utility shall reestablish service with the shortest possible delay consistent with the safety to its customers and the general public. If an emergency interruption affects fire protection service, the utility shall immediately notify the fire chief or other responsible local official.

b. When a utility finds it necessary to schedule an interruption of service, it shall make a reasonable effort to notify all customers to be affected by the interruption. The notice shall include the time and anticipated duration of the interruption. Interruptions should be scheduled at hours which create the least inconvenience to the customer.

c. A utility shall retain records of interruptions for a period of at least five years.

21.7(3) Supply shortage. The utility shall attempt to furnish a continuous and adequate supply of water to its customers and to avoid any shortage or interruption of water delivery.

a. If a utility finds that it is necessary to restrict the use of water, it shall notify its customers, and give the board notice, before the restriction becomes effective. The notification shall specify:

- (1) The reason for the restriction.
- (2) The nature and extent of the restriction.
- (3) The effective date of the restriction.
- (4) The probable date of termination of the restriction.

b. During the times of threatened or actual water shortage, the utility shall equitably apportion its available water supply among its customers.

199—21.8(476) Applications for water costs for fire protection services.

21.8(1) Definition. For purposes of these rules, "water costs for fire protection service" shall be defined as all or a part of the utility's costs of fire hydrants and other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection, as reflected in the utility's current tariff for public fire protection water service.

21.8(2) Utility requirements. A rate-regulated utility which provides public fire protection water service to a city preparing an application pursuant to subrule 21.8(3) shall provide the city all necessary information and affidavits to enable the city to meet its application filing requirements.

21.8(3) Application contents. Any city filing an application with the board requesting inclusion of all or a part of the water costs for fire protection service in a rate-regulated utility's rates or charges to customers covered by the city's fire protection service shall submit, at the time the application is filed, the following information with supporting testimony:

a. A statement showing (1) the proposed method of allocating costs to affected customers, and (2) both the proposed per-customer rate increase and the average percentage increase by customer class, based on the utility's current tariff, if the costs for fire protection water service are included in rates charged to affected customers;

b. Copies of all bills rendered to the city by the utility for public fire protection water service during the preceding 24-month period;

c. The current number of utility customers served within the city's corporate limits, by customer class, with an affidavit from the utility verifying the information;

d. A map illustrating both (1) the city's corporate limits, and (2) the portion of the utility's customer service area within the city's corporate limits, with an affidavit from the utility verifying the customer service area;

e. An affidavit from the utility showing that the notice required by Iowa Code section 476.6(18)"c" and subrule 21.8(4) has been provided and paid for by the applicant and mailed by the utility to all affected customers.

21.8(4) Customer notification.

a. *Prior approval.* The city shall submit to the board for its approval, not less than 30 days before providing notification to affected customers, ten copies of the proposed notice.

b. *Required content of notification.* The notice shall advise affected customers of the proposed increase in rates and charges, the proposed effective date of the increase, and the percentage increase by customer class. It shall advise customers that the city is requesting the increase and that they have a right to file with the board a written objection to the proposed increase and to request a public hearing. It shall also include a written explanation of the reason for the increase.

c. *Notice of deficiencies.* Within 30 days of the filing of the proposed notice, the city shall be notified of either the approval of the notice or of any deficiencies in the notice and the corrective measures required for approval.

d. *Distribution.* The city shall provide to the utility, for mailing, a sufficient number of copies of the approved notice. The city shall direct the utility either to (1) include the notice with the utility's next regularly scheduled mailing to the affected customers; or (2) make a separate mailing of the notice to affected customers within 30 days of receiving from the city the requisite number of copies of the notice. The city shall pay all expenses incurred by the utility in providing notice to affected customers. The utility may require payment prior to the mailing.

e. *Delivery.* The written notice to affected customers shall be mailed or delivered by the utility not more than 90 days before the application is filed and no later than the date the application is filed.

21.8(5) Procedure.

a. *Service of application.* The applicant shall file an original plus ten copies of the application with the executive secretary's office, serve two copies of the application on the public utility and serve two copies on the consumer advocate division of the Iowa department of justice.

b. *Docketing.* Within 30 days of the filing of the application, the board shall either approve the application or docket the case as a formal proceeding and establish a procedural schedule.

c. *Rules.* If the case is docketed as a formal proceeding, the rules in 199—Chapter 7, if not inconsistent, shall apply.

d. *Decision.* The board shall render its decision within six months of the date of the application. If the application is approved, the board shall order the rate-regulated utility providing the water service to the city to file tariffs implementing the board's decision. The utility shall include annually a bill insert explaining to customers that they are being charged for water-related fire protection costs. The city shall pay all costs incurred by the utility to file and implement the required tariff.

These rules are intended to implement Iowa Code sections 17A.3, 474.5, 476.1, 476.2, 476.6(18), 476.8, and 546.7.

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1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's annual message to Congress. The letter is written in a very formal and dignified style, and it is one of the most important documents in the history of the United States.

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DPC is deferred past costs including carrying charges which have not previously been approved for recovery, until the deferred past costs are fully recovered.

n is the length of the utility's plan in months.

r is the applicable monthly rate of return calculated as:

$$r = (1+R)^{1/12} - 1 \text{ or} \\ r = R + 12 \text{ if previously approved}$$

R is the pretax overall rate of return the board held just and reasonable in the utility's most recent general rate case involving the same type of utility service. If the board has not rendered a decision in an applicable rate case for a utility, the average of the weighted average cost rates for each of the capital structure components allowed in general rate cases within the preceding 24 months for Iowa utilities providing the same type of utility service will be used to determine the applicable pretax overall rate of return.

ECE is the estimated contemporaneous expenditures to be incurred during the 12-month recovery period.

A is the adjustment factor equal to overcollections or undercollections determined in the annual reconciliation and for adjustments ordered by the board in prudence reviews.

ASU is the annual sales units estimated for the 12-month recovery period.

35.12(4) Filing requirements. Each utility proposing automatic recovery for its energy efficiency costs shall provide the following information:

- a. The filing shall restate the derivation of each ECR factor previously approved by the board.
- b. The filing shall include new ECR factors based on allocation methods and customer classifications and groupings approved by the board in previous proceedings.
- c. The filing shall include all worksheets and detailed supporting data used to determine new ECR factors. Information already on file with the board may be incorporated by reference in the filing.
- d. The filing shall include a reconciliation comparing the amounts actually collected by the previous ECR factors to the amounts expended. Overcollections or undercollections shall be used to compute adjustment factors.
- e. If in a prudence review, the board has determined that previously recovered energy efficiency costs were imprudently incurred, adjustment factors shall include reductions for these amounts.

35.12(5) Tariff sheets. Upon approval of the new ECR factors, the utility shall file separate tariff sheets for board approval to implement the ECR factors in its rates.

199—35.13(476) Prudence review. The board shall periodically conduct a contested case to evaluate the reasonableness and prudence of the utility's implementation of energy efficiency plans and budgets. The burden shall be on the utility to prove it has taken all reasonable actions to cost-effectively implement an energy efficiency plan as it was approved.

35.13(1) Information to be filed. The parties to the prudence review shall provide the following information:

- a. The utility shall file prepared direct testimony and exhibits in support of its past implementation results including information regarding: implementation issues; monitoring and evaluation issues; program costs; program benefits; energy and demand savings; and participation rates.
- b. The Consumer Advocate Division of the Department of Justice and other intervenors to the contested case shall be allowed at least seven weeks to file rebuttal testimony and exhibits to the utility's direct testimony.

35.13(2) *Disallowance of past costs.* If the board finds the utility did not take all reasonable and prudent actions to cost-effectively implement its energy efficiency programs, the board shall determine the amount in excess of those costs that would have been incurred under reasonable and prudent implementation. That amount shall be deducted from the next ECR factors calculated pursuant to 199 IAC 35.12(3) until satisfied.

199—35.14(476) *New structure energy conservation standards.* A utility providing gas or electric service shall not provide service to any structure completed after April 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under 661—16.801(103A) and 661—16.802(103A). If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not heated or cooled by electric service, or are not intended primarily for human occupancy.

199—35.15(476) *Exterior flood lighting.*

35.15(1) *Newly installed lighting.* All newly installed public utility-owned exterior flood lighting shall be high-pressure sodium lighting or lighting with equivalent or better energy efficiency.

35.15(2) *In-service lighting replacement schedule.* In-service lighting shall be replaced with high-pressure sodium lighting or lighting with equivalent or better energy efficiency when worn out due to ballast or fixture failure for any other reason, such as vandalism or storm damage. A utility shall file with the board as part of its annual report required in 199—Chapter 23 a report stating progress to date in converting to high-pressure sodium lighting or lighting with equivalent or higher energy efficiency.

35.15(3) *Efficiency standards.* The standard for lighting efficiency shall be expressed in “lumens per watt.” A schedule of lumens per watt, correlated to bulb size, shall be used to reflect the inherent increase in efficiency as bulb size increases. The table of values for lighting efficacy extracted from the Standard Handbook for Electrical Engineers, Donald G. Fink and H. Wayne Beaty, Eds., Twelfth Edition, Table 26-14, shall be the standard for high-pressure sodium street and security lighting, within a 10 percent range below the stated values.

These rules are intended to implement Iowa Code sections 476.2(7), 476.6(19-21) and 476.10A.

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CHAPTER 36
ENERGY EFFICIENCY PLANNING AND REPORTING
FOR NON-RATE-REGULATED GAS AND ELECTRIC UTILITIES

199—36.1(476) Non-rate-regulated utilities. Each non-rate-regulated gas and electric utility shall file energy efficiency plans as provided in this chapter.

199—36.2(476) Definitions. The following words and terms, when used in this chapter, shall have the following meanings:

“Annual” means during each calendar year.

“Demand savings” means the change in the rate of energy usage measured over a period, which period shall be specified.

“Dollar savings” means the reduction in the dollars spent on natural gas or electricity service by customers and by the utility system as the result of the energy efficiency programs.

“Energy efficiency programs” means activities conducted by a utility intended to enable or encourage customers to increase the amount of heat, light, cooling, motive power, or other forms of work performed per unit of energy used. Energy efficiency programs also means activities which lessen the amount of heating, cooling, or other forms of work which must be performed, or activities which decrease the cost of providing energy. Examples include, but are not limited to: energy studies or audits, general information, financial assistance, direct rebates to customers or vendors of energy-efficient products, research projects, direct installation by the utility of energy-efficient equipment, direct or indirect load control, and time-of-use rates, tree planting programs, and hot water insulation distribution programs.

“Energy savings” means the amount of energy not used because of an energy efficiency program, measured in kilowatt-hours (kWh) of electricity, thousands of cubic feet (Mcf) of natural gas, or dekatherms (dth) of natural gas.

“Filing year” means the calendar year during which an energy efficiency plan is filed.

“Peak demand savings” means the change in the rate of energy use at the time of the utility’s highest annual use, measured in kilowatts (kW), thousands of cubic feet per day (Mcf/day) of natural gas, or dekatherms per day (dth/day) of natural gas.

“Year” means calendar year.

199—36.3(476) Schedule of filings. On or before July 1, 1992, each non-rate-regulated utility shall file its initial biennial energy efficiency plan with the board for the period January 1, 1992, through December 31, 1993. Each non-rate-regulated utility shall file subsequent biennial energy efficiency plans on or before July 1, 1994, and succeeding even-numbered years.

199—36.4(476) Joint filing of plans. A utility may file its plan jointly with other non-rate-regulated utilities or their agents. A joint plan shall contain the information required by rules 36.5(476) and 36.6(476) for each utility participating in the joint plan, whether jointly filed or individually filed. This information for each utility shall be separately identified, if a plan is filed jointly for several utilities by person(s) acting as an agent for the utilities. Those person(s) shall state to the board their authority to act on behalf of the utilities. The description of a utility’s programs as required in paragraph “a” of subrules 36.5(1) and 36.5(2) may be provided by reference to an attached document or a section of a joint plan.

199—36.5(476) Energy efficiency plan requirements. Each utility's energy efficiency plan shall include the following:

36.5(1) A report on the results of all energy efficiency programs the utility has implemented and completed during each of the two calendar years immediately preceding the filing year. Summary information for energy efficiency programs implemented in earlier years and completed prior to the filing year may also be included in the original plan. For each program implemented during the past two calendar years and completed, the following information shall be provided:

- a. A description of the program, including the purpose or goal of the program, and the energy-using facilities, equipment, or customer behavior that the program was designed to change;
- b. Annual energy and peak demand savings, annual dollar savings, and, if available, nonpeak demand savings from the program;
- c. A description of the method(s) for determining the annual energy savings, peak demand savings, nonpeak demand savings, and annual dollar savings, whether engineering estimates, surveys, metering, or other methods;
- d. Annual number of program participants;
- e. Annual and total costs of the program;
- f. Date the program was initiated, terminated, and the reason for termination; and
- g. Other relevant information.

36.5(2) A report on the results and projected results of all energy efficiency programs the utility is continuing or commencing in the filing year or the year following. For those programs continuing, the report shall describe the program results from the two calendar years immediately preceding the filing year and projected results for the filing year and the year following. Summary information for energy efficiency programs implemented in earlier years but still underway may also be included in the original plan. For those programs commencing in the filing year or the year following, the report shall describe projected implementation and results of programs for each of the two years, as well as an optional description of program results beyond the two years. For each program under this subrule, the following information shall be provided:

- a. A description of the program, including the purpose or goal of the program and the energy-using facilities, equipment, or customer behavior that the program is designed to change;
- b. Annual energy and peak demand savings, annual dollar savings, and, if available, nonpeak demand savings from the program;
- c. Projected annual energy and peak demand savings, annual dollar savings, and, if available, nonpeak demand savings from the program;
- d. A description of the method(s) for determining the annual energy savings, peak demand savings, nonpeak demand savings, and annual dollar savings, whether engineering estimates, surveys, metering, or other methods;
- e. A description of the method(s) for projecting the annual energy savings, peak demand savings, nonpeak demand savings, annual dollar savings, whether engineering estimates, surveys, metering, or other methods;
- f. Annual number of program participants and annual estimated number of program participants;
- g. Annual and total costs of the program;
- h. Estimated annual and total cost of program;
- i. Date the program was initiated and planned termination dates; and
- j. Other relevant information.

199—36.6(476) Program selection criteria. Each utility's plan shall include a description of the procedures or criteria used to continue current and to select future energy efficiency programs for implementation.

199—36.7(476) New Structure energy conservation standards. A utility providing gas or electric service shall not provide such service to any structure completed after April 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under 661—16.801(103A) and 661—16.802(103A). If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not heated or cooled by electric service, or are not intended primarily for human occupancy.

199—36.8(476) Exterior flood lighting.

36.8(1) *Newly installed lighting.* All newly installed public utility-owned exterior flood lighting shall be high-pressure sodium lighting or lighting with equivalent or better energy efficiency.

36.8(2) *In-service lighting replacement schedule.* In-service lighting shall be replaced with high-pressure sodium lighting or lighting with equivalent or better energy efficiency when worn out due to ballast or fixture failure for any other reason, such as vandalism or storm damage. Each utility shall file with the board as part of its annual report required in 199—Chapter 23 a report stating progress to date in converting to high-pressure sodium lighting or lighting with equivalent or higher energy efficiency.

36.8(3) *Efficiency standards.* The standard for lighting efficiency shall be expressed in “lumens per watt.” A schedule of lumens per watt, correlated to bulb size, shall be used to reflect the inherent increase in efficiency as bulb size increases. The table of values for lighting efficacy extracted from the Standard Handbook for Electrical Engineers, Donald G. Fink and H. Wayne Beaty, Eds., Twelfth Edition, Table 26-14, shall be the standard for high-pressure sodium street and security lighting, within a 10 percent range below the stated values.

These rules are intended to implement Iowa Code sections 476.1A(6), 476.1B(1)“l,” and 476.2(5) to 476.2(7).

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CHAPTER 62 COGENERATION PILOT PROGRAM

261—62.1(80GA,HF391) Purpose. The purpose of the cogeneration pilot program (CPP) is to foster the development of electricity cogeneration within the state in order to diversify Iowa's electricity supply and foster economic development.

261—62.2(80GA,HF391) Eligible activities. The department may choose up to two projects for participation in the cogeneration pilot program.

261—62.3(80GA,HF391) Eligibility requirements. To be eligible for the cogeneration pilot program, a business shall meet each of the following requirements:

62.3(1) Generation capacity. Each cogeneration pilot project facility must involve a project of 200 megawatts or less of electric generation capacity.

62.3(2) Investment location. Each cogeneration pilot project facility must be located within Iowa.

62.3(3) Economic impacts. The business shall demonstrate, as a result of the proposed project, significant beneficial economic impacts to the state or to a region of the state.

62.3(4) No closure or reduction in operations. The business shall not close or substantially reduce operations at one location in Iowa and relocate substantially the same operation elsewhere in the state if the closure or reduction results in loss of employment.

261—62.4(80GA,HF391) Application procedures.

62.4(1) Application required. To receive designation as an approved cogeneration pilot program project, an application must be submitted in the format specified by the department. A business shall submit an application on its own behalf.

62.4(2) Application contents. Applications shall include the following:

a. A project description including the activities involved and the impact the project is expected to have on electricity cost, availability and reliability.

b. A description of the consistency of the proposed project with state and regional plans for economic development.

c. An identification of the number of jobs to be created or retained as a result of the project and an explanation of why the jobs are considered quality, high-wage jobs. The explanation shall include the job classifications, pay ranges, and benefits to be provided to the employees.

d. An identification of the amount, terms, and sources of all proposed public and private investments in the project and a statement that indicates whether the other financing has been secured or is still to be arranged.

e. Cost estimates for all project activities.

f. A time frame within which the project will be completed.

g. A description of the immediate (within 24 months) economic development impacts as a result of the project.

h. A description of the long-term (beyond 24 months), speculative economic development impacts as a result of the project.

i. An explanation as to why the project could not otherwise occur without the benefits of this program.

62.4(3) Application due date. In order to be considered for review, an application must be submitted to the department before April 1, 2007.

261—62.5(80GA,HF391) Application review. Completed applications will be reviewed using the following factors:

62.5(1) The expected immediate and long-term economic impacts the project will have on the state of Iowa and region(s) of Iowa including, but not limited to, the likelihood that the project will result in additional new private investment and quality job creation in Iowa. In determining the quality of possible new jobs to be created, the department will consider projected wage levels, fringe benefit packages, turnover rate, full-time and career positions, and other relevant factors.

62.5(2) Substantiality of the capital investment pledged by the business.

62.5(3) The likelihood of closure or relocation of the business's operations and any resulting loss of employment.

62.5(4) The number of direct jobs to be created by the project.

62.5(5) The amount, terms, and sources of all proposed public and private investments that the project will leverage.

62.5(6) The degree of coordination the project has with state and regional economic development plans.

62.5(7) The feasibility of the project.

62.5(8) Any other information about the business that has a bearing on the likely success of the project.

62.5(9) The degree to which the project contributes to the diversification of Iowa's electricity supply and fosters economic development.

261—62.6(80GA,HF391) Award process.

62.6(1) Applications will be reviewed and summarized by department staff. Staff will prepare a summary for the director of the department, who shall make a final decision on the application.

62.6(2) Upon an application's submission, department staff will consult with the Iowa utilities board and any other relevant state agency or interested party in order to gain additional information or to seek comment.

62.6(3) The department shall not approve any application after June 30, 2007.

261—62.7(80GA,HF391) Annual progress report. Every approved pilot project designee shall submit an annual progress report, whose format will be determined by the department. The annual report shall be submitted no later than November 1, beginning in the year 2004 and every year thereafter, up to and including 2007.

These rules are intended to implement 2003 Iowa Acts, House File 391.

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CHAPTER 63

Reserved

CHAPTER 64 NEW CAPITAL INVESTMENT PROGRAM

261—64.1(80GA,HF677) Purpose. The purpose of the new capital investment program is to promote new economic development through new capital investments that upgrade and expand the capabilities of Iowa businesses by allowing the businesses to be more competitive in the world economy.

261—64.2(80GA,HF677) Definitions.

"Act" means 2003 Iowa Acts, House File 677.

"Average county wage" means the average wage the department calculates annually using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Biotechnology-related processes" means the use of cellular and biomolecular processes to solve problems or make products. Farming activities shall not be included for purposes of this definition.

"Board" means the Iowa department of economic development board.

"Capital investment" means:

1. The costs of manufacturing machinery and equipment and computers, as defined in Iowa Code section 427A.1(1)"e" and "j," which are purchased for use in the operation of the business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

2. The cost of improvements made to real property that is used in the operation of the business.

3. The purchase price of real property and any existing buildings and structures located on the real property. For purposes of this definition, if the business is leasing the property, the overall cost or value of the lease shall constitute a capital investment if the lease is treated as a capital transaction for tax purposes. A capital transaction for tax purposes means that the asset must be depreciated for federal income tax purposes. The business must be depreciating the leased property on the business's income tax return in order to claim an investment tax credit for the cost or value of the leased property.

"Community" means a city, county, or other entity established pursuant to Iowa Code chapter 28E.

"Comprehensive health benefits" means a standard medical insurance plan provided by the business and of which the business pays at least 80 percent of the premiums for employee-only coverage. The department shall determine what constitutes a standard medical insurance plan. Additional health benefits provided and paid for by the business may be considered in situations in which the business is paying a lesser percentage of the medical premiums. Additional health benefits include dental insurance, vision insurance, prescription drug coverage and health promotion programs.

"Department" means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"Full-time" means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or

2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Job creation goal" means the number of new high-quality jobs that the business pledged to create in its application.

"Program" means the new capital investment program.

"Project" means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the program and for which the business requests benefits. A project may include the start-up, location, or expansion of a business.

"Project completion" means the date of completion of all improvements necessary for the start-up, location, or expansion of the business within the community.

"Project initiation" means any one of the following:

1. The start of construction of new or expanded buildings;
2. The start of rehabilitation of existing buildings;
3. The purchase or leasing of existing buildings; or
4. The installation of new machinery and equipment or new computers to be used in the operation of the business's project.

The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation.

"Retained jobs" means the full-time jobs that are at risk of being eliminated if the project does not proceed as planned.

"Tax credit certificate" means a document issued by the department to an approved business which indicates the amount of unused investment tax credit the business may receive in the form of a refund.

"Value-added agricultural products" means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

261—64.3(80GA, HF677) Applying for benefits.

64.3(1) Eligibility requirements. To be eligible to receive benefits under this program, a business shall meet all of the following requirements:

a. *Business closures.* The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

b. *Retail businesses.* The business is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

c. *Capital investment.* The business shall make a new capital investment of at least \$1 million within three years of application approval.

d. *Environmental or worker safety violations.* The business has not, within the five years prior to the application date, violated state or federal environmental or worker safety statutes, rules or regulations. If such violations have occurred, the business must demonstrate that there were mitigating circumstances or that such violations did not seriously affect public health or safety or the environment. The business shall provide with the application an affidavit stating that this requirement has been met.

e. *Project initiation.* A business shall not be eligible for benefits under this program if the project for which it is requesting benefits has been initiated.

f. *Violations of law.* If the department finds that a business has a record of violations of law over a three-year period that tends to show a consistent pattern, the business shall not be eligible for benefits under this program. The time period that will be reviewed for violations of a federal or state environmental statute, regulation, or rule is the previous five years as required by Iowa Code section 15A.1(3) "a."

64.3(2) Application. The department shall develop a standardized application and make it available to a business applying for benefits. The application procedures are as follows:

a. Applications may be submitted at any time.

b. The community in which the business's project will be located shall review the application to determine whether the business is eligible for benefits. If the community determines that the business is eligible, it shall approve by resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. The community shall then submit the application for benefits to the department.

c. Each application received from a community will be reviewed by the department. The department may request additional information from the business applying for benefits or use other resources to obtain the needed information.

d. Department staff will rate applications according to the criteria in subrule 64.3(3).

e. Decision making on applications.

(1) Applications which involve the creation of 50 or more new jobs and a capital investment equal to or greater than the minimum capital investment required by the new jobs and income program shall be referred to the board. The minimum capital investment required by the new jobs and income program is \$10 million indexed to 1993 dollars based on the gross national product implicit price deflator published by the Bureau of Economic Analysis of the United States Department of Commerce. Department staff will prepare a report for the board which includes the staff recommendation and the application's rating. The board will make the final decision to approve, defer, or deny the application.

(2) For all other applications, department staff will present their recommendation and the application's rating to the director. The director will make the final decision to approve, defer, or deny the application.

f. Written notification of the board's or the director's decision will be sent to the business within two weeks of the date on which the decision is made.

64.3(3) Application rating system. Each application will be reviewed and rated using the following criteria:

a. *Community and state impacts.* Factors to be considered include, but are not limited to, the following:

(1) Impact of the proposed project on the community and the state.

(2) Local/regional community funding match.

(3) Impact on in-state competitors.

Maximum – 20 points.

b. *Impact on current and new jobs.* Factors to be considered include, but are not limited to, the following:

(1) Impact on the business's current employees, including the potential for increased skills and wages, as a result of this project.

(2) Total number of jobs to be created as the result of the project and the starting wages for these jobs.

(3) Number of high-quality jobs to be created. "High-quality jobs" means new full-time or new career-type positions that have a starting wage equal to or greater than the average county wage.

(4) Number of retained jobs.

(5) Other characteristics that contribute to the quality of jobs, including, but not limited to, turnover rate, safe working environment, and additional fringe benefits.

Maximum – 35 points.

c. *Impact on the business.* Factors to be considered include, but are not limited to, the following:

- (1) Impact that the investment will have on the ability of the business to expand, upgrade, or modernize its capabilities.
- (2) The extent to which the new capital investment will result in a more productive and competitive business enterprise and workforce.
- (3) Potential for future growth in the industry.

Maximum – 30 points.

d. *Insurance benefits.* The business provides comprehensive health benefits, as defined in rule 261—64.2(80GA, HF677), to all full-time employees. If the business meets this criterion, it will receive 15 points.

The maximum total score possible is 100 points. Projects that score less than 60 points will not be recommended for approval to the board or the director.

64.3(4) Project period. An approved business must complete its project within three years of the application approval date. If the project involves the creation of new high-quality jobs, the approved business must, upon reaching its job creation goal, maintain those jobs for two additional years.

64.3(5) Negotiations. The department reserves the right to enter into negotiations with a business regarding the amount of benefits the business may be eligible to receive. The department reserves the right to negotiate the amount of all benefits except the refund of sales, services, and use taxes paid to contractors and subcontractors.

261—64.4(80GA, HF677) Benefits. The following benefits may be available to an approved business. The amount of the benefits will be negotiated by the department with the approved business and reflected in the executed agreement.

64.4(1) Sales, services, and use tax refund. Pursuant to Iowa Code section 15.331A, the approved business shall be entitled to a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility being built, expanded, or rehabilitated as part of the project. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive a refund of sales, services, and use taxes paid to contractors or subcontractors, the approved business must, within one year after project completion, make an application to the Iowa department of revenue.

64.4(2) Research activities credit. Pursuant to Iowa Code section 15.335, the approved business shall be entitled to a research activities credit. This tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II (personal) or division III (corporate). This incentive is a tax credit for increasing research activities in this state during the period the business is participating in the program. This credit may equal up to 6½ percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code sections 422.10 and 422.33, subsection 5. If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the approved business with interest computed under Iowa Code section 422.25. This tax credit may be used by another business with which the approved business is affiliated and with which the approved business files state income tax returns on a consolidated basis. In lieu of claiming a refund, the approved business may elect to have the overpayment credited to its tax liability for the following year.

64.4(3) *Investment tax credit or insurance premium tax credit.*

a. Investment tax credit. An approved business may claim a tax credit equal to a percentage of the new capital investment directly related to the approved project. The percentage shall be equal to the amount provided in paragraph "c." Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II (personal), division III (corporate), or division V (franchise). This tax credit may be used by another business with which the approved business is affiliated and with which the approved business files state income tax returns on a consolidated basis. If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

The approved business may not claim an investment tax credit for a capital investment above the amount stated in the agreement described in subrule 64.5(1). An approved business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.

b. Insurance premium tax credits. An approved business may claim a tax credit equal to a percentage of the new capital investment directly related to the start-up, location, or expansion of an approved business under the program. The percentage shall be equal to the amount provided in paragraph "c." The tax credit shall be allowed against taxes imposed in Iowa Code chapter 432. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The approved business may not claim an insurance premium tax credit for a capital investment above the amount stated in the agreement described in subrule 64.5(1). An approved business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an insurance premium tax credit for additional capital expenditures.

c. Tax credit percentage. The amount of tax credit claimed under this subrule shall be determined as follows:

(1) If the department determines, based on the application of the approved business, that high-quality jobs are not created but economic activity within the state is advanced, the approved business may claim a tax credit of up to 1 percent of the amount of new capital investment, as described in the agreement.

(2) If the department determines, based on the application of the approved business, that one to five high-quality jobs are created, the approved business may claim a tax credit of up to 2 percent of the amount of new capital investment, as described in the agreement.

(3) If the department determines, based on the application of the approved business, that six to ten high-quality jobs are created, the approved business may claim a tax credit of up to 3 percent of the amount of new capital investment, as described in the agreement.

(4) If the department determines, based on the application of the approved business, that 11 to 15 high-quality jobs are created, the approved business may claim a tax credit of up to 4 percent of the amount of new capital investment, as described in the agreement.

(5) If the department determines, based on the application of the approved business, that 16 or more high-quality jobs are created, the approved business may claim a tax credit of up to 5 percent of the amount of new capital investment, as described in the agreement.

64.4(4) Investment tax credit refunds. Subject to prior approval by the department, in consultation with the Iowa department of revenue, an approved business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to apply for a refund of all or a portion of an unused tax credit. For purposes of this subrule, an approved business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol. The refund may be used against a tax liability imposed under Iowa Code chapter 422, division II (personal), division III (corporate), or division V (franchise). To apply to receive a refund of all or a portion of an unused investment tax credit, the following procedures apply:

a. Department approval required. The department will determine whether an approved business's project primarily involves the production of value-added agricultural products or uses biotechnology-related processes.

b. How to apply for tax credit certificate. The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those approved businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the Internal Revenue Code, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member approved for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credit for which the cooperative's members are requesting a tax credit certificate.

c. Application processing. The department will make public by June 1 of each fiscal year the total number of requests for tax credit certificates and the total dollar amount of requested tax credit certificates that have been submitted. The department will issue tax credit certificates within a reasonable period of time following the June 1 announcement.

d. Issuance of tax credit certificates. The department shall not issue tax credit certificates to approved businesses in the new capital investment program, the new jobs and income program, and the enterprise zone program which total more than \$4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of \$4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an approved business will be prorated based upon the total dollar amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each approved business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an approved business submits a request in the amount of \$1 million and the total amount of requested tax credit certificates equals \$8 million, the business will be issued a tax credit certificate in the amount of \$500,000.

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500,000$$

e. When claimed. Tax credit certificates shall not be valid until the tax year following the date of project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the Internal Revenue Code whose approved project primarily involves the production of ethanol. For such cooperative, the individual members of the cooperative are approved to receive the tax credit certificates. The approved business may not claim a tax credit refund unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year in which the tax credit refund is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until the tax credit is depleted, whichever occurs first.

f. Carryforward. An approved business may apply for a tax credit certificate once each year for up to seven years after the qualifying asset is placed in service or until the approved business's unused investment tax credit is depleted, whichever occurs first. For example, an approved business which completes a project in October 2004 and has an investment tax credit of \$1 million may apply for a tax credit certificate in May 2005. If, because of the proration of the \$4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of \$300,000, the business may claim the \$300,000 refund and carry forward the unused investment tax credit of \$700,000 up to seven years or until the credit is depleted, whichever occurs first.

261—64.5(80GA,HF677) Agreement, compliance, and repayment provisions.

64.5(1) Agreement. After the department negotiates the amount of benefits that the approved business shall receive and approves the application, the department shall enter into an agreement with the approved business. This agreement shall include, but is not limited to:

a. Provisions governing the requirements of the Act and these rules which the approved business agreed to satisfy as described in the approved application;

b. Reporting requirements such as an annual certification by the approved business that it is in compliance with the Act and these rules;

c. The amount or level of tax benefits the approved business shall receive as negotiated by the department; and

d. The method of determining the amount of benefits received by the approved business, which will be repaid in the event of the failure to maintain the requirements of the Act and these rules.

In addition the agreement shall specify that an approved business that fails to maintain the requirements of the Act and these rules shall not receive benefits for each year during which the business is not in compliance. The approved business and the department must execute the agreement within 180 days from the application approval date. If the agreement is not signed by that date, the department may rescind the benefits awarded to the approved business unless the approved business has received prior written permission from the department to exceed the time frame for an agreed-upon time period.

64.5(2) Annual certification. An approved business shall certify annually to the community and the department that the business is in compliance with the Act, these rules, and the agreement it has entered into with the department.

64.5(3) On-site monitoring. The approved business shall, upon prior reasonable notice and at any time (during normal business hours), permit the department, its representatives or the state auditor to examine, audit or copy any plans and work details pertaining to the project; all of the approved business's books, records, and accounts relating to the project; and all other documentation or materials related to the agreement.

64.5(4) *Repayment of benefits.* If the approved business has received benefits and fails to meet and maintain any of the requirements of the Act, these rules, or the agreement, the business is subject to repayment of all or a portion of the benefits that it has received. The repayment will be calculated as follows:

a. Job creation. If the approved business does not meet its job creation goal as defined in the agreement or fails to maintain the required number of jobs, the business shall repay a percentage of the tax credits claimed under subrules 64.4(2) and 64.4(3). The repayment percentage will be equal to the percentage of jobs that the approved business failed to create or maintain.

b. Wages and benefits. If the approved business fails to comply with the wage or benefit requirements outlined in the agreement, the business shall not receive the tax credits described in subrules 64.4(2) and 64.4(3) for each year during which the business is not in compliance.

c. Capital investment. If the approved business does not meet the capital investment requirement in the agreement, repayment of the tax credits claimed under subrules 64.4(2) and 64.4(3) shall be calculated as follows:

(1) If the business has not met the minimum investment requirement of \$1 million, the business shall repay all of the benefits that it has received.

(2) If the business has met 50 percent or less of the pledged capital investment, the business shall repay the same percentage in benefits as the percentage that the business failed to invest.

(3) If the business has met more than 50 percent but not more than 75 percent of the pledged capital investment, the business shall repay one-half of the percentage in benefits that the business failed to invest.

(4) If the business has met more than 75 percent but not more than 90 percent of the pledged capital investment, the business shall repay one-quarter of the percentage in benefits that the business failed to invest.

d. Selling, disposing, or razing of property. If, within five years of purchase, the approved business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, building, or other existing structures for which an investment tax credit or insurance premium tax credit was claimed under subrule 64.4(3), the income tax liability of the approved business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) 100 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within one full year after being placed in service.

(2) 80 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within two full years after being placed in service.

(3) 60 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within three full years after being placed in service.

(4) 40 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within four full years after being placed in service.

(5) 20 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within five full years after being placed in service.

64.5(5) *Layoffs or closures.* If an approved business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the benefits and assistance, the department may reduce or eliminate all or a portion of the benefits and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the benefits and assistance, the business may be subject to repayment of all or a portion of the benefits and assistance that it has received.

64.5(6) Extensions. If an approved business fails to meet its requirements under the Act, these rules, or the agreement, the department, in consultation with the community, may elect to grant the business a one-year period to meet the requirements. Only one 12-month extension will be granted to the approved business. Extensions may be granted only when one of the following conditions applies:

a. The delay in achievement of the job creation goal or pledged capital investment was caused by events over which the approved business had no control and could not have reasonably predicted and there is a reasonable probability that the originally proposed job creation goal or pledged capital investment can be achieved; or

b. The project does not fit under paragraph “a” and the approved business has demonstrated to the department’s satisfaction the existence of special circumstances.

261—64.6(80GA,HF677) Amendments. Any substantive change to an approved project will be considered a contract amendment. The amendment must be requested in writing. No amendment will be valid until approved by the department.

261—64.7(80GA,HF677) Other benefits. An approved business may receive other applicable federal, state, and local incentives and tax credits in addition to those provided in this program. However, an approved business which participates in this program shall not receive any funds, tax credits, or incentives from the new jobs and income program or the enterprise zone program.

These rules are intended to implement 2003 Iowa Acts, House File 677.

[Filed 10/14/03, Notice 8/6/03—published 11/12/03, effective 12/17/03]

GROW IOWA VALUES BOARD[264]

[Created by 2003 Iowa Acts, House File 692, section 78]

CHAPTER 1 RULES APPLICABLE TO ALL CHAPTERS

1.1(80GA,HF692,HF683)	Definitions
1.2(80GA,HF692,HF683)	Values fund
1.3(80GA,HF692,HF683)	Principles
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CHAPTER 2 ORGANIZATION AND STRUCTURE

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CHAPTER 1
RULES APPLICABLE TO ALL CHAPTERS

264—1.1(80GA,HF692,HF683) Definitions. Unless otherwise stated, the following definitions shall apply:

“*Advisory board*” means the loan and credit guarantee advisory board established in 2003 Iowa Acts, House File 692, section 106, and composed of seven members.

“*Applicant*” means a business that submits an application for Iowa values fund financial assistance.

“*Board*” or “*Iowa values board*” means the grow Iowa values board established in 2003 Iowa Acts, House File 692, section 78, and composed of 11 voting members and 4 ex officio nonvoting members.

“*Business*” includes, but is not limited to, a sole proprietorship, partnership or corporation organized for profit or not-for-profit under the laws of the state of Iowa or another state, the United States, or another country and which is likely to contribute to achieving the goals and performance measures as described in 2003 Iowa Acts, House File 692, section 83.

“*Committee*” or “*due diligence committee*” means the due diligence committee established in 2003 Iowa Acts, House File 692, section 80, and composed of five members.

“*Department*” means the Iowa department of economic development created in Iowa Code chapter 15.

“*Fund*” or “*values fund*” means the grow Iowa values fund created in 2003 Iowa Acts, House File 692, section 84.

“*Marketing board*” means the economic development marketing board created in 2003 Iowa Acts, House File 692, section 85, and composed of seven members.

“*Project*” means the activity or activities proposed by an applicant which will require state assistance to accomplish and will contribute to the achievement of the goals established in 2003 Iowa Acts, House File 692, section 83.

“*Recipient*” means a business that receives financial assistance from the fund.

“*Review commission*” means the Iowa values review commission established in 2003 Iowa Acts, House File 692, section 81, and composed of three members.

264—1.2(80GA,HF692,HF683) Values fund.

1.2(1) Purpose.

a. The statutory purpose of the grow Iowa values fund is to expand and stimulate the state economy, increase the wealth of Iowans, and increase the population of the state. The approval of an application should contribute to achieving one or more of such goals.

b. The fund is structured to provide financial assistance for business start-ups, business expansions, business modernization, business attraction, business retention, and marketing. The fund may also be used for rail, air, or river port transportation-related purposes when such use is directly related to an economic development project and the funds involved are also used to leverage other money. In addition, one half of one percent of the funds appropriated by 2003 Iowa Acts, House File 683, section 66, is allocated to the department for administrative purposes.

1.2(2) Values fund and board authority. The values fund includes money appropriated to the fund by the general assembly, interest earned, repayments and recaptures of loans and grants. The fund is under the control of the board. The board shall approve or deny applications for financial assistance from money appropriated to the fund pursuant to 2003 Iowa Acts, House File 683, section 66.

1.2(3) Allocation of money in the fund.

a. Money appropriated to the fund is to be used for the purposes stated in subrule 1.2(1), including funding for programs administered by the department. These appropriations are subject to actual receipt of moneys by the fund. If money received by the fund is less than the amount appropriated, such amount will be prorated proportionately. The board shall allocate a percentage of the moneys for business start-ups, business expansion, business modernization, business attraction, business retention, and marketing. The board will allocate funds semiannually. The board may adjust the allocation if it determines that it is necessary to do so to ensure the availability of funds in those categories in which the greatest need is demonstrated to exist or to respond to investment opportunities. The board may allocate an amount to the VAAPFAP program (rules for the VAAPFAP program are located at 261—Chapter 57), the CEBA program (rules for the CEBA program are located at 261—Chapter 53), the entrepreneurial ventures assistance (EVA) program (rules for the EVA program are located at 261—Chapter 60), the targeted small business financial assistance program (TSBFAP)(rules for the TSBFAP are located at 261—Chapter 55) and other programs administered by the department. The department may use funds appropriated under 2003 Iowa Acts, House File 683, section 66, to procure technical assistance from either the public or private sector, for information technology purposes, and for rail, air, or river port transportation-related purposes.

The board may allocate a portion of the funds to assist start-up businesses. Start-up businesses are defined as those that have been in business for less than three years. A start-up business shall demonstrate that its project has an identifiable, viable market; a viable product ready for market; and a commitment to stay in Iowa. Start-up businesses are exempt from the wage level and job count requirements in these rules.

b. Applications submitted by businesses seeking financial assistance from programs that are administered by the department, but funded with values fund money shall comply with the department's application procedures for those programs. Notwithstanding the foregoing, the board shall have final authority to approve or deny such applications where such authority is granted to the board by law.

264—1.3(80GA,HF692,HF683) Principles. In reviewing applications for values fund assistance, the board, the committee and the department will encourage applicants to give consideration to the following principles:

1.3(1) Efficient and effective use of land resources and existing infrastructure by encouraging development in areas having existing infrastructure or the capacity to avoid costly duplication of services and costly use of land.

1.3(2) Provision for a variety of transportation choices, including pedestrian traffic.

1.3(3) Maintenance of local cultural, historical and natural environmental features.

1.3(4) Conservation of open space and farmland and preservation of critical environmental areas.

1.3(5) Promotion of the safety, livability, and revitalization of existing urban and rural communities.

264—1.4(80GA,HF692,HF683) Federal funds and the Section 106 process. If it is determined that Section 106 of the National Historic Preservation Act (Section 106) applies to a project receiving an award of federal money from the fund, the recipient shall comply with applicable requirements and cooperate with the board, the department and the department of cultural affairs in ensuring compliance with the requirements of Section 106. The Section 106 process requires recipients of federal funds to take into account the effect of their undertakings on historic properties and afford the state historic preservation office (SHPO) a reasonable opportunity to comment on such undertakings. It is determined that Section 106 applies to a project, compliance with the Section 106 process shall be a condition of disbursement of funds.

264—1.5(80GA,HF692,HF683) Contract administration.

1.5(1) *Notice of award.* Successful applicants will be notified in writing of the board's award of assistance, including any conditions and terms of the approval.

1.5(2) *Contract required.* The board shall direct the department to prepare an agreement, which includes, but is not limited to, a description of the project to be completed by the business; the wage, job and education standards of the jobs to be created or retained that contribute to attaining the statutory goals of the fund; length of the project period; conditions to disbursement as approved by the board; and the reimbursement requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback provisions") to be negotiated on a project-by-project basis. Successful applicants will be required to execute an agreement within 120 days of the approval. Failure to do so may result in action by the board to rescind the award. The 120-day time limit may be extended by the board for good cause shown.

1.5(3) *Amendments.* Any substantive change to a funded project will require a contract amendment approved by the board. Substantive changes include, but are not limited to, contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries. No amendment will be valid until approved by the board.

264—1.6(80GA,HF692,HF683) Rules expiration date. Rescinded IAB 11/12/03, effective 10/22/03.

These rules are intended to implement 2003 Iowa Acts, House Files 692 and 683.

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[Filed emergency 10/22/03 after Notice 9/17/03—published 11/12/03, effective 10/22/03]



CHAPTER 2 ORGANIZATION AND STRUCTURE

264—2.1(80GA,HF692,HF683) Location and administration.

1. The board, committee, advisory board, and marketing board are located within the Iowa department of economic development for administrative purposes.
2. The department shall provide office space, staff assistance and budget money to pay the expenses of the board, committee, advisory board and marketing board.
3. Requests for information about the board, committee, advisory board or marketing board may be made by contacting the Board of Directors, Iowa Values Fund, 200 East Grand Avenue, Des Moines, Iowa 50309. Information about the board, committee, advisory board and marketing board is also available at www.iowasmartidea.com.

264—2.2(80GA,HF692,HF683) Organizational structure. The values fund legislation, 2003 Iowa Acts, House File 692, establishes the board, the committee, the advisory board, the marketing board, and the review committee.

2.2(1) Board.

- a. The values fund board is comprised of 11 voting members appointed by the governor and 4 nonvoting, ex officio members appointed by the legislature.
- b. A majority of the voting members of the board constitutes a quorum.
- c. Once a quorum, 6 members, is convened, an affirmative vote of the majority of voting board members present is required for a motion to pass.
- d. The board annually elects a chairperson and vice-chairperson. The voting members of the board are appointed for three-year staggered terms. There is no statutory limitation to the number of terms a voting member may serve.
- e. The duties of the board are listed in 2003 Iowa Acts, House File 692, section 79. By statute, the board receives recommendations from the marketing committee and the due diligence committee. In performing its functions, the board may also seek the expertise of other boards, committees, agencies, and other individuals and organizations as deemed appropriate by the board. The board may direct a portion of certain funds to obtain technical assistance and for information technology purposes.

2.2(2) Committee.

- a. The due diligence committee consists of five voting members of the board elected annually by the voting members of the board. Committee members must have expertise in banking and entrepreneurship. The chairperson and vice-chairperson of the committee are elected by and from the committee members.
- b. A majority of the committee constitutes a quorum.
- c. The duties of the committee are to conduct a thorough review of proposed projects and make recommendations to the board as to whether such projects are practical and whether requests for funding are likely to contribute to achievement of the goals set forth in 2003 Iowa Acts, House File 692, section 83, except projects to be funded under the economic development loan and credit guarantee program created in 2003 Iowa Acts, House File 692, section 104. Committee recommendations may include imposing conditions on or rejecting a proposed expenditure.
- d. In discharging its fiduciary obligations, the committee may take all reasonable steps to collect the information it needs to make an informed decision about a proposed project. The committee may use all available resources it deems appropriate to thoroughly evaluate a proposed project and develop a recommendation for the board.

2.2(3) Marketing board. The marketing board is an advisory board composed of seven members, two of whom must be members of the values fund board. A duty of the marketing board is to accept proposals for development of a marketing strategy for the state of Iowa for recommendation to the board and implementation and administration by the department. Any such marketing strategy must be designed to promote the state of Iowa as a lifestyle, increase the population of the state, increase the wealth of Iowans and expand and stimulate the Iowa economy as directed by 2003 Iowa Acts, House File 692, section 83.

2.2(4) Loan and credit guarantee advisory board. The loan and credit guarantee board is an advisory board composed of seven members to advise the department with respect to the loan and credit guarantee program created in 2003 Iowa Acts, House File 692, section 104, and make recommendations to the department as to disposition of all applications for assistance under the program.

264—2.3(80GA,HF692,HF683) Board procedures.

2.3(1) Meetings and agendas. Meetings of the board, committee, advisory board and marketing board are generally held monthly at the offices of the department which are located at 200 East Grand Avenue, Des Moines, Iowa. By notice of the regularly published meeting agenda, the board, committee, advisory board and marketing board may hold regular or special meetings at other locations within the state. Meeting agendas are available on the department's Web site at www.iowasmartidea.com.

2.3(2) Meeting procedures.

a. Any interested party may attend and observe board, committee, advisory board and marketing board meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

b. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude any person who fails to comply with that order.

c. Open session and closed session proceedings are electronically recorded. Minutes of open meetings are available for viewing at the department's offices or through the Web site at www.iowasmartidea.com.

2.3(3) Board committees. The board chairperson may appoint committees deemed necessary to accomplish the work of the board. The following committees have been appointed to assist the board: strategic plan committee, administrative rules committee, applications and other forms committee. These committees may be dissolved as deemed appropriate by the chairperson, and other committees may from time to time be appointed for specific purposes.

264—2.4(80GA,HF692,HF683) Board conflict of interest procedures.

2.4(1) Board members shall disclose any known actual or potential conflicts of interest they, or their immediate family, may have in connection with financial assistance applications submitted to the board. For purposes of this rule, "immediate family" means a board member's spouse, children, grandchildren and parents. Disclosures may be made in writing and submitted to the board chairperson or may be made verbally at a meeting of the board and be reflected in the minutes.

2.4(2) Nonvoting and nonparticipation in decision making. If a board member has identified and disclosed a potential or actual conflict of interest, that person shall not vote on the matter or participate in any discussions relating to the matter.

2.4(3) Projects from board member's county. A member of the board shall abstain from voting on applications for financial assistance to any project which is located in the county in which the member resides.

These rules are intended to implement 2003 Iowa Acts, House Files 692 and 683.

[Filed emergency 10/22/03 after Notice 9/17/03—published 11/12/03, effective 10/22/03]

CHAPTER 3 GROW IOWA VALUES FUND FINANCIAL ASSISTANCE

264—3.1(80GA,HF692,HF683) Eligible applicants. Only businesses are eligible to apply to the department for financial assistance under the grow Iowa values fund.

264—3.2(80GA,HF692,HF683) Eligibility requirements.

3.2(1) The committee and the board will consider all applications that would contribute to attaining the statutory goals of the fund. The board and committee should look for opportunities to support expansion in the following areas:

- a. Life sciences.
- b. Advanced manufacturing.
- c. Information solutions.

3.2(2) Wage requirements and award amounts.

- a. Wage requirements. Fifty percent or more of the jobs must start at 110 percent of the average county wage or average regional wage, whichever is lower.
- b. Award amounts. Award amounts shall be based on the average wage of those jobs that meet or exceed the following wage requirements (only qualified jobs will be counted):

<u>Percent of Average County Wage or Average Regional Wage</u>	<u>Award Amount</u>
110%	up to \$3,000 per job
120%	up to \$4,000 per job
130%	up to \$5,000 per job
140%	up to \$6,000 per job
150%	up to \$7,000 per job

c. Definitions. The percentages described in paragraph "b" are based on the average county wage or average regional wage, whichever is lower. As used in this rule, the following definitions shall apply:

"Average county wage" means the average the department calculates annually using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Average regional wage" means the wage calculated annually by the department using a methodology in which each particular county is considered to be a geographic center of a larger economic region. The wage threshold for the central county is calculated using the average wage of that county, plus each adjoining Iowa county, so that the resulting figure reflects a regional average that is representative of the true labor market area. In performing the calculation, the greatest importance is given to the central county by weighting it by a factor of four, compared to a weighting of one for each of the other adjoining counties. The central county is given the greatest importance in the calculation because most of the employees in that central county will come from that same county, as compared to commuters from other adjoining counties.

d. Award terms and amounts shall be based on factors including, but not limited to, percentage of loan versus forgivable loan, industry cluster, potential for agglomeration, job quality and benefits.

3.2(3) Retail businesses shall not be eligible to apply for funding.

264—3.3(80GA,HF692,HF683) Forms of assistance. Financial assistance by the grow Iowa values fund may consist of, but not be limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

264—3.4(80GA,HF692,HF683) Application.

3.4(1) To apply for moneys from the grow Iowa values fund, a business shall submit an application to the department for consideration by the committee and the board of directors of the grow Iowa values fund in a form provided by the department on behalf of the board.

3.4(2) A business or group of businesses may submit an application for assistance from the fund.

3.4(3) Requests for an application should be directed to the Board of Directors, Grow Iowa Values Fund, 200 East Grand Avenue, Des Moines, Iowa 50309.

3.4(4) Rescinded IAB 11/12/03, effective 10/22/03.

264—3.5(80GA,HF692,HF683) Application contents. An application to request assistance from the grow Iowa values fund shall include, but not be limited to, the following:

1. A business plan that describes the business's current operations and future plans.
2. A description of the proposed project including an identification of the community or location for the project.
3. Documentation that the business meets the eligibility requirements.
4. A description of the jobs to be created or retained, including information concerning wage rates and progression, continuing education requirements, turnover rate, type of job (e.g., full-time, part-time, career-type), health benefits, and any other factors relating to the quality of the jobs to be created or retained.
5. An identification of competitors of the applicant business.
6. An applicant shall be required to include information regarding benefits to the state of Iowa from the proposed project in terms of return on investment by the state in the project. A recipient of values fund money shall annually submit a statement to the board of directors of the grow Iowa values fund regarding the progress achieved in meeting the intended return on investment to the state of Iowa.
7. A description of any violations of law in the preceding five years including, but not limited to, worker safety statutes, rules and regulations. The description must include violations of a federal or state environmental protection statute, regulation or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the business shall provide an explanation of any mitigating circumstances and corrective action taken to achieve compliance. If requested by the department, the business shall provide copies of materials documenting the type of violation(s), any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department, the committee and the board in understanding the nature of any violation(s).
8. A certification by the business that the information provided in the application is true and accurate to the best of its knowledge.
9. A release of information to permit the department, the committee, the board, and their respective attorneys and agents, to reasonably evaluate the application.
10. Financial information to the extent requested by the board, including information about the applicant's owners, investors, and business structure.
11. A certification by the applicant that it plans to stay in Iowa and evidence to support this commitment.
12. A description of how the applicant's project will promote one or more of the goals identified in 264—subrule 1.2(1).

264—3.6(80GA,HF692,HF683) Selection criteria. In reviewing applications for financial assistance, the board, the department and the committee shall consider, in addition to the requirements described in 264—Chapter 1, the following criteria:

1. The extent of financial and other assistance to be provided by local resources.
2. The extent of private contributions to be provided by private parties, including the involvement of financial institutions.
3. The need of the business for financial assistance from governmental sources. Primary consideration will be given to projects for which the department determines that governmental assistance is most necessary for the success of the project.
4. The amount of other governmental financial assistance the applicant will apply for to complete the proposed project.
5. The level of need of the business, the community and region in which it is located as compared to the state as a whole.
6. The impact of the proposed project on the economy of the local and regional areas, and the state of Iowa.
7. The capacity of the business and the methodology to be used to document the return on investment by the state.

264—3.7(80GA,HF692,HF683) Rules expiration date. Rescinded IAB 11/12/03, effective 10/22/03.

These rules are intended to implement 2003 Iowa Acts, House Files 692 and 683.

[Filed emergency 7/30/03—published 8/20/03, effective 7/30/03]

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1. The first part of the report deals with the general situation of the country and the progress of the work.

2. The second part of the report deals with the results of the work and the progress of the work.

3. The third part of the report deals with the results of the work and the progress of the work.

4. The fourth part of the report deals with the results of the work and the progress of the work.

5. The fifth part of the report deals with the results of the work and the progress of the work.

6. The sixth part of the report deals with the results of the work and the progress of the work.

7. The seventh part of the report deals with the results of the work and the progress of the work.

8. The eighth part of the report deals with the results of the work and the progress of the work.

9. The ninth part of the report deals with the results of the work and the progress of the work.

10. The tenth part of the report deals with the results of the work and the progress of the work.

CHAPTER 4
UNIVERSITY AND COLLEGE FINANCIAL ASSISTANCE PROGRAM

264—4.1(80GA,HF683) Purpose. The purpose of this program is to provide financial assistance to institutions of higher learning under the control of the state board of regents. Financial assistance is available for:

1. Multiuse, goods manufacturing processes approved by the Food and Drug Administration of the United States Department of Health and Human Services, protein purification facilities for plant, animal, and chemical manufactured proteins;
2. Accelerating new business creation;
3. Innovation accelerators and business parks;
4. Incubator facilities;
5. Upgrading Food and Drug Administration drug approval laboratories located in Iowa City to a larger multi-client, goods manufacturing processes facility;
6. Crop and animal livestock facilities for the growing of transgenic crops and livestock, protein extraction facilities, containment facilities, and bioanalytical, biochemical, chemical, and microbiological support facilities;
7. A national center for food safety and security; and
8. Advanced laboratory space.

264—4.2(80GA,HF683) Definitions. In addition to the definitions in 264—Chapter 1, the following definitions shall apply to this program:

"Foundation" means an organization or entity designated by a university and closely affiliated with a regents institution or an organization or entity designated by a private college president and closely affiliated with the private college.

"Private colleges" means accredited private institutions as defined in Iowa Code section 261.9.

"Project or facility" means the activities for which financial assistance is available as described in rule 264—4.1(80GA,HF683).

"Regents institutions" means institutions of higher learning under the control of the state board of regents.

264—4.3(80GA,HF683) Eligible applicants. Regents institutions and private colleges are eligible to apply for assistance.

4.3(1) Regents institutions may apply to use financial assistance moneys under this program for purposes of a public and private joint venture to acquire infrastructure assets or research facilities or to leverage moneys in a manner consistent with meeting the goals provided in 2003 Iowa Acts, House File 692, section 83.

4.3(2) Private colleges shall utilize funds awarded to leverage other moneys.

264—4.4(80GA,HF683) Forms of assistance. Forms of financial assistance award include, but are not limited to, loans, forgivable loans, grants, and other forms of assistance the board deems appropriate.

264—4.5(80GA,HF683) Application.

4.5(1) To apply for program moneys, regents institutions and private colleges shall submit an application to the department on a form provided by the department.

4.5(2) Requests for an application should be directed to the Board of Directors, Grow Iowa Values Fund, 200 East Grand Avenue, Des Moines, Iowa 50309.

264—4.6(80GA,HF683) Application contents. An application to request assistance shall include, but not be limited to, the following:

1. Project description.
2. Evidence of private industry demand and support for the project.
3. Demonstration of statewide or regional impact as a result of the project.
4. Project budget, including proposed sources and uses of funds.

264—4.7(80GA,HF683) Reserved amounts. Of the funds appropriated for this program the following amounts shall be reserved for each of the regents institutions: \$10 million for Iowa State University; \$10 million for the University of Iowa; and \$5 million for the University of Northern Iowa. Disbursement of such funds is subject to application to and approval of the grow Iowa values board and subject to actual receipt of moneys by the fund. If money received by the fund is less than the amount appropriated, such amount will be prorated proportionately.

264—4.8(80GA,HF683) Multiyear awards. The board may approve disbursement of funds over a period of several fiscal years to effectively utilize the funds appropriated for the purposes prescribed by statute.

264—4.9(80GA,HF683) Review process. The due diligence committee shall review and recommend funding for eligible projects to the board.

264—4.10(80GA,HF683) Evaluation criteria. Application review criteria include, but are not limited to, the following:

- 4.10(1) Amount of other financing for the project.
 - 4.10(2) Amount of private funds invested in or lent to the project.
 - 4.10(3) Cost efficiency of providing new project infrastructure compared with use of suitable existing infrastructure where possible and feasible.
 - 4.10(4) Time period required to meet performance measures.
 - 4.10(5) Meeting the performance goals and measures cited in 2003 Iowa Acts, House File 692, section 83.
 - 4.10(6) Private industry demand for the project.
 - 4.10(7) Statewide or regional impact of the project.
 - 4.10(8) The degree to which the project furthers the development of life sciences, advanced manufacturing, and information solutions.
 - 4.10(9) The degree to which the project furthers the development of regional activity.
- These rules are intended to implement 2003 Iowa Acts, House File 683, section 67.

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CHAPTER 51
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

264—51.1(17A,22) Statement of policy, purpose and scope of chapter.

51.1(1) The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22; department staff shall cooperate with members of the public in implementing the provisions of that chapter.

51.1(2) This chapter does not:

- a. Require the board to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
- b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
- c. Govern the maintenance or disclosure of, notification of or access to records in the possession of the board which are governed by the rules of another agency.
- d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.
- e. Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.
- f. Require the board to create, compare or procure a record solely for the purpose of making it available.

264—51.2(17A,22) Definitions. As used in this chapter:

"Board" means the grow Iowa values board.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the board is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" means the director of the Iowa department of economic development or the director's designee.

"Department" means the Iowa department of economic development, the agency providing administrative support to the board.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" means the whole or a part of a "public record," as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the board.

"Record system" means any group of records under the control of the board from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

264—51.3(17A,22) Requests for access to records.

51.3(1) Location of record. A request for access to a record should be directed to the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. If a request for access to a record is misdirected, department personnel will promptly forward the request to the appropriate person within the department.

51.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

51.3(3) Request for access to open records.

a. Requests for access to open records may be made in writing, in person, electronically, or by telephone.

b. Mail or telephone requests shall include the name, address, telephone number, and the E-mail address (if available) of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

c. For all requested records, the person making the request shall set forth all available information that would assist in locating the records.

d. The request shall set out the maximum search fee the requester is prepared to pay. If the maximum search fee is reached before all the requested records have been located and copied, the requester shall be notified and asked for further directions before the search proceeds.

51.3(4) Response to requests.

a. **Timing.** Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. Advance requests to have records available on a certain date may be made by telephone or correspondence. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Records will be produced for inspection at the earliest date possible following the request. Records should be inspected within ten business days after notice is given that the records have been located and are available for inspection. After ten business days, the records will be returned to storage and additional costs may be imposed for having to produce them again.

b. **Reasonable delay.** Access to an open record may be delayed for one of the purposes authorized by:

(1) Iowa Code section 22.8(4), which includes good faith delay to seek an injunction or determine if the board is entitled to seek an injunction; to determine if the public records are confidential; or to determine if the confidential record should be made available (A reasonable delay for this purpose shall not exceed 20 calendar days and ordinarily should not exceed 10 business days); or

(2) Iowa Code section 22.10(4), which relates to civil enforcement.

c. **Notice to requester.** The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

d. **Denial of access to records.** The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 51.4(17A,22) and other applicable provisions of law.

51.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization. Individuals will not be given access to the area where the records are kept and will not be permitted to search the files.

51.3(6) Copying. A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available in the board office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

51.3(7) Access to records for examination and copying.

a. *Location.* As specified in Iowa Code section 22.3, the board will provide a suitable place for examination of public records. If it is impracticable to do the work at the board's office at 200 East Grand Avenue, Des Moines, Iowa, the person desiring to examine or copy shall pay all necessary expenses of providing a place for the work. All expenses of the work shall be paid by the person desiring to examine or copy the records.

b. *Paper files.* Hard copies of public records will be made available for examination and copying.

c. *Electronic files.* The board will take reasonable steps to provide on-site access to electronically stored public records. To the extent the department's technology permits, electronic records, including E-mails, will be made available through a secure, on-site computer terminal. If a requester prefers, copies of electronic records located during a records search will be provided and copying fees will apply.

d. *Data processing software.* Reserved.

e. *Tapes.* Public records maintained in the form of cassette, videotape or similar form are available for public examination. Upon request, copies of tapes will be made available and the individual requesting the tape will bear all actual costs of copying.

f. *Mixed records.* If a record contains both public and confidential information, the department will remove the confidential material before making it available for examination or copying. For paper files, a copy of the original will be made and the confidential material will be marked out. Copying fees will apply. For electronic files, if the department is technologically able to block access to fields containing confidential materials, records will be made available as described in paragraph 51.3(7) "c" above.

51.3(8) Fees.

a. *When charged.* The board may charge fees in connection with the examination, search, retrieval, restoration or copying of records. To the extent permitted by applicable provisions of law, the payment of fees may be waived in the case of small requests of ten or fewer copies when the imposition of fees is inequitable or when a waiver is in the public interest.

b. *Copying, faxing and postage costs.* Price schedules for published materials and for photocopies of records supplied by the board shall be prominently posted in board offices. Copies of records may be made by or for members of the public on department photocopy machines or from electronic storage systems at cost as determined and posted in board offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester. Actual costs to fax a document may also be charged to the requester.

c. *Search and supervisory fee.* An hourly fee may be charged for actual department and board expenses in searching for, and supervising the examination and copying of, requested records when the time required is in excess of one hour. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. The board shall post in board offices the hourly fees to be charged in routine cases for search and supervision of records. The department shall give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the examination and copying of particular records in question, and shall indicate the amount of that higher hourly wage to the requester.

d. *Computer-stored information.* All costs (including staff time) for retrieval, restoration and copying of information stored in electronic storage systems will be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

264—51.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 51.3(17A,22).

51.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

51.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

51.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

51.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a.* The name and title or position of the custodian responsible for the denial; and
- b.* A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

51.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

264—51.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

51.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

51.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the board by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

51.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the board does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) (trade secrets), 22.7(6) (advantage to competitors), or 22.7(18) (communications not required by law, rule, procedure or contract), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

51.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

51.5(5) Request granted or deferred. If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

51.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

264—51.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

264—51.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Appearance of counsel before the board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the board to disclose records about that person to the person's attorney.

264—51.8(17A,22) Notice to suppliers of information. When the board requests a person to supply information about that person, the board shall notify the person of the use that will be made of the information, which persons outside the board might routinely be provided the information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

264—51.9(17A,22) Disclosures without the consent of the subject.

51.9(1) Open records are routinely disclosed without the consent of the subject.

51.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.** For a routine use as defined in rule 51.10(17A,22) or in the notice for a particular record system.
- b.** To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.** To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if an authorized representative of such government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.
- d.** To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

- e. To the legislative services agency.
- f. In the course of employee disciplinary proceedings.
- g. In response to a court order or subpoena.

264—51.10(17A,22) Routine use.

51.10(1) “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

51.10(2) To the extent allowed by law, the following uses are considered routine uses of all board records:

- a. Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.
- b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.
- d. Transfers of information within the department, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.
- f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

264—51.11(17A,22) Consensual disclosure of confidential records.

51.11(1) *Consent to disclosure by a subject individual.* The subject may consent in writing to board disclosure of confidential records as provided in rule 51.7(17A,22).

51.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the board may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

264—51.12(17A,22) Release to subject.

51.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 51.7(17A,22). However, the board need not release the following records to the subject:

- a. The identity of a person providing information to the board need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).
- b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
- c. Peace officers’ investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)
- d. Any other records as authorized by law.

51.12(2) When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to other subjects.

264—51.13(17A,22) Availability of records.

51.13(1) Open records. Board records are open for public inspection and copying unless otherwise provided by rule or law.

51.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 73.2)
- b. Tax records made available to the board. (Iowa Code sections 422.20 and 422.72)
- c. Records which are exempt from disclosure under Iowa Code section 22.7, including, but not limited to:

- (1) Industrial prospect files of the department which are considered confidential under Iowa Code section 22.7(8).

- (2) Trade secrets which are treated as confidential under Iowa Code section 22.7(3).

- (3) Reports which, if released, would give advantage to competitors and serve no public purpose. These records are considered confidential under Iowa Code section 22.7(6).

- (4) Communications not required by rule, law, procedure or contract to the extent that the board reasonably believes that such communications would not be made if the supplier knew the information would be made available for general public examination. These records are confidential under Iowa Code section 22.7(18).

- d. Client database. The department maintains a database of business prospects which may be made available to the board for review. This list identifies companies that may be seeking to expand or locate their businesses in Iowa. This list is considered confidential under Iowa Code sections 22.7(3), 22.7(6), 22.7(8) and 22.7(18).

- e. Minutes of closed meetings of a governmental body as permitted under Iowa Code section 21.5(4).

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

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

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

- h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 1.503(3), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Iowa Code of Professional Responsibility for Lawyers, and case law.

- i. Data processing software, as defined in Iowa Code section 22.3A, which is developed by a governmental body.

- j. Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.

- k. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

- l. Any other records considered confidential by law.

51.13(3) Authority to release confidential records. The board may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other provision of law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 51.5(17A,22). If the board initially determines that it will release such records, the board may, when appropriate, notify interested parties and withhold the records from inspection as provided in subrule 51.4(3).

264—51.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 51.12(17A,22). This rule describes the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Unless otherwise stated, the authority for the board to maintain the record is provided by 2003 Iowa Acts, House File 692, sections 77 to 86. The record systems maintained by the department on behalf of the board are:

51.14(1) Travel records. The department maintains travel records of board member travel. Personally identifiable information collected includes the name, address, and social security number of the individual. This information is collected pursuant to 2003 Iowa Acts, House File 534, section 95. Data processing systems do not match, collate or compare the personally identifiable information collected with similar information collected by other state agencies.

51.14(2) Claim vouchers. Requests for reimbursement from board members, contractors, and grantees are maintained by the department on behalf of the board. These records contain the name, address and social security number of the individual requesting reimbursement for expenses. This information is collected pursuant to 2003 Iowa Acts, House File 534, section 96. The information is not maintained in a data processing system which matches, collates or compares the information with other systems containing personally identifiable information.

51.14(3) Contracts and grant records. Contractual agreements and grant agreements are maintained by the department on behalf of the board. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address and social security number of the contractor/grantee. Other information in these records may include the proposal or work statement of the contractor or grant recipient, budget figures, modifications, correspondence and business information. Personally identifiable information is not contained in a data processing system which collates, matches or compares this information with other systems containing personally identifiable information.

51.14(4) Grant and loan application records. The board administers a variety of state and federal grant and loan programs. Records of persons or organizations applying for grants, awards or funds are available through the board. These records may contain information about individuals collected pursuant to specific federal or state statutes or regulations. Personally identifiable information such as name, address, social security number and telephone number may be included in these records when the applicant is an individual. Many program applicants are political subdivisions or corporations, not individuals.

51.14(5) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copies.

264—51.15(17A,22) Other groups of records. This rule describes groups of records maintained by the department on behalf of the board other than record systems as defined in rule 51.12(17A,22). These records are routinely available to the public. However, the board's files of these records may contain confidential information as discussed in rule 51.13(17A,22). The records listed may contain information about individuals. Unless otherwise stated, the authority for the board to maintain the record is provided by Iowa Code chapter 15.

51.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. Public documents generated during the promulgation of board rules, including notices and public comments, are available for public inspection. This information is not stored in an automated data processing system.

51.15(2) Board records. Agendas, minutes, and materials presented to the Iowa values board are available from the department except for confidential records. Those records concerning closed sessions are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

51.15(3) Statistical reports. Periodic reports of various board programs are available from the Iowa department of economic development. Statistical reports do not contain personally identifiable information.

51.15(4) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 51.13(17A,22).

51.15(5) Publications. Publications include news releases, annual reports, project reports, board newsletters, etc., which describe various agency programs and activities. Board news releases, project reports, and newsletters may contain information about individuals including agency staff or members of board councils or committees.

51.15(6) Address lists. The names and mailing addresses of members of boards and councils, work groups, program grantees and members of the public indicating interest in particular programs and activities of the board are maintained to generate mailing labels for mass distribution of board mailings.

51.15(7) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that may be confidential according to rule 51.13(17A,22).

51.15(8) Published materials. The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

These rules are intended to implement Iowa Code chapters 17A and 22.

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CHAPTER 52 BOARD PROCEDURE FOR RULE MAKING

264—52.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

264—52.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) "a," solicit comments from the public on a subject matter of possible rule making by the board by causing notice of the subject matter to be published in the Iowa Administrative Bulletin and indicating where, when, and how persons may comment.

264—52.3(17A) Public rule-making docket.

52.3(1) Docket maintained. The board shall maintain a current public rule-making docket.

52.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the board. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration to the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1) "a," the name and address of board personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects upon which public comment is desired.

52.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) "a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule's becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule.
- b. A citation to all published notices relating to the proceeding.
- c. Where written submissions on the proposed rule may be inspected.
- d. The time during which written submissions may be made.
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made.
- f. Whether a written request for the issuance of a regulatory analysis or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected.
- g. The current status of the proposed rule and any board determinations with respect thereto.
- h. Any known timetable for board decisions or other action in the proceeding.
- i. The date of the rule's adoption.
- j. The date of the rule's filing, indexing, and publication.
- k. The date on which the rule will become effective.
- l. Where the rule-making record may be inspected.

264—52.4(17A) Notice of proposed rule making.

52.4(1) Contents. At least 35 days before the adoption of a rule, the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule.
- b. The specific legal authority for the proposed rule.
- c. Except to the extent impracticable, the text of the proposed rule.
- d. Where, when, and how persons may present their views on the proposed rule.
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the board shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the board for the resolution of each of those issues.

52.4(2) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action must file with the board a written request indicating the name and address (including an E-mail address if electronic transmittal is requested) to which the notices shall be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail a copy of that notice to subscribers who have filed a written request for mailing with the board for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price, if any, which covers the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year. If persons have requested that the board electronically transmit a copy of the notice by E-mail, there shall be no charge for this service.

264—52.5(17A) Public participation.

52.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing or via electronic transmission, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the individual identified in the Notice of Intended Action.

52.5(2) Oral proceedings. The board may, at any time, schedule an oral proceeding on a proposed rule. The board shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
3. A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

The board may waive technical compliance with these procedures.

52.5(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) "b."

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. An employee of the board, or another person designated by the board who will be familiar with the substance of the proposed rules, shall preside at the oral proceeding on the proposed rules. If an employee of the board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is not necessary because the board will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at the proceeding are encouraged to notify the board at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the board decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. These submissions become the property of the board.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

52.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

The board may send notices of proposed rule making and a request for comments to any agency, organization, or association known to it to have a direct interest or expertise pertaining to the substance of the proposed rule.

52.5(5) Accessibility. The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person identified in the Notice of Intended Action in advance to arrange access or other needed services.

264—52.6(17A) Regulatory analysis.

52.6(1) Definition of small business. A “small business” is defined in Iowa Code section 17A.4A(7).

52.6(2) Distribution list. Small businesses or organizations of small businesses may be registered on the board’s small business impact list by making a written application addressed to the Director’s Office, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The application for registration shall state:

- a. The name of the small business or organization of small businesses.
- b. The address of the small business or organization of small businesses.
- c. The name of a person authorized to transact business for the applicant.
- d. A description of the applicant’s business or organization. An organization representing 25 or more persons who each qualify as a small business shall indicate that fact.
- e. Whether the registrant desires copies of Notices of Intended Action at cost or via electronic transmission, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The board may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The board may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses shall be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

52.6(3) Time of distribution. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail or electronically transmit to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the board shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

52.6(4) Qualified requesters for regulatory analysis—economic impact. The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2a) after a proper request from:

- a. The administrative rules coordinator.
- b. The administrative rules review committee.

52.6(5) *Qualified requesters for regulatory analysis—business impact.* The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2b) after a proper request from:

- a. The administrative rules review committee.
- b. The administrative rules coordinator.
- c. At least 25 or more persons who sign the request provided that each represents a different small business.
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

52.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the board shall adhere to the time lines described in Iowa Code section 17A.4A(4).

52.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

52.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4,5).

52.6(9) *Publication of a concise summary.* The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

52.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2a) unless a written request expressly waives one or more of the items listed therein.

52.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2b).

264—52.7(17A,25B) *Fiscal impact statement.* A rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

264—52.8(17A) *Time and manner of rule adoption.*

52.8(1) *Time of adoption.* The board shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

52.8(2) *Consideration of public comment.* Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

52.8(3) *Reliance on board expertise.* Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

264—52.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

52.9(1) Allowable variances. The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

52.9(2) Fair warning. In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

52.9(3) Petition for rule making. The board shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

52.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

264—52.10(17A) Exemptions from public rule-making procedures.

52.10(1) Omission of notice and comment. To the extent the board for good cause finds that notice and public participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

52.10(2) Categories exempt. The following narrowly tailored category of rules is exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by federal law, including federal statutes or regulations establishing conditions for federal funding of federal programs where the board is not exercising any options under federal law.

52.10(3) *Public proceedings on rules adopted without them.* The board may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 52.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a state agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 52.10(1). This petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of the petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 52.10(1) or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

264—52.11(17A) Concise statement of reasons.

52.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Director's Office, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received.

52.11(2) *Contents.* The concise statement of reasons shall contain:

- a. The reasons for adopting the rule.
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change.
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the board's reasons for overruling the arguments made against the rule.

52.11(3) *Time of issuance.* After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

264—52.12(17A) Contents, style, and form of rule.

52.12(1) *Contents.* Each rule adopted by the board shall contain the text of the rule and, in addition:

- a. The date the board adopted the rule.
- b. A brief explanation of the principal reasons for the rule-making action if the reasons are required by Iowa Code section 17A.4(1b), or the board in its discretion decides to include the reasons.
- c. A reference to all rules repealed, amended, or suspended by the rule.
- d. A reference to the specific statutory or other authority authorizing adoption of the rule.
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule.
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by Iowa Code section 17A.4(1b) or the board in its discretion decides to include the reasons.
- g. The effective date of the rule.

52.12(2) Documents incorporated by reference. The board may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board finds that the incorporation of its text in the board proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this board, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

52.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board. The board shall provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review either electronically or at the state law library.

At the request of the administrative code editor, the board shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

52.12(4) Style and form. In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

264—52.13(17A) Board rule-making record.

52.13(1) Requirement. The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

52.13(2) Contents. The board rule-making record shall contain:

a. Copies of or citations to all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of board submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based.

b. Copies of any portions of the board's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based.

c. All written petitions, requests, and submissions received by the board, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the board is authorized by law to keep them confidential; provided, however, that when any materials are deleted because they are authorized by law to be kept confidential, the board shall identify in the record the particular materials deleted and state the reasons for that deletion.

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations.

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based.

f. A copy of the rule and any concise statement of reasons prepared for that rule.

g. All petitions for amendment or repeal or suspension of the rule.

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general.

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code subsection 17A.4(4), and any board response to that objection.

j. A copy of any executive order concerning the rule.

52.13(3) *Effect of record.* Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

52.13(4) *Maintenance of record.* The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

264—52.14(17A) *Filing of rules.* The board shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.

264—52.15(17A) *Effectiveness of rules prior to publication.*

52.15(1) *Grounds.* The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

52.15(2) *Special notice.* When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term “all reasonable efforts” requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule.

264—52.16(17A) Review by board of rules.

52.16(1) Request for review. Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The board may refuse to conduct a review if it has conducted a review of the specified rule within five years prior to the filing of the written request.

52.16(2) Conduct of review. In conducting the formal review, the board shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the board's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any requests for exceptions to the rule received by the board or granted by the board. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection.

264—52.17(17A) Written criticisms of board rules. Any interested person may submit written criticism of a rule adopted by the board.

52.17(1) Where submitted, form. Rule criticisms shall be in writing and submitted to the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The criticism must be typewritten, or legibly hand-written in ink, and must substantially conform to the following form:

GROW IOWA VALUES BOARD	
Criticism of Rule: (specify rule)	
Reason(s) for Criticism:	
Submitted By:	Name:
	Address:
	Telephone Number:
	Signature:
	Date:

52.17(2) Maintenance. Written criticisms of board rules will be maintained in a separate record for a period of five years from the date of receipt by the board. This record will be open for public inspection.

These rules are intended to implement Iowa Code chapter 17A.

[Filed emergency 10/22/03 after Notice 9/17/03—published 11/12/03, effective 10/22/03]

CHAPTER 53
PETITION FOR RULE MAKING

264—53.1(17A) Petition for rule making. Any person or state agency may file a petition for rule making with the board at Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

BEFORE THE GROW IOWA VALUES BOARD

Petition by (Name of Petitioner) for the
(adoption, amendment, or repeal) of rules
relating to (state subject matter).

}

PETITION FOR
RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

3. A brief summary of petitioner's arguments in support of the action urged in the petition.

4. A brief summary of any data supporting the action urged in the petition.

5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

6. Any request by petitioner for a meeting provided for by subrule 53.4(1).

53.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

53.1(2) The board may deny a petition because it does not substantially conform to the required form.

264—53.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

264—53.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel.

264—53.4(17A) Board consideration.

53.4(1) *Forwarding of petition and meeting.* Within five working days after the filing of a petition, the board shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the board shall schedule a brief and informal meeting between the petitioner and a member of the board or the board's designee to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

53.4(2) *Action on petition.* Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

53.4(3) *Denial of petition for nonconformance with form.* Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7.

[Filed emergency 10/22/03 after Notice 9/17/03—published 11/12/03, effective 10/22/03]

CHAPTER 54

PETITION FOR DECLARATORY ORDER

264—54.1(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE GROW IOWA VALUES BOARD

Petition by (Name of Petitioner)
for a Declaratory Order on
(Cite provisions of law involved).

}

PETITION FOR
DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers. A request which seeks to change rather than to declare or determine policy will be denied.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by the petitioner for a meeting provided for by rule 264—54.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

264—54.2(17A) Notice of petition. Within five working days of receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 264—54.6(17A) to whom notice is required by any provision of law. The board may give notice to any other persons.

264—54.3(17A) Intervention.

54.3(1) Nondiscretionary intervention. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 working days of the filing of a petition for declaratory order and before the 30-day time for board action under rule 264—54.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

54.3(2) Discretionary intervention. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

54.3(3) Filing and form of petition for intervention. A petition for intervention shall be filed at the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be type-written or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE GROW IOWA VALUES BOARD

Petition by (Name of Original Petitioner)
for a Declaratory Order on
(Cite provisions of law cited in original
petition).

}

PETITION FOR
INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented by the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and the intervenor's representative, and a statement indicating the person to whom communications should be directed.

264—54.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

264—54.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel.

264—54.6(17A) Service and filing of petitions and other papers.

54.6(1) Service. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served by mailing or personal delivery upon each of the parties of record to the proceeding, and on all other persons identified as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

54.6(2) Filing. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Grow Iowa Values Board, c/o Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. All documents are considered filed upon receipt.

264—54.7(17A) Consideration. Upon request by the petitioner, the board shall schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

264—54.8(17A) Action on petition.

54.8(1) Time frame for action. Within 30 days after receipt of a petition for a declaratory order, the board or the board's designee shall take action on the petition.

54.8(2) Date of issuance of order. The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means unless another date is specified in the order.

264—54.9(17A) Refusal to issue order.

54.9(1) Reasons for refusal to issue order. The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

54.9(2) *Action on refusal.* A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

54.9(3) *Filing of new petition.* Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the board's refusal to issue an order.

264—54.10(17A) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

264—54.11(17A) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

264—54.12(17A) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9.

[Filed emergency 10/22/03 after Notice 9/17/03—published 11/12/03, effective 10/22/03]

CHAPTER 55 UNIFORM WAIVER AND VARIANCE RULES

264—55.1(17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the board. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the board.

55.1(1) Definitions.

“Board” or *“grow Iowa values board”* means the grow Iowa values board established by 2003 Iowa Acts, House File 692.

“Person” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

“Waiver or variance” means a board 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.

55.1(2) Authority.

a. A waiver or variance from rules adopted by the board may be granted in accordance with this chapter if (1) the board has authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

264—55.2(17A,ExecOrd11) Board discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the board upon consideration of all relevant factors.

55.2(1) Criteria for waiver or variance. The board may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the board finds each of the following:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and

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

In determining whether waiver or variance should be granted, the board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

55.2(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other board rule authorizes the board to do so, and the board deems it appropriate to do so.

264—55.3(17A,ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.

55.3(1) Application. All petitions for waiver or variance must be submitted in writing to the Grow Iowa Values Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

55.3(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver or variance is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- c. The relevant facts that the petitioner believes would justify a waiver or variance.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A history of any prior contacts between the board and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Any information known to the requester regarding the board's treatment of similar cases.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the grant of a petition.
- 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 regarding the request to furnish the board with information relevant to the waiver or variance.

55.3(3) Burden of persuasion. When a petition is filed for a waiver or variance from a board rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant the petitioner a waiver or variance.

264—55.4(17A,ExecOrd11) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

264—55.5(17A,ExecOrd11) Board responsibilities regarding petition for waiver or variance.

55.5(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's designee, a committee of the board, or a quorum of the board.

55.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of a rule filed within a contested case; (b) when the board so provides by rule or order; or (c) when a statute so requires.

55.5(3) Ruling. 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 portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

55.5(4) Conditions. The board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

55.5(5) Time for ruling. The board shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

55.5(6) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board.

55.5(7) Service of order. Within seven days of its issuance, any order issued under this chapter 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.

264—55.6(17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the board shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Grow Iowa Values Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819.

264—55.7(17A,ExecOrd11) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver or variance upon appropriate notice if the board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

264—55.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

264—55.9(17A,ExecOrd11) Defense. After the board issues an order granting a waiver or variance, the order is a defense within its 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.

264—55.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver or variance is final board action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A
Sample Petition (Request) for Waiver/Variance

BEFORE THE GROW IOWA VALUES BOARD

Petition by (insert name of petitioner)
for the waiver of (insert rule citation)
relating to (insert the subject matter).

}

PETITION FOR
WAIVER

Requests for waiver or variance from a board rule shall include the following information in the petition for waiver or variance where applicable and known:

- a. Petitioner's (person asking for a waiver or variance) name, address, and telephone number.
- b. Citation of the specific rule from which a waiver or variance is requested.
- c. Description of the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.
- d. Important facts that the petitioner believes justify a waiver or variance. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.
- e. History of prior contacts between the board and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Information known to the petitioner regarding the board's treatment of similar cases.
- g. Name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.
- h. Name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the grant of the waiver or variance.
- i. Name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's Signature

Date

☪ Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving to the board, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The board may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Grow Iowa Values Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819. If the petition relates to a pending

☪ contested case, a copy of the petition shall also be filed in the contested case proceeding.
These rules are intended to implement Executive Order Number 11 and Iowa Code chapter 17A.
[Filed emergency 10/22/03 after Notice 9/17/03—published 11/12/03, effective 10/22/03]



- i. *Sociology*. 7-12. Completion of 24 semester hours in sociology or 30 semester hours in the broad area of social sciences to include 15 semester hours in sociology.
- j. *World history*. 7-12. Completion of 24 semester hours in world history or 30 semester hours in the broad area of social sciences to include 15 semester hours in world history.
- k. *All social sciences*. 7-12. Effective July 1, 2000, completion of 51 semester hours in the social sciences to include 9 semester hours in each of American and world history, 9 semester hours in government, 6 semester hours in sociology, 6 semester hours in psychology other than educational psychology, 6 semester hours in geography, and 6 semester hours in economics.

14.141(19) *Speech communication/theatre*.

- a. *K-6*. Completion of 20 semester hours in speech communication/theatre to include coursework in speech communication, creative drama or theatre, and oral interpretation.
- b. *7-12*. Completion of 24 semester hours in speech communication/theatre to include coursework in speech communication, oral interpretation, creative drama or theatre, argumentation and debate, and mass media communication.

282—14.142(272) Area and grade levels of administrative endorsements.

14.142(1) *PK-12 principal and PK-12 supervisor of special education*.

a. *Authorization*. The holder of this endorsement is authorized to serve as a principal of programs serving children from birth through grade twelve, a supervisor to instructional special education programs with children from birth to the age of 21, and a supervisor of support for special education programs for children from birth to the age of 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

b. *Program requirements*.

- (1) Degree—master's.
- (2) Content: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements.
 - 1. Knowledge of early childhood, elementary, early adolescent, and secondary level administration, supervision, and evaluation.
 - 2. Knowledge and skill related to early childhood, elementary, early adolescent, and secondary level curriculum development.
 - 3. Knowledge of child growth and development from birth through adolescence and developmentally appropriate strategies and practices of early childhood, elementary, and adolescence, to include an observation practicum.
 - 4. Knowledge of family support systems, factors which place families at risk, child care issues, and home-school community relationships and interactions designed to promote parent education, family involvement, and interagency collaboration.
 - 5. Knowledge of school law and legislative and public policy issues affecting children and families.
 - 6. Completion of evaluator training component.
 - 7. Knowledge of current issues in special education administration.
 - 8. Planned field experiences in elementary and secondary school administration including special education administration.

(3) Competencies: Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. A school administrator is an educational leader who promotes the success of all students by accomplishing the following competencies.

1. Facilitates the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community.
2. Advocates, nurtures, and sustains a school culture and instructional program conducive to student learning and staff professional growth.
3. Ensures management of the organization, operations, and resources for a safe, efficient, and effective learning environment.
4. Collaborates with families and community members, responds to diverse community interests and needs, and mobilizes community resources.
5. Acts with integrity, fairness, and in an ethical manner.
6. Understands, responds to, and influences the larger political, social, economic, legal, and cultural context.

c. *Other.*

(1) The applicant must have had three years of teaching experience at the early childhood through grade twelve level.

(2) Graduates from institutions in other states who are seeking initial Iowa licensure and the PK-12 principal and PK-12 supervisor of special education endorsement must meet the requirements for the standard license in addition to the experience requirements.

14.142(2) *Secondary principal.* Rescinded IAB 11/12/03, effective 12/17/03.

14.143(3) The substitute authorization must be renewed annually. Renewal requirements for the substitute authorization consist of a minimum of one renewal unit equivalent to 15 clock hours and completion of a child and dependent adult abuse training program approved by the state abuse education review panel. A waiver of the approved child and dependent adult abuse training requirement may apply under the following conditions with appropriate documentation of any of the following:

- a. The person is engaged in active duty in the military service of this state or of the United States.
- b. The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.
- c. The person is practicing a licensed profession outside this state.
- d. The person is otherwise subject to circumstances that would preclude the person from completing the approved child and dependent adult abuse training in this state.
- e. The person has previously renewed a license or authorization issued by the board of educational examiners and, at that time, reported the completion, within the past five years, of child and dependent adult abuse training approved by the state abuse education review panel.

These rules are intended to implement Iowa Code chapters 272 and 284.

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CHAPTER 22 PARAEDUCATOR CERTIFICATES

282—22.1(272) Paraeducator certificates. Iowa paraeducator certificates are issued upon application filed on a form provided by the board of educational examiners.

282—22.2(272) Approved paraeducator certificate programs. An applicant for an initial paraeducator certificate who completes the paraeducator preparation program from a recognized Iowa paraeducator approved program shall have the recommendation from the designated certifying official at the recognized area education agency, local education agency, community college, or institution of higher education where the preparation was completed. A recognized Iowa paraeducator approved program is one which has its program of preparation approved by the state board of education according to standards established by the board.

282—22.3(272) Issue date on original certificate. A certificate is valid only from and after the date of issuance.

282—22.4(272) Validity. The paraeducator certificate shall be valid for five years.

282—22.5(272) Certificate application fee. All fees are nonrefundable.

22.5(1) Issuance of certificates. The fee for the issuance of the paraeducator certificate shall be \$25.

22.5(2) Adding areas of concentration. The fee for the addition of each area of concentration to a paraeducator certificate, following the issuance of the initial paraeducator certificate and any area(s) of concentration, shall be \$10.

282—22.6(272) Prekindergarten through grade 12 paraeducator generalist certificate.

22.6(1) Applicants must possess a minimum of a high school diploma or a graduate equivalent diploma.

22.6(2) Applicants shall be disqualified for any of the following reasons:

- a. The applicant is less than 18 years of age.
- b. The applicant has been convicted of child abuse or sexual abuse of a child.
- c. The applicant has been convicted of a felony.
- d. The applicant's application is fraudulent.
- e. The applicant's certification from another state is suspended or revoked.
- f. The applicant fails to meet board standards for application for an initial or renewed certificate.

22.6(3) Qualifications or criteria for the granting or revocation of a certificate or the determination of an individual's professional standing shall not include membership or nonmembership in any teacher or paraeducator organization.

22.6(4) Applicants shall have successfully completed at least 90 clock hours of training in the areas of behavior management, exceptional child and at-risk child behavior, collaboration skills, interpersonal relations skills, child and youth development, technology, and ethical responsibilities and behavior.

22.6(5) Applicants shall have successfully completed the following list of competencies so that, under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

a. Support a safe, positive teaching and learning environment including the following competencies:

- (1) Follow prescribed health, safety, and emergency school and classroom policy and procedures.
- (2) As directed, prepare and organize materials to support teaching and learning.
- (3) Use strategies and techniques for facilitating the integration of individuals with diverse learning needs in various settings.

(4) Assist with special health services.

(5) Assist in adapting instructional strategies and materials according to the needs of the learner in content areas including, but not limited to, reading, writing and mathematics.

(6) Assist in gathering and recording data about the performance and behavior of individuals.

(7) Assist in maintaining a motivational environment.

(8) Assist in various instructional arrangements (e.g., large group, small group, tutoring).

(9) Demonstrate knowledge in the content areas of reading, writing and mathematics.

b. Assist in the development of physical and intellectual development including the following competencies:

(1) Assist with the activities and opportunities that encourage curiosity, exploration, and problem solving that are appropriate to the development levels and needs of all children.

(2) Actively communicate with children and provide opportunities and support for children to understand, acquire, and use verbal and nonverbal means of communicating thoughts and feelings.

(3) Actively communicate and support high expectations that are shared, clearly defined and appropriate.

(4) Make and document observations appropriate to the individual with specific learning needs.

(5) Use strategies that promote the learner's independence.

(6) Assist in monitoring progress and providing feedback to the appropriate person.

c. Support social, emotional, and behavioral development including the following competencies:

(1) Provide a supportive environment in which all children, including children with disabilities and children at risk of school failure, can begin to learn and practice appropriate and acceptable behaviors as individuals and groups.

(2) Assist in developing and teaching specific behaviors and procedures that facilitate safety and learning in each unique school setting.

(3) Assist in the implementation of individualized behavior management plans, including behavior intervention plans for students with disabilities.

(4) Model and assist in teaching appropriate behaviors as a response to inappropriate behaviors.

(5) Use appropriate strategies and techniques in a variety of settings to assist in the development of social skills.

(6) Assist in modifying the learning environment to manage behavior.

d. Establish positive and productive relations including the following competencies:

(1) Demonstrate a commitment to a team approach to interventions.

(2) Maintain an open, friendly, and cooperative relationship with each child's family, sharing information in a positive and productive manner.

(3) Communicate with colleagues, follow instructions and use problem-solving skills that will facilitate working as an effective member of the school team.

(4) Foster respectful and beneficial relationships between families and other school and community personnel.

(5) Function in a manner that demonstrates a positive regard for the distinctions among roles and responsibilities of paraprofessionals, professionals, and other support personnel.

e. Integrate effectively the technology to support student learning including the following competencies:

- (1) Establish an environment for the successful use of educational technology.
- (2) Support and strengthen technology planning and integration.
- (3) Improve support systems for technical integration.
- (4) Operate computers and use technology effectively.

f. Practice ethical and professional standards of conduct on an ongoing basis including the following competencies:

- (1) Demonstrate a commitment to share information in a confidential manner.
- (2) Demonstrate a willingness to participate in ongoing staff development and self-evaluation, and apply constructive feedback.
- (3) Abide by the criteria of professional practice and rules of the board of educational examiners.

22.6(6) An applicant for a certificate under these rules shall demonstrate that the requirements of the certificate have been met, and the burden of proof shall be on the applicant.

282—22.7(272) Paraeducator area of concentration. An area of concentration is not required but optional. Applicants must currently hold or have previously held an Iowa paraeducator generalist certificate. Applicants may complete one or more areas of concentration but must complete at least 45 clock hours in each area of concentration.

22.7(1) Early childhood—prekindergarten through grade 3. The paraeducator shall successfully complete the following list of competencies so that under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

- a. Reinforce skills, strategies, and activities involving individuals or small groups.
- b. Participate as a member of the team responsible for developing service plans and educational objectives for parents and their children.
- c. Listen to and communicate with parents in order to gather information for the service delivery team.
- d. Demonstrate knowledge of services provided by health care providers, social services, education agencies, and other support systems available to support parents and provide them with the strategies required to gain access to these services.
- e. Demonstrate effective strategies and techniques to stimulate cognitive, physical, social, and language development in the student.
- f. Gather information as instructed by the classroom teacher about the performance of individual children and their behaviors, including observing, recording, and charting, and share information with professional colleagues.
- g. Communicate and work effectively with parents and other primary caregivers.

22.7(2) Special needs—prekindergarten through grade 12. The paraeducator shall successfully complete the following list of competencies so that under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

- a. Understand and implement the goals and objectives in an individualized education plan (IEP).
- b. Demonstrate an understanding of the value of serving children and youth with disabilities and special needs in inclusive settings.
- c. Assist in academic subjects using lesson plans and instructional strategies developed by teachers and other professional support staff.

d. Gather and maintain data about the performance and behavior of individual students and confer with special and general education practitioners about student schedules, instructional goals, progress, and performance.

e. Use appropriate instructional procedures and reinforcement techniques.

f. Operate computers and use assistive technology and adaptive equipment that will enable students with special needs to participate more fully in general education.

22.7(3) *English as a second language—prekindergarten through grade 12.* The paraeducator shall successfully complete the following list of competencies so that, under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

a. Operate computers and use technology that will enable students to participate effectively in the classroom.

b. Work with the classroom teacher as collaborative partners.

c. Demonstrate knowledge of the role and use of primary language of instruction in accessing English for academic purposes.

d. Demonstrate knowledge of instructional methodologies for second language acquisition.

e. Communicate and work effectively with parents or guardians of English as a second language students in their primary language.

f. Demonstrate knowledge of appropriate translation and interpretation procedures.

22.7(4) *Career and transitional programs—grades 5 through 12.* The paraeducator shall successfully complete the following list of competencies so that, under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

a. Assist in the implementation of career and transitional programs.

b. Assist in the implementation of appropriate behavior management strategies for career and transitional students and those students who may have special needs.

c. Assist in the implementation of assigned performance and behavior assessments including observation, recording, and charting for career and transitional students and those students who may have special needs.

d. Provide training at job sites using appropriate instructional interventions.

e. Participate in preemployment, employment, or transitional training in classrooms or at off-campus sites.

f. Communicate effectively with employers and employees at work sites and with personnel or members of the public in other transitional learning environments.

22.7(5) *School library media—prekindergarten through grade 12.* The school library media paraeducator shall successfully complete the following list of competencies so that, under the direct supervision and direction of a qualified school library supervisor or school librarian, the paraeducator will be able to:

a. Be aware of, implement, and support the goals, objectives, and policies of the school library media program.

b. Assist the school library supervisor or school librarian in general operations, such as processing materials, circulating materials, performing clerical tasks, assisting students and staff, and working with volunteers and student helpers, and to understand the role of the paraeducator in the library setting in order to provide efficient, equitable, and effective library services.

c. Demonstrate knowledge of library technical services including, but not limited to, cataloging, processing, acquisitions, routine library maintenance, automation and new technologies.

d. Be aware of and support the integration of literacy initiatives and content area standards, e.g., visual information and technology in support of the curriculum.

e. Be aware of the role school libraries play in improving student achievement, literacy, and lifelong learning.

- f. Demonstrate an understanding of ethical issues related to school libraries, such as copyright, plagiarism, privacy, diversity, confidentiality, and freedom of speech.
- g. Assist in the daily operations of the school library program, such as shelving, working with volunteers and student helpers, inventory, materials repair and maintenance.
- h. Exhibit welcoming behaviors to all library patrons and visitors to encourage use of the library and its resources.
- i. Demonstrate knowledge of the school library collection and the availability of other resources that will meet individual student information or research needs.
- j. Demonstrate a general knowledge of basic technology skills and assist in troubleshooting basic hardware and software problems.

282—22.8 to 22.11 Reserved.

282—22.12(272) Prekindergarten through grade 12 advanced paraeducator certificate. Applicants for the prekindergarten through grade 12 advanced paraeducator certificate shall have met the following requirements:

22.12(1) Currently hold or have previously held an Iowa paraeducator generalist certificate.

22.12(2) Possess an associate's degree or have earned 62 semester hours of college coursework from a regionally accredited institution of higher education.

22.12(3) Complete a minimum of two semester hours of coursework involving at least 100 clock hours of a supervised practicum with children and youth. These two semester hours of practicum may be part of an associate degree or part of the earned 62 semester hours of college coursework.

282—22.13(272) Renewal requirements.

22.13(1) The paraeducator certificate may be renewed upon application, payment of a \$25 renewal fee, and verification of successful completion of coursework totaling three units in any combination listed below.

a. One unit may be earned for each hour of credit which leads to the completion of the requirements for an area of concentration not currently held.

b. One unit may be earned for each hour of credit that will assist a paraeducator to demonstrate the knowledge of and the ability to assist in reading, writing, or mathematics.

c. One unit may be earned for each hour of credit completed which supports either the building's or district's career development plan.

d. One unit may be earned for each semester hour of college credit.

22.13(2) Effective September 1, 2002, all applicants renewing a paraeducator certificate must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply under the following conditions with appropriate documentation of any of the following:

a. A person is engaged in active duty in the military service of this state or of the United States.

b. The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

c. A person is practicing a licensed profession outside this state.

d. A person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.

These rules are intended to implement Iowa Code sections 272.6 and 272.12.

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441—1.10(17A,514I) HAWK-I board. The director of the department has, by statute, the advice and counsel of the HAWK-I board on the healthy and well kids in Iowa program. This seven-member board consists of the commissioner of insurance or the commissioner's designee, the director of the department of education or the director's designee, the director of the department of public health or the director's designee, and four public members appointed by the governor, subject to confirmation by two-thirds of the members of the senate. The board shall also include two members of the senate and two members of the house of representatives, serving as ex officio members.

1.10(1) Organization.

a. The members of the board shall annually elect from the board's voting membership a chairperson of the board.

b. Members appointed by the governor and the legislative members shall serve two-year terms.

1.10(2) Duties and powers of the board. The board's powers and duties are to make policy and to provide direction for the administration of all aspects of the healthy and well kids in Iowa program which is administered by the division of financial, health and work supports. In carrying out these duties, the board shall do all of the following:

- a. Adopt rules of the department.
- b. Develop criteria for and approve all contracts.
- c. Establish a clinical advisory committee.
- d. Establish an advisory committee on children with special health care needs.
- e. Conduct studies and evaluations and provide reports as directed by legislation.
- f. Define regions of the state for which plans are offered.
- g. Solicit input from the public about the program.
- h. Improve interaction between the program and other public and private programs which provide services to eligible children.
- i. Receive and accept grants, loans, or other advances of funds from any person and may receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purpose of the program.

1.10(3) Board action.

- a. A quorum shall consist of two-thirds of the membership appointed and qualified to vote.
- b. When a quorum is present, a position is carried by a majority of the qualified members of the board.

1.10(4) Board minutes.

- a. Copies of administrative rules and other materials considered are made part of the minutes by reference.
- b. Copies of the minutes are kept on file in the office of the administrator of the division of financial, health and work supports.

1.10(5) Board meetings.

- a. The board shall meet at regular intervals at least six times each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members, but no more than twelve times per year.
- b. Any person wishing to make a presentation at a board meeting shall notify the Administrator, Division of Financial, Health and Work Supports, Department of Human Services, 1305 E. Walnut Street, Des Moines, Iowa 50309-0114, telephone (515)281-6080, at least 15 days before the board meeting.

1.10(6) Robert's Rules of Order. In cases not covered by these rules, Robert's Rules of Order shall govern.

This rule is intended to implement Iowa Code sections 17A.3(1) "a" and 514I.5.

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86.2(4) *Uninsured status.* The child must be uninsured.

a. A child who is currently enrolled in an individual or group health plan is not eligible to participate in the HAWK-I program. However, a child who is enrolled in a plan shall not be considered insured for purposes of the HAWK-I program if:

(1) The plan provides coverage only for a specific disease or service (such as a vision, dental, or cancer policy), or

(2) The child does not have reasonable geographic access to care under that plan. "Reasonable geographic access" means that the plan or an option available under the plan does not have service area limitations or, if the plan has service area limitations, the child lives within 30 miles or 30 minutes of a network primary care provider.

b. Rescinded IAB 7/9/03, effective 7/1/03.

c. American Indian and Alaska Native. American Indian and Alaska Native children are eligible for the HAWK-I program on the same basis as other children in the state, regardless of whether or not they may be eligible for or served by Indian Health Services-funded care.

86.2(5) *Ineligibility for Medicaid.* The child shall not be receiving Medicaid or eligible to receive Medicaid if application were made except when the child would be required to meet a spenddown under the medically needy program in accordance with the provisions of 441—subrule 75.1(35). Additionally, a child who would be eligible for Medicaid except for the parent's failure or refusal to cooperate in establishing initial or ongoing eligibility shall not be eligible for coverage under the HAWK-I program. Children who are excluded from the household due to the child's excess income can participate in the HAWK-I program if otherwise eligible. This does not apply to children who are voluntarily excluded from the household for nonfinancial reasons.

86.2(6) *Iowa residency.* The child shall be a resident of the state of Iowa. A resident of Iowa is a person:

a. Who is living in Iowa voluntarily with the intention of making that person's home in Iowa and not for a temporary purpose; or

b. Who, at the time of application, is not receiving assistance from another state and entered Iowa with a job commitment or to seek employment or who is living with parents or guardians who entered Iowa with a job commitment or to seek employment.

86.2(7) *Citizenship and alien status.* The child shall be a citizen or lawfully admitted alien. The criteria established under 8 U.S.C. Section 1612(a)(2)(A) and the Balanced Budget Act of 1997, subsection 5302, shall be followed when determining whether a lawfully admitted alien child is eligible to participate in the HAWK-I program. The citizenship or alien status of the parents or other responsible person shall not be considered when determining the eligibility of the child to participate in the program.

86.2(8) *Dependents of state of Iowa employees.* The child shall not be eligible for the HAWK-I program if the child is eligible for health insurance coverage as a dependent of a state of Iowa employee.

86.2(9) *Inmates of nonmedical public institutions.* The child shall not be an inmate of a nonmedical public institution as defined at 42 CFR Section 435.1009 as amended November 10, 1994.

86.2(10) *Inmates of institutions for mental disease.* At the time of application or annual review of eligibility, the child shall not be an inmate of an institution for mental disease as defined at 42 CFR Section 435.1009 as amended November 10, 1994.

86.2(11) *Preexisting medical conditions.* The child shall not be denied eligibility based on the presence of a preexisting medical condition.

86.2(12) *Furnishing a social security number.* Rescinded IAB 10/20/99, effective 12/1/99.

441—86.3(514I) Application process.

86.3(1) *Who may apply.* Each person wishing to do so shall have the opportunity to apply without delay. When the request is made in person, the requester shall immediately be given an application form. When a request is made that the application form be mailed, it shall be sent in the next outgoing mail.

a. Child lives with parents. When the child lives with the child's parents, including stepparents and adoptive parents, the parent shall file the application on behalf of the child unless the parent is unable to do so.

If the parent is unable to act on the child's behalf because the parent is incompetent or physically disabled, another person may file the application on behalf of the child. The responsible person shall be a family member, friend or other person who has knowledge of the family's financial affairs and circumstances and a personal interest in the child's welfare or a legal representative such as a conservator, guardian, executor or someone with power of attorney. The responsible person shall sign the application form and assume the responsibilities of the incompetent or disabled parent in regard to the application process and ongoing eligibility determinations.

b. Child lives with someone other than a parent. When the child lives with someone other than a parent (e.g., another relative, friend, guardian), the person who has assumed responsibility for the care of the child may apply on the child's behalf. This person shall sign the application form and assume responsibility for providing all information necessary to establish initial and ongoing eligibility for the child.

c. Child lives independently or is married. When a child under the age of 19 lives in an independent living situation or is married, the child may apply on the child's own behalf, in which case, the child shall be responsible for providing all information necessary to establish initial and ongoing eligibility. If the child is married, both the child and the spouse shall sign the application form.

86.3(2) *Application form.* An application for the HAWK-I program shall be submitted on Form 470-3526, Healthy and Well Kids in Iowa (HAWK-I) Application, unless the family applies for the Medicaid program first.

When an application has been filed for the Medicaid program in accordance with the provisions of rule 441—76.1(249A) and Medicaid eligibility does not exist in accordance with the provisions of rule 441—75.1(249A), or the family must meet a spenddown in accordance with the provisions of 441—subrule 75.1(35) before the child can attain eligibility, the Medicaid application shall be used to establish eligibility for the HAWK-I program in lieu of the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526. Applications may be obtained by telephoning the toll-free telephone number of the third-party administrator.

86.13(2) Dissemination of application forms and information. The third-party administrator shall disseminate the following:

- a. Rescinded IAB 10/17/01, effective 12/1/01.
- b. Outreach materials, application forms, or other materials developed and produced by the department to any organization or individual making a request for the materials. If the request is for quantities exceeding ten, the third-party administrator shall forward the request to Iowa prison industries for dissemination.
- c. Participating health plan information.
- d. Other materials as specified by the department.

86.13(3) Toll-free dedicated customer services line. The third-party administrator shall maintain a toll-free multilingual dedicated customer service line in accordance with the requirements of the department.

86.13(4) HAWK-I program web site. The third-party administrator shall work in cooperation with the department to maintain a web site providing information about the HAWK-I program.

86.13(5) Application process. The third-party administrator shall process applications in accordance with the provisions of rule 441—86.3(514I).

a. Processing applications and mailing of approvals and denials shall be completed within ten working days of receipt of the application and all necessary information and verification unless the application cannot be processed within this period for a reason beyond the control of the third-party administrator.

b. Original verification information shall be returned to the applicant or enrollee upon completion of review.

86.13(6) Tracking of applications. The third-party administrator shall track and maintain applications. This includes, but is not limited to, the following procedures:

- a. Date-stamping all applications with the date of receipt.
- b. Screening applications for completeness and requesting in writing any additional information or verification necessary to establish eligibility. All information or verification of information attained shall be logged.
- c. Entering all applications received into the data system with an identifier status of pending, approved, or denied.
- d. Referring applications to the county office of the department, when appropriate, and receiving application referrals from the department.
- e. Rescinded IAB 7/9/03, effective 7/1/03.
- f. Notifying the plans when the number of enrollees who speak the same non-English language equals or exceeds 10 percent of the number of enrollees in the plan.

86.13(7) Effective date of coverage. The third-party administrator shall establish effective date of coverage in accordance with the provisions of rule 441—86.5(514I).

86.13(8) Selection of plan. The third-party administrator shall provide participating health plan information to families of eligible children by telephone or mail and, if necessary, offer unbiased assistance in the selection of a plan in accordance with the provisions of rule 441—86.6(514I).

86.13(9) Enrollment. The third-party administrator shall notify participating health plans of enrollments.

86.13(10) Disenrollments. The third-party administrator shall disenroll an enrollee in accordance with the provisions of rule 441—86.7(514I). The third-party administrator shall notify the participating health plan when an enrollee is disenrolled.

86.13(11) Annual reviews of eligibility. The third-party administrator shall annually review eligibility in accordance with the provisions of rules 441—86.2(514I) and 86.9(514I).

86.13(12) Acting on reported changes. The third-party administrator shall ensure that all changes reported by the HAWK-I enrollee in accordance with rule 441—86.10(514I) are acted upon no later than ten working days from the date the change is reported.

86.13(13) Premiums. The third-party administrator shall:

- a. Calculate premiums in accordance with the provisions of rule 441—86.8(514I).
- b. Collect HAWK-I premium payments. The funds shall be deposited into an interest-bearing account maintained by the department for periodic transmission of the funds and any accrued interest to the HAWK-I trust fund in accordance with state accounting procedures.
- c. Track the status of the enrollee premium payments and provide the data to the department.
- d. Mail a reminder notice to the family if the premium is not received by the due date.

86.13(14) Notices to families. The third-party administrator shall develop and provide timely and adequate approval, denial, and cancellation notices to families that clearly explain the action being taken in regard to an application or an existing enrollment. Denial and cancellation notices shall clearly explain the appeal rights of the applicant or enrollee. All notices shall be available in English and Spanish.

86.13(15) Records. The third-party administrator shall at a minimum maintain the following records:

- a. All records required by the department and the department of inspections and appeals.
- b. Records which identify transactions with or on behalf of each enrollee by social security number or other unique identifier.
- c. Application, case and financial records.
- d. All other records as required by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.

86.13(16) Confidentiality. The third-party administrator shall protect and maintain the confidentiality of HAWK-I applicants and enrollees in accordance with 441—Chapter 9.

86.13(17) Reports to the department. The third-party administrator shall submit reports as required by the department.

86.13(18) Systems. The third-party administrator shall maintain data files that are compatible with the department's and the health plans' data files and shall make the system accessible to department staff.

441—86.14(514I) Covered services. The benefits provided under the HAWK-I program shall meet a benchmark, benchmark equivalent, or benefit plan that complies with Title XXI of the federal Social Security Act.

86.14(1) Required services. The participating health plan shall cover at a minimum the following medically necessary services:

- a. Inpatient hospital services (including medical, surgical, intensive care unit, mental health, and substance abuse services).
- b. Physician services (including surgical and medical, and including office visits, newborn care, well-baby and well-child care, immunizations, urgent care, specialist care, allergy testing and treatment, mental health visits, and substance abuse visits).
- c. Outpatient hospital services (including emergency room, surgery, lab, and x-ray services and other services).
- d. Ambulance services.
- e. Physical therapy.
- f. Nursing care services (including skilled nursing facility services).

- (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) Rescinded IAB 10/17/01, effective 12/1/01.
- (3) Rescinded IAB 10/17/01, effective 12/1/01.
- (4) Rescinded IAB 10/17/01, effective 12/1/01.
- (5) Encounter data on a monthly basis as required by the department.
- (6) Rescinded IAB 10/17/01, effective 12/1/01.
- (7) Other information as directed by the department.

c. Each plan shall at a minimum provide reports and plan information to the department as follows:

- (1) Information regarding the plan's appeal process.
- (2) A plan for a health improvement program.
- (3) Periodic financial, utilization and statistical reports as required by the department.
- (4) 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 or other differences.

(5) 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.

441—86.17(514I) Use of donations to the HAWK-I program. If an individual or other entity makes a monetary donation to the HAWK-I program, the department shall deposit the donation into the HAWK-I trust fund. The department shall track all donations separately and shall not commingle the donations with other moneys in the trust fund. The department shall report the receipt of all donations to the HAWK-I board.

86.17(1) If the donor specifically identifies the purpose of the donation, regardless of the amount, the donation shall be used as specified by the donor as long as the identified purpose is permissible under state and federal law.

86.17(2) If the donation is less than \$5,000 and the donor does not specifically identify how it is to be used, the department shall use the moneys in the following order:

- a. For the direct benefit of enrollees (e.g., premium payments).
- b. For outreach activities.
- c. For other purposes as determined by the HAWK-I board.

86.17(3) If the donation is more than \$5,000 and the donor does not specify how the funds are to be used, the HAWK-I board shall determine how the funds are to be used.

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

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501—3.8(80B) Certification through examination. Law enforcement officers who have been certified in another state may, upon application to the director with council approval, take a competency test or tests to gain Iowa law enforcement officer certification. Successful completion of the required test or tests will result in certification by the council. The test or tests will be prepared and administered by the academy or its designee, and the passing score will be determined by the academy. The required test or tests will be based upon the officer's prior law enforcement training and experience as follows:

3.8(1) *Five or more years of law enforcement experience.* Officers with more than five years of full-time law enforcement experience will be required to pass a test or tests which will primarily measure the officer's knowledge of Iowa laws. The test or tests will include, but need not be limited to, such topics as criminal law, motor vehicle law, juvenile law, law of arrest, law of search and seizure, and law regarding the use of force.

3.8(2) *Less than five years of law enforcement experience.* Officers with less than five years of full-time law enforcement experience will be required to pass a comprehensive test or tests which will focus on all phases of law enforcement. The test or tests will include, but need not be limited to, such topics as criminal law, juvenile law, motor vehicle law, law of arrest, law of search and seizure, law regarding the use of force, confessions and admissions, crime prevention, community relations, minority relations, crime scene investigation, vehicle stops, and rules of evidence.

3.8(3) *Tabulating previous law enforcement experience.* In tabulating whether an officer has met the law enforcement experience requirement, no credit will be given for experience received from the officer's current employment.

3.8(4) *Criteria to be eligible to certify through examination.* The following will be prerequisites for certification through examination:

a. Successful completion of a minimum 160-hour certifying basic law enforcement training school in another state, which certification has not been withdrawn by the certifying state.

b. Firing a verified score of 80 percent or greater with the officer's service handgun since the individual's appointment as an Iowa law enforcement officer, and which course of fire was prescribed by the academy and administered by the Iowa law enforcement academy or its designee.

c. Possession of a current crash injury management card, first responder, or another appropriate certification recognized by the Iowa law enforcement academy.

3.8(5) *Application and testing periods.* Application for certification through examination shall be made within 120 days of the applicant's hiring date, unless a determination is made by the academy council that this time period should be extended for "good cause." Failure to make timely application for certification through examination may result in the applicant's being required to attend an academy certifying school.

3.8(6) *Retesting requirements.* Failure to successfully complete this examination will require retesting within 60 days in the areas failed. If any area is failed a second time, it will be necessary for the individual to attend and satisfactorily complete training at the academy covering those areas of deficiency. Successful completion of the training will result in law enforcement officer certification by the academy council.

3.8(7) *One year's absence from law enforcement shall require training.* An officer who has not served as a regular law enforcement officer during the 12-month period preceding the officer's hiring date will be required to attend a certifying school.

501—3.9(80B) Special certification through examination. This rule is promulgated by the academy in compliance with 1996 Iowa Acts, chapter 1201. Persons having successfully completed the Federal Bureau of Investigation National Academy, having corrected Snellen vision in both eyes of 20/20 or better, and having been employed on or before January 1, 1996, as chief of police of a city in the state of Iowa with a population of 20,000 or more may, upon application to the director with council approval, take a competency test or tests to gain Iowa law enforcement officer certification. Successful completion of the required test or tests will result in certification by the council. The test or tests will be prepared and administered by the academy and the passing score will be determined by the academy. Persons eligible under this rule who successfully complete the long form examination shall be granted certification limited to and valid only for the position for which the person was hired.

3.9(1) Criteria. The following will be prerequisites for special certification through examination under this rule:

a. Firing a verified score of 80 percent or greater with the officer's service handgun which course of fire was prescribed and administered by the Iowa law enforcement academy.

b. The applicant must possess or obtain current first responder or more advanced certification recognized by the Iowa department of public health and approved by the academy, and current cardio-pulmonary resuscitation certification from the American Heart Association, Module "C," or American Red Cross Professional Rescuer Level, with documentation furnished to the academy.

3.9(2) Application and testing periods. Application shall be made within 120 days of the effective date of this rule. Failure to make timely application will result in the applicant's being required to attend an academy certifying school.

3.9(3) Retesting requirements. Failure to successfully complete the examination will require re-testing within 60 days in the areas failed. If any area is failed a second time, the applicant will be required to attend and satisfactorily complete training at the academy covering those areas of deficiency. Successful completion of the training will result in law enforcement officer certification by the academy council.

501—3.10(80B) More extensive certifying course curricula not prohibited. While no law enforcement training facility will be approved by the Iowa law enforcement academy council which does not meet the minimum requirements of these certifying course curricula, this in no way limits or restricts any law enforcement training facility in instituting a certifying course curriculum that surpasses the curriculum established pursuant to Iowa Code chapter 80B.

This rule is intended to implement Iowa Code chapter 80B.

501—3.11(80B) Time frame—tolled. The time frame requirements for completion of any mandatory training are tolled during the period a law enforcement officer is called to active military service.

501—3.12(80B) Training of an individual who intends to become certified as a law enforcement officer.

3.12(1) An individual who has not yet been hired or started employment as an Iowa sworn peace officer may apply for attendance at the Iowa law enforcement academy (ILEA) or, if qualified as provided for in 501—subrule 3.4(1), at a short course of study at an approved law enforcement training program if such individual is sponsored by an Iowa law enforcement agency.

a. The individual must submit an application packet approved and provided by the Iowa law enforcement academy at least 30 days in advance of the course of study that the person wants to attend if the hiring standards are conducted by a sponsoring agency and at least 60 days in advance of the course of study that the person wants to attend if the hiring standards are conducted by ILEA. An administrative fee, to be established by the academy, shall accompany the application packet.

b. The sponsoring Iowa law enforcement agency must certify that the agency intends to hire within the next 18 months or has hired the individual as a law enforcement officer.

c. The fees to attend the Iowa law enforcement academy will be collected as follows:

(1) 25 percent at the time position in class is reserved. (This fee is nonrefundable.)

(2) 25 percent on first day of the academy class.

(3) The remaining amount to reach full payment of all ILEA training fees must be received by the end of the fourth week or the individual will be dismissed from the academy.

d. The fees to attend a short course of study at an approved law enforcement training program will be collected as determined by that entity.

3.12(2) Hiring standards. An individual who files an application under subrule 3.12(1) must meet all hiring standards as established by the academy in rules 501—2.1(80B) and 501—2.2(80B).

a. The sponsoring law enforcement agency may conduct required testing including medical/psychological/cognitive examinations, thorough background investigation and other matters as required by rules 501—2.1(80B) and 501—2.2(80B). The sponsoring law enforcement agency that conducts the required testing must certify that all hiring standards have been met and submit proof of the same as required by Iowa law enforcement academy administrative rules and on forms provided by the academy.

b. The academy shall conduct the required testing including medical/psychological/cognitive examinations, thorough background investigation and other matters as required by rules 501—2.1(80B) and 501—2.2(80B) if the sponsoring agency has not done so. The academy will establish fees for conducting the hiring standards requirements, including the background check, to be paid by the individual filing the application. The fees must be paid before the testing occurs.

3.12(3) Application for a short course of study at an approved law enforcement training program. An individual applying for attendance at a short course of study at an approved law enforcement training program shall submit proof of successful completion of a two-year or four-year police science or criminal justice program at an accredited educational institution in this state as approved by the academy. The proof must include a letter from the registrar certifying the person's graduation and a certified transcript of courses taken and grades received. The proof must be submitted 30 days in advance of the course of study that the person wants to attend.

3.12(4) Permission to attend. An individual shall not be granted permission to attend an approved law enforcement training program if such acceptance would result in the nonacceptance of another qualifying applicant who is a law enforcement officer.

3.12(5) Certification. The academy will not grant certification until an individual is employed by an Iowa law enforcement agency and has met required hiring standards and successfully completed certification testing.

a. The following hiring standards must be reverified if the individual is not hired by an Iowa law enforcement agency during the first 12 months following completion of the course of study.

(1) The Iowa law enforcement academy evaluations of the Minnesota Multiphasic Personality Inventory (MMPI) may be used for only 12 months to comply with this rule. Any individual who has not been hired or placed upon a civil service certified list within the first 12 months following completion of the course of study must retake the MMPI and, before the individual is certified, the results of the MMPI must be approved by the hiring authority.

(2) Standard & Associates' National Police Officer Selection Test (POST) test scores shall be valid for a period of 12 months from the date of completion of the course of study. An individual who has not been hired or placed upon a civil service certified list within 12 months must retake and successfully pass the examination before being certified.

(3) The individual must be examined by a licensed physician or surgeon and meet the physical requirements necessary to fulfill the responsibilities of a law enforcement officer.

(4) The individual must successfully pass a physical test adopted by the Iowa law enforcement academy.

b. An individual may be certified in the following areas only after being employed by an Iowa law enforcement agency:

- (1) Iowa Law Enforcement Emergency Care Provider.
- (2) Implied consent.
- (3) Standardized field sobriety testing.
- (4) Firearms qualification with the hiring agency's weapon and ammunition.

Certification will be awarded in the above areas if the individual is employed by an Iowa law enforcement agency within the first 12 months following completion of the basic training course of study and when the following requirements are met. All individuals, once employed by an Iowa law enforcement agency, must undergo testing in the firearms qualifications with the hiring agency's weapon and ammunition at the direction of an instructor certified in firearms by the Iowa law enforcement academy. Documentation of this testing and scores must be submitted to the Iowa law enforcement academy. The individual will be certified upon successful completion of the firearms qualification and review of the testing results completed during training at the Iowa law enforcement academy or at a short course of study at an approved law enforcement training program.

If the individual is not employed within a 12-month period after completing basic training at the Iowa law enforcement academy or at a short course of study at an approved law enforcement training program, the individual will be required to retake the required training for Iowa Law Enforcement Emergency Care Provider, implied consent, and standardized field sobriety testing. Successful completion and documentation of this training must be submitted to the Iowa law enforcement academy before certification can be granted.

3.12(6) Employment within 18 months. The individual must be employed by an Iowa law enforcement agency within 18 months of completion of the course of study in order to receive certification. An individual shall not be certified under rule 501—3.12(80B) if the individual is not employed by an Iowa law enforcement agency within 18 months of completion of the course of study.

This rule is intended to implement 2003 Iowa Acts, Senate Files 352 and 453.

These rules are intended to implement Iowa Code chapter 80B.

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2. To determine if two or more animal feeding operations are deemed to be one animal feeding operation, the first test is whether the animal feeding operations are under common ownership or management. If they are not under common ownership or management, they are not one animal feeding operation. For purposes of water quality regulation, the second test is whether the two animal feeding operations are adjacent or utilize a common area or system for manure disposal. If the two operations are not adjacent and do not use a common area or system for manure disposal, they are not one animal feeding operation. For purposes of the separation distances in Iowa Code section 455B.162, the second test is whether the two animal feeding operations are adjacent or utilize a common system for manure storage. If the two operations are not adjacent and do not use the same system for manure storage, they are not one animal feeding operation.

"Animal feeding operation structure" means a confinement building, manure storage structure, or egg washwater storage structure.

"Animal unit" means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

1. Slaughter and feeder cattle	1.000
2. Immature dairy cattle	1.000
3. Mature dairy cattle	1.400
4. Butcher or breeding swine weighing more than 55 pounds	0.400
5. Swine weighing 15 pounds or more but not more than 55 pounds . . .	0.100
6. Sheep or lambs	0.100
7. Horses	2.000
8. Turkeys	0.018
9. Broiler or layer chickens	0.010

"Animal unit capacity" means a measurement used to determine the maximum number of animal units that may be maintained as part of an animal feeding operation at any one time, including as provided in Iowa Code sections 455B161A as amended by 2002 Iowa Acts, chapter 1137, section 9, and 455B.200B as amended by 2002 Iowa Acts, chapter 1137, sections 3 to 32.

"Animal weight capacity" means the sum of the average weight of all animals in a confinement feeding operation when the operation is at full animal capacity. For confinement feeding operations with only one species, the animal weight capacity is the product of multiplying the animal capacity by the average weight during a production cycle. For operations with more than one species, the animal weight capacity of the operation is the sum of the animal weight capacities for all species.

EXAMPLE 1. Bill wants to construct a confinement feeding operation with two confinement buildings and an earthen manure storage basin. The capacity of each building will be 900 market hogs. The hogs enter the building at 40 pounds and leave at 250 pounds. The average weight during the production cycle is then 145 pounds for this operation. The animal weight capacity of the operation is 145 pounds multiplied by 1800 for a total of 261,000 pounds.

EXAMPLE 2. Howard is planning to build a confinement feeding operation with eight confinement buildings and an egg washwater storage lagoon. The capacity of each building will be 125,000 laying hens. The hens enter the building at around 2.5 pounds and leave at around 3.5 pounds. The average weight during the production cycle for these laying hens is 3.0 pounds. Manure will be handled in dry form. The animal weight capacity of the operation is 3.0 pounds multiplied by 1,000,000 for a total of 3,000,000 pounds.

EXAMPLE 3. Carol has an animal feeding operation with four confinement buildings with below floor formed concrete manure storage tanks and one open feedlot. One confinement building is a farrowing building with a capacity of 72 sows. One confinement building is a nursery building with a capacity of 1,450 pigs. The open feedlot contains 425 sows. Two of the confinement buildings are finishing buildings with a capacity of 1,250 market hogs. The farrowing building contains 72 sows at an average weight of 400 pounds for an animal weight capacity of 28,800 pounds. The nursery building contains 1,450 pigs with an average weight over the production cycle of 25 pounds for an animal weight capacity of 36,250 pounds. The two finishing buildings contain 2,500 market hogs (combined) with an average weight over the production cycle of 150 pounds for an animal weight capacity of 375,000 pounds. The total animal weight capacity of the confinement feeding operation is 440,050 pounds. The weights of the animals in open lots are not included in the calculation of the animal weight capacity of the confinement feeding operation.

"Applicant" means the person applying for a construction or operation permit for an animal feeding operation. The applicant shall be the owner or owners of the animal feeding operation.

"Business" means a commercial enterprise.

"Cemetery" means a space held for the purpose of permanent burial, entombment or interment of human remains that is owned or managed by a political subdivision or private entity, or a cemetery regulated pursuant to Iowa Code chapter 523I or 566A. A cemetery does not include a pioneer cemetery where there have been six or fewer burials in the preceding fifty years.

"Church" means a religious institution.

"Commercial enterprise" means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

"Commercial manure applicator" means a person who engages in the business of and charges a fee for applying manure on the land of another person.

"Commercial manure service" means a sole proprietor or business association engaged in the business of transporting, handling, storing, or applying manure for a fee.

"Commercial manure service representative" means a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service.

"Common management" means significant control by a person of the management of the day-to-day operations of each of two or more animal feeding operations.

"Common ownership" means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

"Confinement feeding operation" means an animal feeding operation in which animals are confined to areas which are totally roofed.

"Confinement feeding operation building" or *"confinement building"* means a building used in conjunction with a confinement feeding operation to house animals.

"Confinement feeding operation structure" means an animal feeding operation structure that is part of a confinement feeding operation.

"Confinement site" means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a small animal feeding operation.

"Confinement site manure applicator" means a person, other than a commercial manure service or a commercial manure service representative, who applies manure on land if the manure originates from a manure storage structure.

“*Construction permit*” means a written approval of the department to construct an animal feeding operation structure.

“*Controlling interest*” means ownership of a confinement feeding operation as a sole proprietor or a majority ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a controlling interest when it is held directly, indirectly through a spouse or dependent child, or both. The majority ownership interest must be a voting interest or otherwise control management of the confinement feeding operation.

“*Covered*” means organic or inorganic material, placed upon an animal feeding operation structure used to store manure, which significantly reduces the exchange of gases between the stored manure and the outside air. Organic materials include, but are not limited to, a layer of chopped straw, other crop residue, or a naturally occurring crust on the surface of the stored manure. Inorganic materials include, but are not limited to, wood, steel, aluminum, rubber, plastic, or Styrofoam. The materials shall shield at least 90 percent of the surface area of the stored manure from the outside air. Cover shall include an organic or inorganic material which current scientific research shows reduces detectable odor by at least 75 percent. A formed manure storage structure directly beneath a floor where animals are housed in a confinement feeding operation is deemed to be covered.

“*Critical public area*” means land that is owned or managed by the federal government, by the department, or by a political subdivision and that has unique scenic, cultural, archaeological, scientific, or historic significance or contains a rare or valuable ecological system. Critical public areas include:

§ State wildlife refuges listed in 571—subrule 52.1(2);

§ Recreation areas, state parks, state parks managed by another governmental agency, and state preserves as listed in 571—61.2(461A);

§ County parks and recreation areas listed in “Outdoor Adventure Guide,” May 2002, Iowa Association of County Conservation Boards, which is incorporated by reference and is on file in the state law library;

§ National wildlife refuges listed on the “Iowa Map Page,” June 24, 2002, which is incorporated by reference; this document is on file at the state law library where it is also available via the Internet at <http://midwest.fws.gov/maps/iowa.htm>;

§ National monuments and national historic sites listed on the “National Park Service Guide for Iowa,” June 24, 2002, which is incorporated by reference; this document is on file at the state law library where it is also available via the Internet at <http://165.83.219.77/parksearch/state/state.cfm?statevar=ia>;

§ Parks in Iowa that are under the jurisdiction of the U.S. Army Corps of Engineers and listed in “Lakeside Recreation for the Upper Mississippi Basin States,” June 24, 2002, which is incorporated by reference; this document is on file at the state law library where it is also available via the Internet at <http://www.usace.army.mil/inet/functions/cw/cecwo/uppermis.htm>.

“*Cropland*” means any land suitable for use in agricultural production including, but not limited to, feed, grain and seed crops, fruits, vegetables, forages, sod, trees, grassland, pasture and other similar crops.

“*Deep well*” means a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

“*Designated area*” means a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface tile inlet, drinking water well, designated wetland, lake, or water source. A designated area does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

“*Discontinued animal feeding operation*” means an animal feeding operation whose structures have been abandoned or whose use has been discontinued as evidenced by the removal of all animals and the owner or operator has no immediate plans to repopulate.

"Discontinued animal feeding operation structure" means an animal feeding operation structure that has been abandoned or whose use has been discontinued as evidenced by the removal of all animals from the structure and the owner or operator has no immediate plans to repopulate.

"Document" means any form required to be processed by the department under this chapter regulating animal feeding operations, including but not limited to applications or related materials for permits as provided in Iowa Code section 455B.200A as amended by 2002 Iowa Acts, chapter 1137, sections 28 and 29, manure management plans as provided in Iowa Code section 455B.203 as amended by 2002 Iowa Acts, chapter 1137, sections 38 to 41, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department's analysis of the application including using and responding to a master matrix pursuant to 2002 Iowa Acts, chapter 1137, section 35, and notices required under those sections.

"Earthen manure storage basin" means an earthen cavity, either covered or uncovered, which, on a regular basis, receives manure discharges from a confinement feeding operation if accumulated manure from the basin is completely removed at least once each year.

"Earthen waste slurry storage basin" means an uncovered and exclusively earthen cavity which, on a regular basis, receives manure discharges from a confinement animal feeding operation if accumulated manure from the basin is completely removed at least twice each year and which was issued a permit, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995.

"Educational institution" means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade 12 and served by local school districts, accredited or approved nonpublic schools, area educational agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

"Egg washwater storage structure" means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs. It does not include a structure also used as a manure storage structure.

"Enforcement action" means an action against a confinement feeding operation initiated by the department or the attorney general to enforce the provisions of Iowa Code chapter 455B or rules adopted pursuant to the chapter. An enforcement action begins when the department issues an administrative order to the person, when the department notifies a person in writing of intent to recommend referral or the commission refers the action to the attorney general pursuant to Iowa Code section 455B.141 or 455B.191, or when the attorney general institutes proceedings pursuant to section 455B.112, whichever occurs first. An enforcement action is pending until final resolution of the action by satisfaction of an administrative order; rescission or other final resolution of an administrative order or satisfaction of a court order, for which all administrative and judicial appeal rights are exhausted, expired, or waived.

"Family" means persons related to each other as spouse, parent, grandparent, sibling, and other lineal descendants of the grandparents or their spouses.

"Family farm member" means a person who participates in the same agricultural operation with a spouse, parent, grandparent, child, grandchild or sibling.

"Family member" means a person related to another person as parent, grandparent, child, grandchild, sibling, or a spouse of such related person.

"Formed manure storage structure" means a covered or uncovered impoundment used to store manure from an animal feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Similar materials may include, but are not limited to, plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed manure storage structure shall have the structural integrity to withstand expected internal and external load pressures.

“*Freeboard*” means the difference in elevation between the liquid level and the top of the lowest point of animal feeding operation structure’s berm or the lowest external outlet from a formed manure storage structure. However, for a formed manure storage structure meeting the requirements of 65.15(20), “freeboard” means the difference in elevation between the liquid level and the structure’s overflow level.

“*Grassed waterway*” means a natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.

“*Highly erodible land*” means a field that has one-third or more of its acres or 50 acres, whichever is less, with soils that have an erodibility index of eight or more, as determined by rules promulgated by the United States Department of Agriculture.

“*Human sanitary waste*” means wastewater derived from domestic uses including bathroom and laundry facilities generating wastewater from toilets, baths, showers, lavatories and clothes washing.

“*Incidental*” means a duty which is secondary or subordinate to a primary job or function.

“*Incorporation*” means a soil tillage operation following the surface application of manure which mixes the manure into the upper four inches or more of soil.

“*Indemnity fund*” means the manure storage indemnity fund created in Iowa Code section 455J.2.

“*Injection*” means the application of manure into the soil surface using equipment that discharges it beneath the surface.

“*Interest*” means ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is an interest when it is held directly, indirectly through a spouse or dependent child, or both.

“*Internet*” means the federated international system that is composed of allied electronic communication networks linked by telecommunication channels that uses standardized protocols, and that facilitates electronic communication services, including but not limited to use of the World Wide Web; the transmission of electronic mail or messages; the transfer of files and data or other electronic information; and the transmission of voice, image, and video.

“*Karst terrain*” means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves. If a 25-foot vertical separation distance can be maintained between the bottom of an unformed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

“*Livestock market*” means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

“*Low-pressure irrigation system*” means spray irrigation equipment which discharges manure from a maximum height of 9 feet in a downward direction, and which utilizes spray nozzles which discharge manure at a maximum pressure of 25 pounds per square inch.

“*Major water source*” means a water source that is a lake, reservoir, river or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Table 1 and Table 2 at the end of this chapter.

“*Manager*” means a person who is actively involved in the operation of the service and makes management decisions in the operation of a commercial manure service.

“*Man-made manure drainage system*” means a drainage ditch, flushing system, or other drainage device which was constructed by human beings and is used for the purpose of transporting manure.

“*Manure*” means animal excreta or other commonly associated wastes of animals including, but not limited to, bedding, litter, or feed losses. Manure does not include wastewater resulting from the washing and in-shell packaging of eggs.

"Manure storage structure" means a formed manure storage structure or an unformed manure storage structure. A manure storage structure does not include an egg washwater storage structure.

"New animal feeding operation" means an animal feeding operation whose construction was begun after July 22, 1987, or whose operation is resumed after having been discontinued for a period of 12 months or more.

"Nonpublic water supply" means a water system that has fewer than 15 service connections or serves fewer than 25 people, or one that has more than 15 service connections or serves more than 25 people for less than 60 days a year.

"One hundred year flood plain" means the land adjacent to a major water source, if there is at least 1 percent chance that the land will be inundated in any one year, according to calculations adopted by rules adopted pursuant to Iowa Code section 459.103. In making the calculations, the department shall consider available maps or data compiled by the Federal Emergency Management Agency.

"Open feedlot" means an unroofed or partially roofed animal feeding operation in which no crop, vegetation, or forage growth or residue cover is maintained during the period that animals are confined in the operation.

"Operation permit" means a written permit of the department authorizing the operation of a manure control facility or part of one.

"Owner" means the person who has title to the property where the animal feeding operation is located or the person who has title to the animal feeding operation structures. It does not include a person who has a lease to use the land where the animal feeding operation is located or to use the animal feeding operation structures.

"Permanent vegetation cover" means land which is maintained in perennial vegetative cover consisting of grasses, legumes, or both, and includes, but is not limited to, pastures, grasslands or forages.

"Primary highway" means a road designated as an interstate, U.S. highway or state highway in the 2002 Iowa Transportation Map, including streets in municipalities under the jurisdiction of the department of transportation.

"Professional engineer" means a person engaged in the practice of engineering as defined in Iowa Code section 542B.2 who is issued a certificate of licensure as a professional engineer pursuant to Iowa Code section 542B.17.

"Public thoroughfare" means a road, street, or bridge that is constructed or maintained by the state or a political subdivision.

"Public use area" means that portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time. Facilities include, but are not limited to, picnic grounds, campgrounds, cemeteries, lodges, shelter houses, playground equipment, lakes as listed in Table 2 at the end of this chapter, and swimming beaches. It does not include a highway, road right-of-way, parking areas, recreational trails or other areas where the public passes through, but does not congregate or remain in the area for significant periods of time.

"Public water supply" (also referred to as a system or a water system) means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the supplier of water and used primarily in connection with such system, and (2) any collection (including wells) or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water supply system is either a "community water system" or a "noncommunity water system."

"Q100," as defined in 567—70.2(455B,481A), means a flood having a 1 percent chance of being equaled or exceeded in any one year as determined by the department.

“*Qualified confinement feeding operation*” means a confinement feeding operation which has an animal unit capacity of:

1. 5,333 or more for animals other than swine as part of a farrowing and gestating operation or farrow-to-finish operation or cattle as part of a cattle operation;
2. 2,500 or more for a swine farrowing and gestating operation;
3. 5,400 or more for a swine farrow-to-finish operation;
4. 8,500 or more for a confinement feeding operation maintaining cattle.

“*Release*” means an actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a designated area resulting from storing, handling, transporting or land-applying manure.

“*Religious institution*” means a building in which an active congregation is devoted to worship.

“*Research college*” means an accredited public or private college or university, including but not limited to a university under control of the state board of regents as provided in Iowa Code chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in Iowa Code chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

“*Residence*” means a house or other building, including all structures attached to the building, not owned by the owner of the animal feeding operation, which meets all of the following criteria at the location of the intended residence:

1. Used as a place of habitation for humans on a permanent and frequent basis.
2. Not readily mobile.
3. Connected to a permanent source of electricity, a permanent private water supply or a public water supply system and a permanent domestic sewage disposal system including a private, semipublic or public sewage disposal system.
4. Assessed and taxed as real property.

If a house or other building has not been occupied by humans for more than six months in the last two years, or if a house or other building has been constructed or moved to its current location within six months, the owner of the intended residence has the burden of proving that the house or other building is a residence. Paragraph “3” shall not apply to a house or other building inhabited by persons who are exempt from the compulsory education standards of Iowa Code section 299.24 and whose religious principles or tenets prohibit the use of the utilities listed.

“*Restricted spray irrigation equipment*” means spray irrigation equipment which disperses manure through an orifice at a rate of 80 pounds per square inch or more.

“*Runoff control basin*” means an impoundment designed and operated to collect and store runoff from an open feedlot.

“*School*” means an educational institution.

“*Secondary containment barrier*” means a structure used to retain accidental manure overflow from a manure storage structure.

“*Shallow well*” means a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

“*Small animal feeding operation*” means an animal feeding operation which has an animal unit capacity of 500 or fewer animal units.

“*Solids settling facility*” means a basin, terrace, diversion, or other structure which is designed and operated to remove settleable solids from open feedlot runoff.

“*Spray irrigation equipment*” means mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for aerial application of water to aid the growing of general farm crops.

"Substantial improvements" means increasing the animal unit capacity of a facility by 1 percent through 150 percent.

"Substantial labor" means providing 50 percent or more of the total annual hours of physical work necessary to maintain animals in a confinement feeding operation.

"Swine farrow-to-finish operation" means a confinement feeding operation in which porcine are produced and in which a primary portion of the phases of the production cycle is conducted at one confinement feeding operation. Phases of the production cycle include, but are not limited to, gestation, farrowing, growing and finishing. At a minimum, farrowing, growing, and finishing shall be conducted at the operation with a majority of the pigs farrowed at the site finished to market weight in order to qualify as a farrow-to-finish operation.

"Thoroughfare" means a road, street, bridge or highway open to the public and constructed or maintained by the state or a political subdivision.

"Unformed manure storage structure" means a covered or uncovered impoundment used to store manure, other than a formed manure storage structure, which includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

"Watercourse" means any lake, river, creek, ditch, or other body of water or channel having definite banks and bed with water flow or the occurrence of water, except lakes or ponds without outlet to which only one landowner is riparian. Watercourse does not include water flow or the occurrence of water in a terrace, grassed waterway, solids settling basin, road ditch, areas subject to rill erosion, or other similar areas.

"Water of the state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

"Water source" means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

"Wetted perimeter" means the outside edge of land where the direct discharge of manure occurs from spray irrigation equipment.

567—65.2(455B) Minimum manure control requirements and reporting of releases. Water pollution control facilities shall be constructed and maintained to meet the minimum manure control requirements stated in subrules 65.2(1) to 65.2(8) of this rule. A release shall be reported to the department as provided in subrule 65.2(9) of this rule.

65.2(1) The minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to discharge into a water of the state.

a. Settleable solids may be removed by use of solids-settling basins, terraces, diversions, or other solid-removal methods. Construction of solids-settling facilities shall not be required where existing site conditions provide adequate settleable solids removal.

b. Removal of settleable manure solids shall be considered adequate when the velocity of manure flows has been reduced to less than 0.5 foot per second for a minimum of five minutes. Sufficient capacity shall be provided in the solids-settling facilities to store settled solids between periods of manure application and to provide required flow-velocity reduction for manure flow volumes resulting from precipitation events of less intensity than the ten-year, one-hour frequency event. Solids-settling facilities receiving open feedlot runoff shall provide a minimum of 1 square foot of surface area for each 8 cubic feet of runoff per hour resulting from the ten-year, one-hour frequency-precipitation event.

567—65.19(455B) Manure applicators certification.

65.19(1) A commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. A person is not required to be certified as a confinement site manure applicator if the person applies manure which originates from a manure storage structure which is part of a small animal feeding operation. Certification of a commercial manure service representative under this rule will also satisfy the commercial license requirement under 567—Chapter 68 only as it applies to manure removal and application. Each person who operates a manure applying vehicle or equipment must be certified individually except as allowed in subrule 65.19(7).

65.19(2) Fees.

a. Commercial manure service. Effective January 1, 2004, the fee for a new or renewed certification of a service is \$200. The commercial manure service shall designate one manager for the service and shall provide the department with documentation of the designation.

b. Commercial manure service representative. Effective January 1, 2004, the fee for a new or renewed representative certification is \$75. The manager of a commercial manure service must be certified as a commercial manure service representative, but is exempt from paying the \$75 certification fee.

c. Confinement site manure applicator. Effective January 1, 2003, the fee for a new or renewed certification is \$100. However, the fee is not required if all of the following apply:

(1) The person indicates that the person is a family member as defined in this chapter by submitting a completed form provided by the department;

(2) The person is certified as a confinement site manure applicator within one year of the date another family member was certified or whose certification as a confinement site manure applicator was renewed;

(3) The other family member certified as a confinement site manure applicator has paid the certification fee.

d. Educational fee. Effective May 30, 2003, commercial manure service representatives, managers and confinement site manure applicators shall pay an educational fee to be determined annually by the department.

e. Late fee. Renewal applications received after March 1 require that an additional \$12.50 fee be paid before the certification is renewed. An application is considered to be received on the date it is postmarked.

f. Duplicate certificate. The fee for a duplicate certificate is \$15.

65.19(3) Certification requirements. To be certified by the department as a commercial manure service, a commercial manure service representative or a confinement site manure applicator, a person must do all of the following:

a. Apply for certification on a form provided by the department.

b. Pay the required fees set forth in subrule 65.19(2).

c. Pass the examination given by the department or, in lieu of the examination, attend continuing instruction courses as described in subrule 65.19(6).

65.19(4) Certification term, renewal and grace period.

a. Certification term. Certification for a commercial manure service and commercial manure service representative shall be for a period of one year and shall expire on March 1 of each year. Certification for a confinement site manure applicator shall be for a period of three years and shall expire on December 31 of the third year. After June 30, 2001, the expiration dates of confinement site manure applicator certifications that currently expire on a date other than December 31 are automatically extended to December 31 of the year the certification expires.

b. Renewal. Application for renewal of a commercial manure service certification or a commercial manure service representative certification must be received by the department no later than March 1 of the year the certification expires. Application for renewal of a confinement site manure applicator certification must be received by the department or postmarked no later than March 1 after the year the certification expires. Application shall be on forms provided by the department and shall include:

- (1) Certification renewal and educational fees.
- (2) A passing grade on the certification examination or proof of attending the required hours of continuing instructional courses.

c. Substitution of employees. If a commercial manure service pays the certification fee for a representative, the service may substitute representatives. The substituted representative must be certified pursuant to 65.19(3). The service shall provide documentation to the department, on forms provided by the department, that the substitution is valid.

d. Grace period. Except as provided in this paragraph, a commercial manure service, a commercial manure service representative or a confinement site manure applicator may not continue to apply manure after expiration of a certificate. A confinement site manure applicator may continue to apply manure until March 1 following the year the certification expires, provided a complete renewal application, as provided in paragraph "b," is postmarked or received by the department prior to March 1. Commercial manure services and representatives must submit an application for certification renewal by March 1 of each year.

65.19(5) Examinations.

a. A person wishing to take the examination required to become a certified commercial manure service representative or certified confinement site manure applicator may request a listing of dates and locations of examinations. The applicant must have a photo identification card at the time of taking the examination.

b. If a person fails the examination, the person may retake the examination, but not on the same business day.

c. Upon written request by an applicant, the director will consider the presentation of an oral examination on an individual basis when the applicant has failed the written examination at least twice; and the applicant has shown difficulty in reading or understanding written questions but may be able to respond to oral questioning.

65.19(6) Continuing instruction courses in lieu of examination.

a. To establish or maintain certification, between March 1 and March 1 of the next year, a commercial manure service representative must each year either pass an examination or attend three hours of continuing instructional courses.

b. To establish or maintain certification, a confinement site manure applicator must either pass an examination every three years or attend two hours of continuing instructional courses each year.

65.19(7) Exemption from certification.

a. Certification as a commercial manure service representative is not required of a person who is any of the following:

- (1) Actively engaged in farming and who trades work with another such person.
- (2) Employed by a person actively engaged in farming not solely as a manure applicator but who applies manure as an incidental part of the person's general duties.
- (3) Engaged in applying manure as an incidental part of a custom farming operation.
- (4) Engaged in applying manure as an incidental part of the person's duties.
- (5) Applying, transporting, handling or storing manure within a period of 30 days from the date of initial employment as a commercial manure service representative if the person applying the manure is acting under direct instructions and control of a certified commercial manure service representative who is physically present at the manure application site by being in sight or immediate communication distance of the supervised person where the certified commercial service representative can communicate with the supervised person at all times.

(6) Employed by a research college to apply manure from animal feeding operations that are part of the research activities or experiments of the research college.

b. Certification as a confinement site manure applicator is not required of a person who is either of the following:

(1) A part-time employee or family member of a confinement site manure applicator and is acting under direct instruction and control of a certified confinement site manure applicator who is physically present at the manure application site by being in sight or hearing distance of the supervised person where the certified confinement site manure applicator can physically observe and communicate with the supervised person at all times.

(2) Employed by a research college to apply manure from an animal feeding operation that is part of the research activities or experiments of the research college.

65.19(8) Certified commercial manure services have the following obligations:

a. Maintain the following records of manure disposal operations for a period of three years:

(1) A copy of instructions for manure application provided by the owner of the animal feeding operation.

(2) Dates that manure was applied or sold.

(3) The manure application rate.

(4) Location of fields where manure was applied.

b. Comply with the provisions of the manure management plan (MMP) prepared for the animal feeding operation and the requirements of 65.2(455B) and 65.3(455B). If a manure management plan does not exist, the requirements of 65.2(455B) and 65.3(455B) must still be met.

c. Any tanks or equipment used for hauling manure shall not be used for hauling hazardous or toxic wastes, as defined in 567—Chapter 131, or other wastes detrimental to land application and shall not be used in a manner that would contaminate a potable water supply or endanger the food chain or public health.

d. Pumps and associated piping on manure handling equipment shall be installed with watertight connections to prevent leakage.

e. Any vehicle used by a certified commercial manure service or commercial manure service representative to transport manure on a public road shall display the certification number of the commercial manure service with three-inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial manure service representative designated as the manager shall also be prominently displayed on the side of the tank or vehicle.

f. Direct connection shall not be made between a potable water source and the tank or equipment on the vehicle.

65.19(9) Discipline of certified applicators.

a. Disciplinary action may be taken against a certified commercial manure service, a commercial manure service representative or a confinement site manure applicator on any of the following grounds:

(1) Violation of state law or rules applicable to a certified commercial manure service, a commercial manure service representative, or a confinement site manure applicator or the handling or application of manure.

(2) Failure to maintain required records of manure application or other reports required by this rule.

(3) Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

b. Disciplinary sanctions allowable are:

(1) Revocation of a certificate.

(2) Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional training or reexamination may be required as a condition of probation.

c. The procedure for discipline is as follows:

(1) The director shall initiate disciplinary action.

(2) Written notice shall be given to an applicator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The applicator shall be given 20 days to present any relevant facts and indicate the person's position in the matter and to indicate whether informal resolution of the matter may be reached.

(3) An applicator who receives notice shall communicate verbally or in writing or in person with the director, and efforts shall be made to clarify the respective positions of the applicator and director.

(4) Failure to communicate facts and position relevant to the matter by the required date may be considered when determining appropriate disciplinary action.

(5) If agreement as to appropriate disciplinary sanction, if any, can be reached with the applicator and the director, a written stipulation and settlement between the department and the applicator shall be entered. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the applicator, and the reasons for the particular sanctions imposed.

(6) If an agreement as to appropriate disciplinary action, if any, cannot be reached, the director may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 561—Chapter 7 related to contested and certain other cases pertaining to license discipline.

65.19(10) Revocation of certificates.

a. Upon revocation of a certificate, application for commercial manure service representative or confinement site applicator certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

b. Upon revocation of a certificate, application for a commercial manure service certification may be allowed after three years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

65.19(11) Record inspection. The department may inspect, with reasonable notice, the records maintained by a commercial manure service. If the records are for an operation required to maintain records to demonstrate compliance with a manure management plan, the confidentiality provisions of subrule 65.17(14) and Iowa Code section 459.312 shall extend to the records maintained by the commercial manure service.

567—65.20(455B) Manure storage indemnity fund. The manure storage indemnity fund created in Iowa Code chapter 455J will be administered by the department. Moneys in the fund shall be used for the exclusive purpose of administration of the fund and the cleanup of eligible facilities at confinement feeding operation sites.

65.20(1) Eligible facility site. The site of a confinement feeding operation which contains one or more animal feeding operation structures is an eligible site for reimbursement of cleanup costs if one of the following conditions exists:

a. A county has acquired title to real estate containing the confinement feeding operation following nonpayment of taxes and the site includes a manure storage structure which contains stored manure or site contamination originating from the confinement feeding operation.

b. A county or the department determines that the confinement feeding operation has caused a clear, present and impending danger to the public health or environment.

65.20(2) Site cleanup. Site cleanup includes the removal and land application or disposal of manure from an eligible facility site according to manure management procedures approved by the department. Cleanup may include remediation of documented contamination which originates from the confinement feeding operation. Cleanup may also include demolishing and disposing of animal feeding operation structures if their existence or further use would contribute to further environmental contamination and their removal is included in a cleanup plan approved by the department. Buildings and equipment must be demolished or disposed of according to rules adopted by the department in 567—Chapter 101 which apply to the disposal of farm buildings or equipment by an individual or business organization.

65.20(3) Claims against the fund. Claims for cleanup costs may be made by a county which has acquired real estate containing an eligible facility site pursuant to a tax deed. A county claim shall be signed by the chairperson of the county board of supervisors. Cleanup may be initiated by the department or may be authorized by the department based on a claim by a county.

a. Advance notice of claim. Prior to or after acquiring a tax deed to an eligible facility site, a county shall notify the department in writing of the existence of the facility and the title acquisition. The county shall request in this notice that the department evaluate the site to determine whether the department will order or initiate cleanup pursuant to its authority under Iowa Code chapter 455B.

b. Emergency cleanup condition. If a county determines that there exists at a confinement feeding operation site a clear, present and impending danger to the public health or environment, the county shall notify the department of the condition. The danger should be documented as to its presence and the necessity to avoid delay due to its increasing threat. If no cleanup action is initiated by the department within 24 hours after being notified of an emergency condition requiring cleanup, the county may provide cleanup and submit a claim against the fund.

65.20(4) Contents of a claim against the fund.

a. A county claim against the fund for an eligible site acquired by a county following nonpayment of taxes shall be submitted to the department for approval prior to the cleanup action and shall contain the following information:

(1) A copy of the advance notice of claim as described in paragraph 65.20(3)“a.”

(2) A copy of a bid by a qualified person, other than a governmental entity, to perform a site cleanup. The bid shall include a summary of the qualifications of the bidder including but not limited to prior experience in removal of hazardous substances or manure, experience in construction of confinement feeding operation facilities or manure storage structures, equipment available for conducting the cleanup, or any other qualifications bearing on the ability of the bidder to remove manure from a site. The bid must reference complying with a cleanup plan. The bid shall include a certification that the bidder has liability insurance in an amount not less than \$1 million.

(3) A copy of the tax deed to the real estate containing the eligible facility site.

(4) Name and address, if known, of the former owner(s) of the site. The claim shall also include a description of any efforts to contact the former owner regarding the removal of manure and any other necessary cleanup at the site.

(5) A response to the request in the advance notice described in paragraph 65.20(3)“a” that the department will not initiate cleanup action at the site, or that 60 days have passed from the advance notice and request.

(6) A proposed cleanup plan describing all necessary activity including manure to be removed, application rates and sites, any planned remediation of site contamination, and any structure demolition and justification.

b. A county claim against the fund for an emergency cleanup condition may be submitted following the cleanup and shall contain the following information:

(1) A copy of a bid as described in subparagraph 65.20(4)“a”(2).

(2) Name and address of the owner(s), or former owner(s), of the site or any other person who may be liable for causing the condition.

(3) Information on the response from the department to the notice given as described in paragraph 65.20(3)“b,” or if none was received, documentation of the time notice was given to the department.

(4) A cleanup plan or description of the cleanup activities performed.

65.20(5) *Department processing of claims against the fund.*

a. Processing of claims. The department will process claims in the order they are received.

b. The cleanup plan will be reviewed for acceptability to accomplish necessary actions according to subrule 65.20(2).

c. Review of bid. Upon receipt of a claim, the department will review the bid accompanying the claim. The department may consult with any person in reviewing the bid. Consideration will be given to the experience of the bidder, the bid amount, and the work required to perform the cleanup plan. If the department is satisfied that the bidder is qualified to perform the cleanup and costs are reasonable, the department will provide written approval to the county within 60 days from the date of receipt of the claim.

d. Obtaining a lower bid. If the department determines that it should seek a lower bid to perform the cleanup, it may obtain the names of qualified persons who may be eligible to perform the cleanup. One or more of those persons will be contacted and invited to view the site and submit a bid for the cleanup. If a lower bid is not received, the original bid may be accepted. If a bid is lower than the original bid submitted by the county, the department will notify the county that it should proceed to contract with that bidder to perform the cleanup.

65.20(6) *Certificate of completion.* Upon completion of the cleanup, the county shall submit a certificate of completion to the department. The certificate of completion shall indicate that the manure has been properly land-applied according to the cleanup plan and that any site contamination identified in the approved cleanup plan has been remediated and any approved structure demolition has been performed.

65.20(7) *Payment of claims.* Upon receipt of the certificate of completion, the department shall promptly authorize payment of the claim as previously approved. Payments will be made for claims in the order of receipt of certificates of completion.

65.20(8) *Subrogation.* The fund is subrogated to all county rights regarding any claim submitted or paid as provided in Iowa Code section 455J.5(5).

567—65.21(455B) *Transfer of legal responsibilities or title.* If title or legal responsibility for a permitted animal feeding operation and its animal feeding operation storage structure is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the permit and these rules. The person to whom the permit was issued and the person to whom title or legal responsibility is transferred shall notify the department of the transfer of legal responsibility or title of the operation within 30 days of the transfer. Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the permit to reflect the transfer of legal responsibility. A person who has been classified as a habitual violator under Iowa Code section 455B.191 shall not acquire legal responsibility or a controlling interest to any additional permitted confinement feeding operations for the period that the person is classified as a habitual violator. A person who has an interest in a confinement feeding operation that is the subject of a pending enforcement action shall not acquire legal responsibility or an interest to any additional permitted confinement feeding operations for the period that the enforcement action is pending.

567—65.22(455B) Validity of rules. If any part of these rules is declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect, and to that end, these rules are declared to be severable.

These rules are intended to implement Iowa Code sections 455B.104, 455B.134(3)“e,” 455B.171 to 455B.188, and 455B.191; Iowa Code chapter 459; and 1998 Iowa Acts, chapter 1209, sections 41 and 44 to 47.

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CHAPTER 117
WASTE TIRE MANAGEMENT
[Prior to 5/15/02, see also 567—Chapter 219]

567—117.1(455B,455D) Purpose. The purpose of this chapter is to establish guidelines for the proper management of waste tires, including disposal, collection, storage, processing, and beneficial reuse of waste tires and processed waste tire materials. The chapter shall not be construed to exempt a waste tire storage site or processing site from compliance with more stringent local ordinances, fire codes, or other applicable statutes.

567—117.2(455B,455D) Definitions. As used in this chapter:

“*Bagel cut*” means to cut a tire in half along its circumference.

“*Baled tire*” means a method of volume reduction of waste tires, whereby whole or cut tires are compacted into a bundle and then banded together to form a tire bale. Baled tires shall not be considered processed tires and shall be defined as solid waste, unless they are incorporated into an approved beneficial use project.

“*Beneficial use*” means the use or application of waste tires or processed tires in a manner that provides a benefit to an end user and that does not pose a threat to the environment or to public health and safety. Use of waste tires or processed tires primarily as a means for land disposal shall not be considered a beneficial use.

“*Civil engineering application*” means a form of reusing waste tires, either whole or processed, in place of naturally occurring materials in construction, so long as the waste tires provide a defined engineering benefit.

“*Crumb rubber*” means a material derived by reducing waste tires or other rubber into uniform granules of 3/8 inch or less, with the inherent reinforcing materials such as steel and fiber removed along with other contaminants.

“*Cut tire*” means a waste tire from which the tire face, tread, or sidewall has been cut or removed for beneficial use. A cut tire shall consist of pieces greater than 18 inches on any one side.

“*Department*” means Iowa department of natural resources.

“*End user*” means an industry, utility, business, entity, or individual that receives whole waste tires or processed tires and uses them for a raw material in a manufactured product, for energy recovery, or other beneficial use. A tire processor shall not be considered an end user.

“*Energy recovery*” means the extraction of the fuel or heat value from whole or processed tires through their controlled combustion at a permitted utility or industry.

“*Operator*” means the individual, corporation, or party that manages the daily work activities related to the collection, storage, and processing of waste tires and processed tire materials at a waste tire stockpile site or processing facility.

“*Owner*” means the individual, corporation, or party that is the legal owner of the real estate where a waste tire stockpile site or processing facility exists.

“*Passenger tire equivalent*” means a conversion measurement that is used to estimate waste tire weights and volume amounts and in which one passenger car tire with a rim diameter of 17 inches or less is equal to 20 pounds. One cubic yard of volume shall contain 15 passenger tire equivalents. Tires larger than a passenger car tire shall be evaluated for volume using this conversion measurement.

"Permit" means a permit issued by the department to establish, construct, modify, own, or operate a waste tire storage or processing site.

"Processed tire" means a tire that has been processed through grinding, shredding, or other means, thereby producing a material that is readily suitable for marketing into product manufacturing, energy recovery, or other beneficial reuse markets. Waste tires that have been compacted, baled, cut, or shredded without a suitable market shall not be considered processed tires and shall be regulated as solid waste.

"Processing" means producing or manufacturing usable materials from waste tires.

"Processing site" means a site which is used for the processing of waste tires and which is owned or operated by a tire processor who has a permit for the site.

"Site" includes all contiguous parcels of land under the ownership, management, or financial interest of an owner or operator receiving a permit through this chapter. Public rights-of-way and their easements shall not affect the continuity of a site for the purposes of this chapter.

"Site of end use" means a site where processed waste tires are recycled or reused in a beneficial manner authorized by the department.

"Tire bale." See *"baled tire."*

"Tire casing" means a used and worn tire that is suitable for the process of recapping. A tire casing stored for more than one year without being recapped shall be considered a waste tire.

"Tire collector" means a permitted person or business that owns or operates a site used for the storage, collection, or deposit of more than 500 waste tires or an authorized vehicle recycler who is licensed by the department of transportation pursuant to Iowa Code section 321H.4 and who owns or operates a site used for the storage, collection, or deposit of more than 3,500 waste tires.

"Tire processor" means a permitted individual or business that processes tires through grinding, shredding, or other means, thereby producing a material that is readily suitable for marketing into product manufacturing, energy recovery, or other beneficial reuse markets. "Tire processor" does not mean a person who retreads tire casings or who collects and stores tires.

"Used tire" means a tire that previously has been on a vehicle but that retains suitable tread depth and is free of damage or defects so that it may be safely returned to its original purpose.

"Waste tire," as defined in Iowa Code section 455D.11, means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect. This definition shall include a tire mounted on a rim, but not on a vehicle. "Waste tire" does not include a nonpneumatic tire.

"Waste tire hauler" means an individual or business providing waste tire hauling and disposal services, in accordance with Iowa Code section 9B.1.

"Waste tire stockpile" means a site that is used for the storage, collection, or deposit of waste tires or tire bales, including indoor, outdoor, and underground storage.

567—117.3(455B,455D) Waste tire disposal.

117.3(1) Land disposal prohibited. Land disposal of waste tires, in whole, cut, or shredded form, is prohibited. Waste tires shall be accepted at a permitted sanitary landfill for final disposal if the tires have first been cut into pieces that are not more than 18 inches on any one side.

117.3(2) Transport to permitted facilities. A person who transports waste tires for final disposal is required to dispose of the tires only at a permitted facility.

117.3(3) Registered waste tire hauler. A person who contracts with another person to transport more than 40 waste tires in a single load is required to contract only with a person registered as a waste tire hauler, pursuant to Iowa Code section 455D.11I.

567—117.4(455B,455D) Waste tire storage permits and requirements.**117.4(1) Storage quantity limitations.**

a. No business or individual shall store more than 500 passenger tire equivalents without obtaining a permit for a waste tire stockpile pursuant to 117.4(2).

b. Businesses or individuals may temporarily store up to 1,500 passenger tire equivalents without obtaining a waste tire stockpile permit, subject to the following requirements:

(1) The waste tires are stored only in a mobile container, truck, or trailer, provided or serviced by a registered waste tire hauler.

(2) The waste tires are removed by the waste tire hauler or delivered to a waste tire processor at least every 60 days.

(3) The waste tire generator has a written copy of a contract or service agreement for waste tire disposal services from a registered waste tire hauler.

c. A permitted municipal landfill or solid waste transfer station shall be allowed the storage of up to 1,500 passenger tire equivalents without a permit if the waste tires are removed at least every 120 days and are stored in a manner to minimize the collection of water.

d. Persons who use waste tires for an approved beneficial use shall not be required to obtain a waste tire stockpile permit, subject to their compliance with the provisions of rule 117.8(455B,455D).

117.4(2) Waste tire stockpile permit.

a. Any tire collector, business or individual storing more than 500 passenger tire equivalents on any one site must obtain a waste tire stockpile permit. An authorized vehicle recycler, as licensed by the Iowa department of transportation, may store up to 3,500 passenger tire equivalents without a waste tire stockpile permit; any storage beyond this amount shall require full compliance with this subrule. This subrule is applicable to the indoor, outdoor, and underground storage of waste tires. If the site cannot meet the conditions to obtain a waste tire stockpile permit, the waste tires must be removed from the site and properly disposed of within 30 days.

b. Any tire collector, business, individual, owner or operator of a site seeking to construct a waste tire stockpile must obtain the permit from the department before initiating such operations. The permit shall be issued directly to the owner of the site and the designated tire collector that will be operating the stockpile.

c. Permits shall have an annual fee of \$850, payable to the department upon the application for a permit, and due annually beginning each July 1 thereafter at the rate of \$850. Permit fees shall not be prorated. The permit shall be valid for a period of three years from date of issuance. Failure to remit the annual renewal fee shall be cause for the department to revoke the permit.

d. Application for a permit must be made on a form provided by the department and must include, at a minimum, the following:

(1) The name, address, and telephone number of the individual who directly owns the stockpile site.

(2) The name, address, and telephone number of the tire collector at the stockpile site, if different from the owner.

(3) A scaled map showing the areas proposed to be used for the storage of the waste tires, all property boundaries of the site, and the location of all buildings and major improvements on the site and within 300 feet of the property boundary.

(4) A vector control plan to prevent infestations of mosquitoes and rodents for aboveground storage in an open area. The plan shall be prepared by a firm that provides professional vector management services, or by the permittee, if properly trained and certified in vector control procedures. The permittee must provide documentation to show adequate implementation and monitoring of the vector control plan.

(5) A site closure plan. The plan shall describe the actions that would be taken to properly dispose of waste tire materials at the site 30 days prior to any intent to discontinue operations at the site so that, upon discontinuance of the operation, no violations of waste tire or solid waste disposal laws and regulations will exist.

(6) An emergency response and remedial action plan, developed and implemented according to applicable provisions of 567—102.16(455B). The plan shall be developed with the input and review of the local fire department and local emergency management coordinator. The applicant shall provide documentation that an opportunity for such input and review has been received by these local authorities.

(7) A financial assurance instrument in compliance with rule 117.7(455B,455D).

(8) A certified check for \$850 made payable to the Department of Natural Resources.

117.4(3) Permitted storage requirements. A permitted waste tire stockpile site shall meet the following minimum permit conditions as set by the department:

a. Aboveground storage, open area.

(1) A waste tire stockpile site shall not contain more than 250,000 passenger tire equivalents.

(2) A single waste tire pile shall not contain more than 50,000 cubic feet of waste tires.

(3) The vertical dimension of a waste tire pile shall not exceed 10 feet.

(4) A single waste tire pile shall not be more than 100 feet in length.

(5) The surface area covered by a waste tire pile shall not exceed 5,000 square feet; the pile may not be constructed upon any waste tire materials or other flammable materials.

(6) A 50-foot fire lane must be maintained between any two tire piles.

(7) Tire bales shall be stored in piles no greater than 10 feet in height, 25 feet in width, or 50 feet in length, with a separation distance of 50 feet between piles of tire bales.

(8) All waste tire piles shall be located at least 50 feet from any building.

(9) Trees and brush shall be cleared within 50 feet of any tire pile.

(10) Combustible materials or volatile chemicals shall not be stored within 50 feet of any tire pile unless stored in approved fire-resistant containers or cabinets.

(11) A 20-pound Class ABC dry chemical fire extinguisher shall be available within 100 feet of any one portion of the tire storage areas.

(12) The site must be graded to prevent any standing pools of water and to limit the runoff and run-off of precipitation.

(13) A waste tire pile must be at least 200 feet from any well, lake, pond, river, stream, sinkhole, or tile line surface intake unless appropriate grading, or the construction of a barrier, dike, or berm, is completed to intercept surface water flows that may impact such interceptors. This distance may then be reduced to 50 feet.

(14) The stockpile site must be secured by a fence or barrier of a minimum of 6 feet in height to impede unauthorized vehicle and personal access. All gates and entry points shall be secured and locked when site personnel are not present.

(15) No open burning of any type shall be allowed at the permitted stockpile site. All fueling of vehicles and equipment and any other work or activity that may release sparks or flame shall be conducted at least 50 feet from any tire storage area.

(16) Signs shall be posted every 100 feet on site, placed for visibility of personnel on site, and state: "Open burning on-site prohibited." The perimeter of the site shall be posted with signs every 100 feet, placed for visibility to those off site, that state: "Highly flammable materials on-site. Burning in area not recommended."

(17) All waste tire piles shall be located at least 300 feet from any property line, street, or public right-of-way.

b. Aboveground storage, enclosed area. Storage of waste tires shall comply with the requirements of 117.4(3)"a," subparagraphs (2) through (7), and the following:

(1) To qualify as an enclosed area, the area must be enclosed in a structure with a permanent roof and lateral protection to prevent precipitation from accumulating within the tires.

(2) An enclosed storage structure shall not contain more than 50,000 passenger tire equivalents.

(3) Combustible materials or volatile chemicals shall not be stored in a structure permitted for tire storage unless stored in approved fire-resistant containers or cabinets.

(4) A 20-pound Class ABC dry chemical fire extinguisher shall be available within 50 feet of any one portion of the tire storage areas.

(5) The storage structure must be secured from unauthorized access.

(6) No open burning of any type shall be allowed at the permitted stockpile site. All fueling of vehicles and equipment and any other work or activity that may release sparks or flame shall be conducted at least 50 feet from any tire storage area. The exterior of the enclosed storage area shall be posted with signs, placed every 100 feet, that state: "Highly flammable materials stored inside. Burning on-site prohibited."

c. *Underground storage.* To qualify as an underground waste tire storage site, the site must meet the following conditions:

(1) The site must be a licensed grain warehouse.

(2) All underground storage areas must be dry and not prone to the entry of surface water or groundwater.

(3) The underground storage areas must be secured from unauthorized access by locking gates, doors, barriers, or other devices.

(4) The site shall not store any volatile chemicals or other combustible materials within 150 feet of the tire storage area.

(5) For tires placed for storage after July 1, 2002, all such storage areas shall have access lanes, not less than 50 feet in width, arranged so that no portion of the storage area is more than 150 feet from an access lane.

(6) For tires placed for storage after July 1, 2002, the tires shall not be buried by debris, rubble, or other cover within the underground storage site.

(7) The underground storage site shall be limited to a maximum storage capacity of 4 million passenger tire equivalents.

117.4(4) Reporting requirements. The holder of a permit for a waste tire stockpile facility shall make a semiannual report to the department on a form as provided or approved by the department. The report shall state the following:

a. Quantity of waste tires stored at the facility at the time of reporting, determined by count or weight and reported in passenger tire equivalents.

b. Quantity of waste tires received from in-state sources during the reporting period.

c. Quantity of waste tires received from out-of-state sources during the reporting period.

d. For any waste tires removed from the permitted stockpile site during the reporting period, the quantity shall be given by equivalent count or weight of such waste tires removed. Documentation shall be provided to denote how the reported quantity of tires were disposed of at a permitted facility, reused, or resold.

567—117.5(455B,455D) Used tire storage.

117.5(1) Acceptable used tire storage. A used tire shall be stored in a manner that provides for the following:

a. Prevention of the collection of water, dirt, or debris within the tire.

b. Organized storage through stacking, rows, and sorting which provides for accurate descriptions and counts of the types and sizes of tires stored.

c. Storage conforms to applicable local and state fire codes.

117.5(2) Inventory resale and reuse. Used tires stored for more than one year without documentation of active resale or reuse of tire inventory in a proportion equal to 75 percent of the amount stored shall be considered waste tires and shall be subject to the applicable waste tire storage and disposal rules of this chapter.

567—117.6(455B,455D) Waste tire processing facility permits and requirements.**117.6(1) Waste tire processing facility permit.**

a. Any business or individual operating a tire processing facility shall obtain a waste tire processing permit prior to commencing such operations. The permit shall be issued directly to the owner and operator of the company that will be operating the tire processing facility.

b. Facilities that accept waste tires to cut, grind, or compact only for final disposal at a permitted sanitary disposal project shall be required to obtain a waste tire processing permit in accordance with these rules. Such facilities shall not store any cut or shredded waste tire materials for more than 30 days.

c. Businesses or individuals operating mobile waste tire processing equipment shall be required to obtain a waste tire processing permit. The permit shall authorize the operator to provide waste tire processing services statewide; however, mobile operations shall not be allowed to store any processed or whole waste tires at any facility or site owned or operated by the permittee unless specifically authorized within the permit.

d. Businesses or individuals who cut, grind, or compact for disposal waste tires generated directly from operations at their own on-site manufacturing operation or service facility shall not be required to obtain a waste tire processing permit provided that all waste tire materials processed on site are disposed of at least every 30 days at a permitted facility and no more than 500 waste tires are processed monthly.

e. Processing permits shall have an annual fee of \$850, payable to the department upon the application for a permit, and due annually beginning each July 1 thereafter at the rate of \$850. Permit fees shall not be prorated. The permit shall be valid for a period of three years from date of issuance. Failure to remit the annual renewal fee shall be cause for the department to revoke the permit.

f. A permitted processing facility shall have a site closure plan. The plan shall describe the actions that would be taken to properly dispose of all waste tire materials, in whole or processed form, at the site 30 days prior to any intent to discontinue operations at the site so that, upon discontinuance of the operation, no violations of waste tire or solid waste disposal laws and regulations will exist.

g. A permitted processing facility shall have an emergency response and remedial action plan, developed and implemented according to applicable provisions of 567—102.16(455B). The plan shall be developed with the input and review of the local fire department and local emergency management coordinator. The applicant shall provide documentation that an opportunity for such input and review has been received by these local authorities.

h. A permitted processing facility shall obtain financial assurance in accordance with rule 117.7(455B,455D), as necessary.

i. Application for a processing permit must be made on a form provided by the department and must include, at a minimum, the following:

(1) The name, address, and telephone number of the individual who directly owns the tire processing facility.

(2) The name, address, and telephone number of the operator of the processing facility, if different from the owner of the tire processing facility.

(3) The type of processing operations to be conducted at the facility, including descriptions of processing equipment and its hourly capacity, operating hours of the facility, and types of processed tire materials to be produced.

(4) A scaled map showing all areas proposed for waste tire storage and processing operations, all property boundaries of the site, and the location of all buildings and major improvements on the site and within 300 feet of the property boundary.

(5) A site closure plan, as referenced in 117.6(1)“f.”

(6) An emergency response and remedial action plan, as referenced in 117.6(1)“g.”

(7) A certified check for \$850 made payable to the Department of Natural Resources.

(8) A financial assurance instrument in compliance with rule 117.7(455B,455D).

117.6(2) Permitted waste tire processing facility permit requirements. A permitted waste tire processing facility shall meet the following minimum permit requirements as set by the department. Nothing in this rule shall limit the permitted tire processing facility from compliance with more stringent local ordinances, fire codes, or other applicable statutes.

a. The site must be graded to prevent any standing pools of water and to limit the run-on of precipitation in all areas where waste tires or processed tire material is stored.

b. The processing facility site must be secured by a fence or barrier of a minimum of 6 feet in height to impede unauthorized vehicle and personal access. All gates and entry points shall be secured and locked when site personnel are not present.

c. No open burning of any type shall be allowed at the permitted stockpile site. All fueling of vehicles and equipment and any other work or activity that may release sparks or flame shall be conducted at least 50 feet from any tire storage area.

d. Signs shall be posted every 100 feet on site, placed for visibility of personnel on site, and state: "Open burning on-site prohibited." The perimeter of the site shall be posted with signs every 100 feet, placed for visibility to those off site, that state: "Highly flammable materials on-site. Burning in area not recommended."

117.6(3) Preprocessed whole waste tire storage.

a. Permitted storage of whole waste tires on site prior to processing shall be limited to the quantity of tires that the facility has the ability to process within a three-day period. This quantity shall be determined by multiplying the actual number of working hours that processing is normally to occur during a typical three-day period by 80 percent of the manufacturer's specifications of hourly capacity of the processing equipment. After one year of the facility's operation, documented actual hourly production shall be used for this permit determination in lieu of the manufacturer's equipment specifications.

b. A tire processor may store an additional three-day capacity of preprocessed waste tires, above the initial three-day capacity, using the same quantity determination as stated in 117.6(3)"a," subject to the tire processor's obtaining and maintaining financial assurance for these additional tires to be stored prior to processing in accordance with rule 117.7(455B,455D).

c. Under no circumstance shall a waste tire processor be allowed the storage of more than 75,000 preprocessed waste tires, measured as passenger tire equivalents, through any combination of processing performance or financial assurance determinations. All waste tires on site, including those stored indoors or outdoors or in trucks, trailers, or mobile cages, shall be counted in determining compliance with this rule.

d. Any single waste tire shall not be stored at the processing facility for more than 30 days before the tire is processed.

e. Any tire bales produced or stored at a tire processing facility shall count toward the maximum allowable quantity of preprocessed waste tire storage.

f. All preprocessed tires stored outdoors shall comply with the following:

- (1) A single waste tire pile shall not contain more than 50,000 cubic feet of waste tires.
- (2) The vertical dimension of a waste tire pile shall not exceed 10 feet.
- (3) A single waste tire pile shall not be more than 100 feet in length.
- (4) The surface area covered by a waste tire pile shall not exceed 5,000 square feet.
- (5) A 50-foot fire lane must be maintained between any two tire piles.
- (6) A waste tire pile shall not be located within 50 feet of any property line, street, public right-of-way, or building.
- (7) A tire pile must be at least 200 feet from any well, lake, pond, river, stream, sinkhole, or tile line surface intake unless appropriate grading, or the construction of a barrier, dike, or berm, is completed to intercept surface water flows that may impact such interceptors. This distance may then be reduced to 50 feet.

(8) Trees and brush shall be cleared within 50 feet of any tire pile.

(9) Combustible materials or volatile chemicals shall not be stored within 50 feet of any tire pile unless stored in approved fire-resistant containers or cabinets.

(10) A 20-pound Class ABC dry chemical fire extinguisher shall be available within 100 feet of any one portion of tire storage areas.

(11) Waste tires stored in trucks, trailers, or mobile containers must be at least 10 feet from any property line or building.

(12) Tire bales shall be stored in piles no greater than 10 feet in height, 25 feet in width, or 50 feet in length, with a separation distance of 50 feet between piles of tire bales.

g. Indoor storage of waste tires shall not be allowed within 20 feet of any waste tire processing or handling equipment. All waste tires being actively unloaded and fed into processing equipment, including those being off-loaded from trucks, trailers, or mobile containers, shall be cleared at least 20 feet away from the processing equipment by the end of the last working shift of the day. Any remaining indoor storage shall comply with the requirements of 117.4(3) "b," subparagraphs (3) through (7), and the following:

(1) No more than 25,000 passenger tire equivalents shall be stored indoors.

(2) Combustible materials or volatile chemicals shall not be stored within 25 feet of any waste tire storage area unless they are stored in approved containers pursuant to applicable fire codes.

(3) A 20-pound Class ABC dry chemical fire extinguisher shall be available within 50 feet of any one portion of indoor tire storage areas.

(4) The storage structure must be secured from unauthorized access.

117.6(4) Processed tire storage.

a. Storage of processed tire materials at a tire processing facility shall be limited to the volume of material in aggregate that the processor manufactures within a consecutive 60-day period, using the facility's daily average capacity for processing whole tires as determined in 117.6(3) "a." The department shall have the final authority for determining the allowable quantities of processed tire materials to be stored.

b. Under no circumstances shall the equivalent of more than 500,000 processed tires, or 5,000 tons of material, be stored at the processing site.

c. All processed tire material at the site of processing shall be stored as follows:

(1) Processed tires that have been shredded or ground into pieces that are 9 inches or smaller shall be stored in piles no more than 15 feet in height, 100 feet in length, and 50 feet in width and shall contain no more than 75,000 cubic feet of product by volume.

(2) Processed tires cut into strips, sidewalls, or other pieces larger than 9 inches shall be stored in piles no more than 10 feet in height, 100 feet in length, and 50 feet in width and shall contain no more than 50,000 cubic feet of product by volume.

(3) A 50-foot fire lane must be maintained between piles of processed tire material, with the base of the lane kept free from the accumulation of waste tire-derived residuals or materials or other debris.

(4) All processed tire material shall be stored at least 50 feet from any property line, street, public right-of-way, or building.

(5) Trees and brush shall be cleared within 50 feet of the storage of all processed tire material.

(6) A 20-pound Class ABC dry chemical fire extinguisher shall be available within 100 feet of any one portion of processed tire storage areas.

d. For indoor storage of more than 5,000 cubic feet of processed tire material, the material shall be stored on concrete floors and all retaining walls, bins, barriers, and roofing material for the material storage shall be constructed of nonflammable materials.

e. The processor must demonstrate a reasonable market demand for all types and quantities of processed product stored at the processing site. Market demand for processed waste tire products shall be demonstrated by the processor through at least one of the following criteria:

(1) Active contracts, purchase orders, or supply agreements with an end user, noting quantities of material required by the end user, specifications of the quality of the product required by the end user, and monthly or annual demand of product by the end user from the processor. This information shall be made available for review by the department as required to determine compliance with this rule.

(2) Historic, ongoing demand for product by an end user or type of end user, within the state or surrounding region.

(3) Information and evidence that any proposed new product or use for processed waste tires produced by the tire processor will be marketed in a timely fashion, with sufficient demand and consumption by end user markets.

f. The department shall have the final authority in determining storage limitations, including prohibition, for processed tire products when active markets are not evident from information provided by the tire processor.

117.6(5) Reporting requirements. The holder of a permit for a waste tire processing facility shall make a semiannual report to the department on a form as provided or approved by the department. The report shall state the following:

a. Quantity of waste tires received by the facility during the reporting period.
b. Quantity of waste tires received by the facility from in-state sources.
c. Quantity of waste tires received by the facility from out-of-state sources.
d. Quantity of unprocessed waste tires on hand at the facility at the time of reporting.
e. Quantity of waste tires processed and delivered to end users during the reporting period, by product type, with determinations of quantities of product delivered to identified in-state and out-of-state markets or sites.

f. Quantity of processed tire material currently stored at the facility, by product type.

117.6(6) Disposal of solid wastes from tire processing.

a. All waste materials, residuals, and scraps derived from tire processing operations shall be regulated as solid waste. These materials include, but are not limited to, tire bead rings, metal wire, synthetic fibers, and cording.

b. All of these solid wastes must be disposed of at least every 60 days at a permitted sanitary disposal project, scrap recycler, or location, as approved by the department.

c. Documentation of the disposal of these solid wastes must be kept at the processing facility for a period of three years.

567—117.7(455B,455D) Financial assurance for waste tire sites. Permitted waste tire stockpile sites and waste tire processing facilities must obtain and submit a financial assurance instrument to this department for permitted waste tire storage, in accordance with these rules. The financial assurance instrument shall provide monetary funds to properly dispose of any waste tires that may remain at a waste tire site due to the owner's or operator's failure to properly close the site within 30 days of permit termination, revocation, or expiration. Waste tire storage and processing sites operated by state, county, or city agencies or operated in conjunction with a sanitary landfill shall not be required to obtain financial assurance instruments.

117.7(1) No permit without financial assurance. A permit shall not be issued to the owner and operator of a waste tire processing or storage site until a financial assurance instrument has been submitted to and approved by the department as necessary.

117.7(2) Financial assurance amounts required.

a. Waste tire stockpile sites shall have financial assurance coverage equal to 35 cents per waste tire collected and stored prior to July 1, 1998, and 85 cents per waste tire collected and stored on or after July 1, 1998.

b. If the owner or operator of a waste tire stockpile does not have adequate records to determine the time frame within which waste tire inventories were initially collected, then financial assurance amounts shall be determined by allocating the number of tires stored proportionally between the time period the facility has operated before and after July 1, 1998.

c. Waste tire processing sites shall have financial assurance coverage equal to 85 cents per waste tire stored above the permitted three-day processing capacity, in accordance with 117.6(3) "b."

117.7(3) *Acceptable financial assurance instruments.* Financial assurance may be provided by cash, surety bond, letter of credit, secured trust fund, or corporate guarantee, as follows:

a. Cash payments shall be provided by a certified check, made payable to the Department of Natural Resources.

b. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state, and the surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond must be continuous until canceled by the surety. Written notice of intent to cancel the bond must be provided to the owner and operator and to the department at least 90 days before the effective date of cancellation.

c. A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to comply with proper removal and disposal of waste tires covered by the financial assurance provided by the trust.

d. The department may require, at the expense of the permittee, a financial audit of an individual or firm requesting the use of a letter of credit or corporate guarantee.

117.7(4) *Financial assurance cancellation and permit suspension.*

a. Within 30 days of receipt of a written notice of cancellation of financial assurance by the surety, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 30 days, the department shall suspend the permit.

b. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, proper closure means removal of all tires and related products from the site or facility through acceptable disposal or processing options.

c. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the surety company, trust, or other financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

d. Any financial assurance instrument provided to the department in compliance with this rule must be payable to the department and must remain in continuous effect until the director of the department gives written notification to the owner, operator, and surety provider that the covered site has been properly closed. An owner or operator who elects to terminate a permitted activity, or whose renewal application has been denied, or whose permit has been suspended or revoked for cause, must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

e. The director may request payment from any surety to provide for the purpose of completing closure when one of the following circumstances exists:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

567—117.8(455B,455D) Beneficial uses of waste tires.

117.8(1) *Role of the department.* In order to ensure that all approved uses of whole or processed waste tires do not pose a threat to the environment or to the public health, welfare, and safety, the department shall have the authority to determine if a proposed use of waste tires is beneficial and shall have the authority to approve or deny applications if such a benefit is not evident. Proposed beneficial uses in which the primary purpose of the project is as a land disposal mechanism shall not be approved.

117.8(2) *Waste tire products exempted.* The following end uses of materials derived, processed, or recycled from waste tires shall be considered beneficial reuses under this chapter and shall not require individual beneficial use designations from the department for their use at a specific site of end use.

- a. Asphalt rubber, including asphalt cement modified with a crumb rubber modifier;
- b. Buffing rubber, defined as high quality tire rubber, which is a by-product from the conditioning of tire casings in preparation for retreading;
- c. Carbon black derived from the thermal or oxidative decomposition of tires;
- d. Crumb rubber material, including rubber granules used for soil amendments or surfacing materials for playgrounds, equestrian arenas, and athletic fields;
- e. Crumb rubber modifiers used in asphalt paving materials;
- f. Tire-derived fuel (TDF), which is a fuel derived from waste tires, including whole tires, processed into pieces that satisfy the specifications of the end user for use as either a primary or supplemental fuel. Use of TDF requires modification of air source construction and operation permits if such use is not already recognized in the end user's permit.

117.8(3) *Beneficial uses for whole waste tires.* This subrule establishes acceptable beneficial uses for whole waste tires and required notifications and approvals that must be obtained from the department prior to placement of waste tires at the site of end use. The following applications shall be considered acceptable beneficial uses for whole waste tires:

- a. Tire swings, sandboxes, or other equipment for child play areas on residential lots or at schools, care centers, and recreational areas;
- b. Dock bumpers at vehicle loading/unloading docks or marine docks;
- c. Crash barriers at racetracks;
- d. Agricultural uses to hold down covers over hay, silage, and other agricultural commodities. When not in use, the tires should be neatly stacked;
- e. Structures for military and police training at facilities under ownership or management of local, state, or federal agencies;
- f. Artificial fishing reefs and fish habitat structures constructed at facilities under ownership or management of a county conservation board, the department, or a federal agency;
- g. Stream bank erosion control and culvert outlet tire mats, constructed as follows:

- (1) The tires shall be placed in a single layer and banded together with a noncorrosive strip;
- (2) All the tires shall be drilled or punctured to allow for outflow of air to prevent their flotation when submerged;
- (3) The banded mat shall be anchored with cable at least 0.5 inches in diameter;
- (4) The cables shall then be fastened to buried anchors made of treated timbers or concrete, at least every 50 feet along the top of the mat and intermittently in the middle;
- (5) The mat shall extend 4 to 6 feet out on the channel bottom;
- (6) The outermost row on the channel bottom shall be filled with rocks or broken concrete;
- (7) Vegetation shall be planted in and around the tire mat; rows within the tire mat that are too wet for vegetation establishment shall be filled with rocks or broken concrete; and
- (8) Any variation from these design standards shall be acceptable only under the direction of an Iowa-licensed professional engineer.

h. Construction of residential dwelling structures or other buildings for which a building permit has been obtained from local government officials;

i. Culvert piping made from waste tires with a rim diameter of 21 inches or greater and subject to the following design criteria:

(1) The maximum depth of water flows within the culvert shall be no greater than 75 percent of the piping diameter;

(2) Sand or similar aggregate material must be installed in the lower portions of the culvert piping to provide ballast and limit mosquito infestations;

(3) The culvert must not be installed below the highest seasonal groundwater elevation;

(4) The maximum depth of earthen or aggregate coverings over the culvert shall not exceed the outside diameter of the whole tires used in the culvert;

(5) Soils used for backfill around and above the culvert shall be compacted so as to provide a culvert deflection of less than 5 percent of the outside diameter; and

(6) Vertical sections of tire culvert piping shall be designed with safety measures to prevent unauthorized access by or hazards to children and animals.

117.8(4) *Required notifications and approval for whole tire uses.* Prior to the installation or placement of waste tires for a beneficial use as approved in subrule 117.8(3), the owner or operator of the site of end use shall properly notify or seek approval from the department for the proposed beneficial use under the following circumstances. These circumstances apply to the total combined amount of tire material that already is, or is intended to be, used at the site:

a. For applications of less than 250 whole waste tires, notification to the department shall not be required, subject to the end user's compliance with all requirements of this chapter.

b. For applications of 250 to 500 whole waste tires, the department shall be notified in writing no less than 30 days prior to the construction or placement of waste tires for a beneficial use, with the following information provided:

(1) The name, address, and telephone number of the owner, operator, or individual responsible for the beneficial use application at the site of end use;

(2) The address of the site of beneficial end use;

(3) The estimated total number of tires to be used;

(4) A description of the beneficial use application;

(5) A project time line, including proposed project start and end dates; and

(6) A statement that explains how the site owner shall properly dispose of such waste tires in the event that the beneficial use is discontinued or dismantled.

c. For applications of more than 500 waste tires, approval by the department shall be obtained prior to any such applications. Approval requests shall be made to the department in writing and shall contain all information as requested in paragraph 117.8(4) "*b*," as well as a scaled plan of the site of end use with areas noted where whole waste tires are to be placed, including locations of the site of end use property lines and the location of any structures within 300 feet of the site of end use.

117.8(5) *Prevention of public health risks for whole tire uses.* All beneficial uses of whole waste tires as approved in this rule shall have incorporated into their design and construction measures to prevent the retention and stagnation of water, in the event that such conditions are likely to exist. These measures shall include, at a minimum, the piercing or drilling of holes in whole waste tires to allow for water drainage. Such measures shall be designed to minimize risks to public health and safety caused by the breeding of disease-carrying insects and rodents.

117.8(9) *Requests for approval of other beneficial use designations.* The department shall have the authority to approve or deny requests for beneficial use applications for whole, shredded, baled, or cut waste tires that are not specifically addressed within this chapter. Requests for such use determinations shall be made to the department in writing. The department may request project descriptions and supporting scientific and engineering data to determine if a request for a beneficial use designation is warranted. The department shall approve or deny a request for approval within 30 days of receipt of such a request and supporting data if so required by the department. The department shall have the sole authority to deny a beneficial use request if the department determines that any one of the following conditions exists:

- a. The requested beneficial use designation poses a risk to the environment or to the public health, welfare, and safety;
- b. The requested beneficial use designation is determined to have the primary purpose as a land disposal mechanism, and any beneficial use would be incidental in nature; or
- c. The requested beneficial use designation would not be in accordance with other applicable federal, state, or local laws, regulations, and ordinances.

117.8(10) *Compliance with local, state, and federal regulations.* Any proposed beneficial use project or application of whole, shredded, baled, or cut waste tires may require approval or permits from federal, state, and local agencies, under other laws, regulations, and ordinances, as applicable, including but not limited to the following:

- a. The Army Corps of Engineers, for projects involving navigable waterways and other waterways over which it has jurisdiction;
- b. Waste tire beneficial use applications involving placement on or within land or waters contained within a floodplain which require approval from the department's floodplain management program, as specified in 567—Chapters 70 through 75; and
- c. Local building codes, zoning and land-use covenants, ordinances, and guidelines.

117.8(11) *Storage of waste tires prior to beneficial use application.* Whole, shredded, cut, or baled waste tires to be used for a beneficial use application may be stored at the site of end use, subject to the following requirements:

- a. Such tire materials shall be stored in piles or bales for no longer than 60 days prior to the date of application, except for whole waste tires for agricultural uses as specified in paragraph 117.8(3)"d."
- b. All storage of such waste tire materials shall be conducted in accordance with the uniform fire code and the requirements of 117.4(3) and 117.6(4)"c" as applicable.
- c. Any storage of waste tires associated with a proposed beneficial reuse project at a site of end use for longer than 60 days without implementation of completion of a beneficial reuse project shall be subject to the waste tire storage permitting requirements as contained in rule 117.4(455B,455D).

These rules are intended to implement Iowa Code sections 455B.301 to 455B.307 and 455D.11 to 455D.11H.

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d. Planning.

(1) The commission shall develop comprehensive countywide emergency operations plans that are multihazard and multifunctional in nature and that shall include, but not be limited to, a part "A" operations plan, part "B" mitigation plan, and part "C" recovery plan that may be contained in a single document or multiple documents. Part A, B, and C plans must be completed and submitted to the division on or before October 5, 2003.

1. A part "A" operations plan assigns responsibilities to organizations and individuals for carrying out specific actions at projected times and places in an emergency or disaster.

2. The part "B" mitigation plan shall establish interim and long-term strategies to eliminate hazards or to reduce the impact of those hazards that cannot be eliminated. This requirement notwithstanding, to qualify for federal funding for mitigation assistance, the eligible applicant must comply with the mitigation planning requirements set forth in 44 CFR Section 201.6 and the Iowa Hazard Mitigation Grant Program Administrative Plan, as appropriate.

3. A part "C" recovery plan shall identify the short-term and long-term strategic priorities, processes, vital resources, and acceptable time frames and procedures for restoration.

(2) Plans shall contain the following common elements.

1. The functional roles and responsibilities of internal and external agencies, organizations, departments, and individuals during mitigation, preparedness, response and recovery shall be identified.

2. Lines of authority for those agencies, organizations, departments, and individuals shall be established and identified.

(3) Plans shall be regularly reviewed and amended as appropriate in accordance with a five-year schedule established by the commission, to include at a minimum:

1. A complete review, and amendment as appropriate, of the part "A" operations plan at a minimum of every five years. However, a review, and amendment as appropriate, of the hazardous materials portion and of a minimum of 20 percent of the remaining annexes or portions of the plan shall be conducted on a yearly basis. The complete operations plan must be entirely reviewed and amended as appropriate every five years. A printed copy of the portions of the plan that are reviewed, regardless of amendment, must be certified and submitted to the division for approval.

2. A complete review, and amendment as appropriate, of the part "B" mitigation plan at a minimum of every five years at such time a printed copy of the plan, regardless of amendment, must be submitted to the division for approval. Part "B" mitigation plans must also be reviewed and amended, as appropriate, certified and submitted to the division for approval within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster.

3. A complete review, and amendment as appropriate, of the part "C" recovery plan at a minimum of every five years at such time a printed copy of the plan, regardless of amendment, must be submitted to the division for approval. Part "C" recovery plans must also be reviewed and amended, as appropriate, certified and submitted to the division for approval within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster.

(4) To be certified, the plan must be adopted by the members of the local or joint emergency management commission and attested to by the chairperson and the local emergency management coordinator on a form to be provided by the division.

(5) In addition to the standards heretofore established in paragraph 7.3(4) "d," the operations plan shall include provisions for damage assessment.

(6) Hazardous materials plans shall meet the minimum requirements of federal law, 42 U.S.C., Sec. 11003.

(7) Counties designated as risk or host counties for a nuclear facility emergency planning zone shall meet the standards and requirements as published by the United States Nuclear Regulatory Commission and the Federal Emergency Management Agency in NUREG-0654, FEMA-REP-1, Rev. 1, March 1987.

(8) Local or joint emergency management commissions participating in or conducting exercises or experiencing real disaster incidents, which require after action and corrective action reports, have 180 days from the date of the publication of the corrective action report to incorporate the corrective actions, as appropriate, in their plans.

(9) Required plans or portions of plans, submitted for approval to the division by a local or joint emergency management commission, shall be reviewed within 60 calendar days from the receipt of the plan. The division shall notify the local emergency management coordinator in writing of the approval or nonapproval of the plan. If the plan is not approved, the division shall state the specific standard or standards that are not being met and offer guidance on how the plan may be brought into compliance.

(10) A comprehensive countywide emergency operations plan shall not be considered approved by the emergency management division as required in Iowa Code subsection 29C.9(8) unless such plan adheres to and meets the minimum standards as established in paragraph 7.3(4)“d.”

(11) Iowa Code section 29C.6 provides that state participation in funding financial assistance in a presidentially declared disaster is contingent upon the local government's having on file a state-approved, comprehensive, countywide plan as provided in Iowa Code subsection 29C.9(8). Required plans must be received by the division within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster for the affected county, and must be approved by the division within 240 days of this date for public or private nonprofit entities within the county to be eligible to receive state financial assistance.

e. Direction, control and coordination.

(1) The commission shall execute and enforce the orders or rules made by the governor, or under the governor's authority.

(2) The commission shall establish and maintain the capability to effectively direct, control and coordinate emergency and disaster response and recovery efforts.

(3) The commission shall establish a means of interfacing on-scene management with direction and control personnel and facilities.

(4) The commission should actively support use of the Incident Command System (ICS) model by all emergency and disaster response agencies within the jurisdiction.

f. Damage assessment.

(1) The commission shall develop and maintain a damage assessment capability consistent with local, state and federal requirements and shall designate individuals responsible for the function of damage assessment.

(2) Individuals identified by the commission to perform the function of damage assessment shall be trained through a course of instruction approved by the division.

g. Communications and warning.

(1) The commission should identify a means of disseminating a warning to the public, key officials, emergency response personnel and those other persons within the jurisdiction that may be potentially affected.

(2) The commission should identify the primary and secondary means of communications to support direction, control, and coordination of emergency management activities.

h. Operations and procedures. The commission should encourage public and private agencies, having defined responsibilities in the countywide emergency operations plan, to develop standard operating procedures, policies, and directives in support of the plan.

i. Training.

(1) The commission shall require the local emergency management coordinator to meet the minimum training requirements as established by the division and identified in subrule 7.4(4).

(2) The commission should, in conjunction with the local emergency management coordinator, arrange for and actively support ongoing emergency management related training for local public officials, emergency responders, volunteers, and support staff.

j. Provide the required matching financial contribution.

k. Expend funds for authorized purposes or in accordance with applicable laws, regulations, terms and conditions.

l. Respond to, or cooperate with, state efforts to determine the extent and nature of compliance with the cooperative agreement.

7.7(5) *Serious nonperformance problems.* If a local or joint commission cannot demonstrate achievement of agreed-upon work products, the division is empowered to withhold reimbursement or to recover funds from the local or joint commission. Corrective action procedures are designed to focus the commission's attention on nonperformance problems and to bring about compliance with the cooperative agreement. Corrective action procedures, which could lead to sanction, may be enacted as soon as the administrator becomes aware of serious nonperformance or noncompliance. This realization may arise from staff visits or other contacts with the local agency or commission, from indications in the commission's or coordinator's quarterly report that indicate a significant shortfall from planned accomplishments, or from the commission's or coordinator's failure to report. Financial sanctions are to be applied only after corrective action remedies fail to result in accomplishment of agreed-upon work product.

7.7(6) *Corrective actions.*

a. *Informal corrective action.* As a first and basic step to correcting nonperformance, a designated member of the state emergency management division staff will visit, call or write the local coordinator to determine the reason for nonperformance and seek an agreeable resolution.

b. *Formal corrective action.* On those occasions when there is considerable discrepancy between agreed-upon and actual performance and response to informal corrective action is not sufficient or agreeable, the division will take the following steps:

(1) Emergency management staff will review the scope of work, as agreed to in the cooperative agreement, to determine the extent of nonperformance. To focus attention on the total nonperformance issue, all instances of nonperformance will be addressed together in a single correspondence to the local or joint commission.

(2) The administrator will prepare a letter to the local or joint commission which will contain, at a minimum, the following information:

1. The reasons why the division believes the local or joint commission may be in noncompliance, including the specified provisions in question.

2. A description of the efforts made by the division to resolve the matter and the reasons these efforts were unsuccessful.

3. A declaration of the local or joint commission's commitment to accomplishing the work agreed upon and specified in the comprehensive cooperative agreement and its importance to the emergency management capability of the local jurisdiction.

4. A description of the exact actions or alternative actions required of the local or joint commission to bring the problem to an agreed resolution.

5. A statement that this letter constitutes the final no-penalty effort to achieve a resolution and that financial sanctions provided for in these rules will be undertaken if a satisfactory response is not received by the division within 30 days.

7.7(7) *Financial sanctions.* If the corrective actions heretofore described fail to produce a satisfactory resolution to cases of serious nonperformance, the administrator may invoke the following financial sanction procedures:

a. Send a "Notice of Intention to Withhold Payment" to the chairperson of the local or joint commission. This notice shall also contain notice of a reasonable time and place for a hearing, should the local or joint commission request a hearing before the administrator.

b. Any request by a local or joint commission for a hearing must be made in writing, to the division, within 15 days of receipt of the notice of intention to withhold payment.

c. Any hearing under the notice of intention to withhold payment shall be held before the administrator. However, the administrator may designate an administrative law judge to take evidence and certify to the administrator the entire record, including findings and recommended actions.

d. The local or joint commission shall be given full opportunity to present its position orally and in writing.

e. If, after a hearing, the administrator finds sufficient evidence that the local or joint commission has violated established rules and regulations or the terms and conditions of the cooperative agreement, the administrator may withhold such contributions and payments as may be considered advisable, until the failure to expend funds in accordance with said rules, regulations, terms and conditions has been corrected or the administrator is satisfied that there will no longer be any such failure.

f. If upon the expiration of the 15-day period stated for a hearing, a hearing has not been requested, the administrator may issue the findings and take appropriate action as described in the preceding paragraph.

g. If the administrator finds there is serious nonperformance by the commission or its coordinator and issues an order to withhold payments to the local or joint commission as described in this rule, the commission shall not receive funds under the emergency management performance grant program for the remainder of the federal fiscal year in which the order is issued and one additional year or until such time that all issues of nonperformance have been agreeably addressed by the division and the commission.

h. Any emergency management performance grant program funds withheld or recovered by the division as a result of this process shall be reallocated at the end of the federal fiscal year to the remaining participating counties.

These rules are intended to implement Iowa Code sections 29C.6 and 29C.8.

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5.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3.)
- b. Records which are exempt from disclosure under Iowa Code section 22.7.
- c. Minutes of closed meetings of a government body (Iowa Code section 21.5(4)).
- d. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d.”

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

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

(See Iowa Code sections 17A.2 and 17A.3.)

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

g. Corporate income return systems, corporate income tax field and office audit systems, related field collections system, and corporate tax error resolution system (Iowa Code section 422.20).

h. Individual and fiduciary income returns, individual and fiduciary income tax field and office audit systems, and related field collections system (Iowa Code section 422.20, 422.72, and 450.68).

i. Individual income tax withholding system, IA-W4 system, declaration of estimated tax, and withholding penalty waiver systems (Iowa Code sections 422.20 and 422.72).

j. Penalty waiver, abatement, and settlement systems (Iowa Code sections 421.5, 422.20, and 422.72).

k. Franchise tax returns, audit and collection systems (Iowa Code section 422.72).

l. Sales and use tax returns, field and office audit and collections systems, sales tax refund examination system, industrial machinery, equipment, and computer refund systems, and sales and use tax penalty waiver systems (Iowa Code section 422.72).

m. Motor vehicle fuel, railway fuel tax, and special fuel tax return and error resolution systems, and related field and office audit and collection systems (Iowa Code section 452A.63).

n. Inheritance, generation skipping transfer, qualified use inheritance and estate tax returns, field and office audit systems, and related field collections system (Iowa Code section 450.68).

o. Federal and state exchange of information systems (Iowa Code sections 422.20(2) and 422.72).

p. Cigarette and tobacco tax systems with related office and field audit and field collections systems (Iowa Code section 22.7(6)).

q. Property assessor and deputy assessor examination records systems (Iowa Code section 441.5).

r. Central property tax assessments systems (Iowa Code sections 422.20 and 22.7(6)).

s. Elderly credit mobile home system (Iowa Code section 425.28).

t. Iowa disabled and senior citizen property tax and special assessment credit systems (Iowa Code section 425.28).

u. Local option sales and services tax system (Iowa Code section 422.72).

v. New job tax credit system (Iowa Code section 422.20).

- w. Corporate and franchise estimated tax systems (Iowa Code section 422.20).
- x. Hotel and motel tax system (Iowa Code section 422.72).
- y. The work product portion of the hearing officer case files (Iowa Code subsection 22.7(4)).
- z. Permit application and maintenance systems (Iowa Code sections 22.7(6), 452A.63, 422.20, and 422.72).

aa. Taxpayer contact systems (Iowa Code subsection 22.7(18) and any relevant tax confidentiality sections).

bb. Centralized payroll and department personnel and payroll systems, including those of the Iowa Lottery, to the extent covered (Iowa Code subsection 22.7(11)).

cc. Inheritance tax returns, estate tax returns, and generation skipping transfer tax returns (Iowa Code sections 450.68, 450A.12, 450B.7 and 451.12).

dd. Any other records made confidential by law.

5.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

This rule is intended to implement Iowa Code chapters 450, 450A, 450B, and 451.

701—5.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(17A,22).

5.14(1) Retrieval. Personal identifiers may be used to retrieve information from any of the systems of records that the agency maintains that contain personally identifiable information.

5.14(2) Means of storage. Paper, microfilm, microfiche, and various electronic means of storage are used to store records containing personally identifiable information.

5.14(3) Comparison. Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

5.14(4) Comparison with data from outside the agency. Personally identifiable information in systems of records maintained by the agency may be compared with information from outside the agency when specified by law. This comparison is allowed in situations including:

a. Determination of any offset of a debtor's income tax refund or rebate for child support recovery or foster care recovery (2003 Iowa Acts, House File 534, section 86);

b. Collection of taxes by collection agencies (Iowa Code subsection 421.17(22));

c. Calculation of any offset against an income tax refund or rebate for default on a guaranteed student loan (2003 Iowa Acts, House File 534, section 86);

d. Offset from any tax refund or rebate for any liability owed a state agency (2003 Iowa Acts, House File 534, section 86);

e. Offset for any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of district court as a criminal fine, civil penalty surcharge, or court costs (2003 Iowa Acts, House File 534, section 86).

5.14(5) Nature and extent. All of the record systems listed in subrule 5.14(6) contain personally identifiable information concerning matters such as income, property holdings or exchanges, financial transactions, and demographic information such as address and number of dependents.

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

This rule is intended to implement Iowa Code chapter 22.

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The computation of the child care credit for nonresident taxpayers is shown in the following example:

A husband and wife both have earned income during 1977 and are filing separate Iowa returns or separately on a combined Iowa return. The total income for the spouses is shown below:

	Husband	Wife
Wages		\$ 5,000 (Non-Iowa)
Self-employment income	\$20,000 (Iowa)	
Interest income	\$ 2,500 (Non-Iowa)	\$ 2,500 (Non-Iowa)
Net rental income		\$10,000 (Iowa)

The qualifying employment-related expenses shown on federal Schedule 2441 amounted to \$3,000. The amount of child care credit attributable to Iowa would be:

$$\frac{\$20,000}{\$25,000} \times \$3,000 \times 5\% = \$120$$

The \$120 child care credit is then allocated to each spouse on the following basis:

Husband	Wife
$\frac{\$20,000}{\$30,000} \times \$120 = \$80$	$\frac{\$10,000}{\$30,000} \times \$120 = \$40$

For tax years beginning on or after January 1, 1982, nonresidents or part-year residents of Iowa shall compute their child care credit in the same manner as residents of Iowa.

A copy of federal Schedule 2441 must be attached to all returns on which taxpayers have claimed the child care credit. In no case may the child care credit exceed the taxpayers' Iowa income tax liability.

b. For tax years beginning on or after January 1, 1977, and prior to January 1, 1983, the percentage of qualifying employment-related expenses paid for child and dependent care which is allowable as a tax credit shall be 5 percent. For tax years beginning on or after January 1, 1983, but before January 1, 1986, the percentage of qualifying employment-related expenses paid for child and dependent care which is allowable as a tax credit shall be 10 percent.

c. For tax years beginning on or after January 1, 1986, but before January 1, 1990, the child care credit is 45 percent of the federal child and dependent care credit provided in Section 21 of the Internal Revenue Code. Married taxpayers who are claiming the child care credit and who elect to file separate returns or separately on the combined return must allocate the credit to each spouse in the ratio that each spouse's net income relates to the combined net incomes of both spouses. This credit may not exceed the computed tax less the amount of exemption credits for any taxable year.

42.2(4) Political contributions credit. Effective for tax years beginning on or after January 1, 1983, but before January 1, 1986, a taxpayer is allowed a tax credit equal to 5 percent of the first \$100 donated as a political contribution as defined in Section 24c of the Internal Revenue Code. In the case of a married couple filing a joint return, a political contribution credit equal to 5 percent of the first \$200 donated shall be allowed. The credit may not exceed the computed tax less the amount of exemption credits and child care credits for any taxable year.

42.2(5) Iowa venture capital fund investment credit. A taxpayer is allowed a tax credit equal to 5 percent of the taxpayer's investment in the initial offering of securities by the Iowa venture capital fund established by the Iowa development commission. Any credit in excess of the computed tax less exemption credits, child care credits, and political contribution credits may be credited to the tax liability for the following three taxable years or until depleted in less than three years.

42.2(6) Research activities credit. Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a credit equal to 6½ percent of the state's apportioned share of qualified expenditures for increasing research activities. Effective for tax years beginning on or after January 1, 1991, the state research activities credit will be computed on the basis of the qualifying expenditures for increasing research activities as allowable under Section 41 of the Internal Revenue Code in effect on January 1, 1999. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in Iowa to the total qualified research expenditures. The Iowa research activities credit is made permanent for tax years beginning on or after January 1, 1991, even though there may no longer be a research activities credit for federal income tax purposes.

a. Qualified expenditures in Iowa are:

- (1) Wages for qualified research services performed in Iowa.
- (2) Cost of supplies used in conducting qualified research in Iowa.
- (3) Rental or lease cost of personal property used in Iowa in conducting qualified research.

Where personal property is used both within and without Iowa in conducting qualified research, the rental or lease cost must be prorated between Iowa and non-Iowa use by the ratio of days used in Iowa to total days used both within and without Iowa.

(4) Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed in Iowa.

b. Total qualified expenditures are:

- (1) Wages paid for qualified research services performed everywhere.
- (2) Cost of supplies used in conducting qualified research everywhere.
- (3) Rental or lease cost of personal property used in conducting qualified research everywhere.
- (4) Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed everywhere.

Qualifying expenditures for increasing research activities is the smallest of the amount by which the qualified research expenses for the taxable year exceed the base period research expenses or 50 percent of the qualified research expenses for the taxable year.

Research expenditures for tax years beginning after December 31, 1985, but before January 1, 1987, will qualify for the Iowa credit for increasing research activities to the extent that the credit would be allowable for federal income tax purposes under Section 30 of the Internal Revenue Code as in effect on January 1, 1985.

A taxpayer may claim on the taxpayer's individual income tax return the pro rata share of the credit for qualifying research expenditures incurred in Iowa by a partnership, subchapter S corporation, or estate or trust. The portion of the credit claimed by the individual must be in the same ratio as the individual's pro rata share of the earnings of the partnership, subchapter S corporation, or estate or trust.

Any research credit in excess of the individual's tax liability, less the credits authorized in Iowa Code sections 422.11A, 422.11C, 422.12 and 422.12B may be refunded to the taxpayer or may be credited to the estimated tax of the taxpayer for the following year.

42.2(7) New jobs credit. A tax credit is available to an individual who has entered into an agreement under Iowa Code chapter 260E and has increased employment by at least 10 percent.

a. Definitions.

(1) The term "new jobs" means those jobs directly resulting from a project covered by an agreement authorized by Iowa Code chapter 260E (Iowa Industrial New Jobs Training Act) but does not include jobs of recalled workers or replacement jobs or other jobs that formerly existed in the industry in the state.

(2) The term "jobs directly related to new jobs" means those jobs which directly support the new jobs but does not include instate employees transferred to a position which would be considered to be a job directly related to new jobs unless the transferred employee's vacant position is filled by a new employee.

EXAMPLE A. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line, transfers an instate employee to be foreman of the new product line but does not fill the transferred employee's position. The new foreman's position would not be considered a job directly related to new jobs even though it directly supports the new jobs because the transferred employee's old position was not refilled.

EXAMPLE B. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an instate employee to be foreman of the new product line and fills the transferred employee's position with a new employee. The new foreman's position would be considered a job directly related to new jobs because it directly supports the new jobs and the transferred employee's old position was filled by a new employee.

The burden of proof that a job is directly related to new jobs is on the taxpayer.

(3) The term "*taxable wages*" means those wages upon which an employer is required to contribute to the state unemployment fund as defined in Iowa Code subsection 96.19(37) for the year in which the taxpayer elects to take the new jobs tax credit. For fiscal year taxpayers, "taxable wages" shall not be greater than the maximum wage upon which an employer is required to contribute to the state unemployment fund for the calendar year in which the taxpayer's fiscal year begins.

(4) The term "*agreement*" means an agreement entered into under Iowa Code chapter 260E after July 1, 1985, an amendment to that agreement, or an amendment to an agreement entered into before July 1, 1985, if the amendment sets forth the base employment level as of the date of the amendment. The term "agreement" also includes a preliminary agreement entered into under Iowa Code chapter 260E provided the preliminary agreement contains all the elements of a contract and includes the necessary elements and commitments relating to training programs and new jobs.

(5) The term "*base employment level*" means the number of full-time jobs an industry employs at a plant site which is covered by an agreement under Iowa Code chapter 260E on the date of the agreement.

(6) The term "*project*" means a training arrangement which is the subject of an agreement entered into under Iowa Code chapter 260E.

(7) The term "*industry*" means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health or professional services. Industry does not include a business which closes or substantially reduces its operations in one area of the state and relocates substantially the same operation in another area of the state. Industry is a business engaged in the above listed activities rather than the generic definition encompassing all businesses in the state engaged in the same activities. For example, in the meat-packing business, an industry is considered to be a single corporate entity or operating division, rather than the entire meat-packing business in the state.

(8) The term "*new employees*" means the same as new jobs or jobs directly related to new jobs.

(9) The term "*full-time job*" means any of the following:

1. An employment position requiring an average work week of 35 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
3. An aggregation of any number of part-time or job-sharing employment positions which equal one full-time employment position. For purposes of this subrule each part-time or job-sharing employment position shall be categorized with regard to the average number of hours worked each week as one-quarter, half, three-quarters, or full-time position, as set forth in the following table:

Average Number of Weekly Hours	Category
More than 0 but less than 15	$\frac{1}{4}$
15 or more but less than 25	$\frac{1}{2}$
25 or more but less than 35	$\frac{3}{4}$
35 or more	1 (full-time)

b. How to compute the credit. The credit is 6 percent of the taxable wages paid to employees in new jobs or jobs directly related to new jobs for the taxable year in which the taxpayer elects to take the credit.

EXAMPLE 1. A taxpayer enters into an agreement to increase employment by 20 new employees which is greater than 10 percent of the taxpayer's base employment level of 100 employees. In year one of the agreement the taxpayer hires 20 new employees but elects not to take the credit in that year. In year two of the agreement only 18 of the new employees hired in year one are still employed and the taxpayer elects to take the credit. The credit would be 6 percent of the taxable wages of the 18 remaining new employees. In year three of the agreement the taxpayer hires two additional new employees under the agreement to replace the two employees that left in year two and elects to take the credit. The credit would be 6 percent of the taxable wages paid to the two replacement employees. In year four of the agreement three of the employees for which a credit had been taken left employment and three additional employees were hired. No credit is available for these employees. A credit can only be taken one time for each new job or job directly related to a new job.

EXAMPLE 2. A taxpayer operating two plants in Iowa enters into a chapter 260E agreement to train new employees for a new product line at one of the taxpayer's plants. The base employment level on the date of the agreement at plant A is 300 and at plant B is 100. Under the agreement 20 new employees will be trained for plant B which is greater than a 10 percent increase of the base employment level for plant B. In the year in which the taxpayer elects to take the credit, the employment level at plant A is 290 and at plant B is 120. The credit would be 6 percent of the wages of 10 new employees at plant B as 10 new jobs were created by the industry in the state. A credit for the remaining 10 employees can be taken if the employment level at plant A increases back to 300 during the period of time that the credit can be taken.

c. When the credit can be taken. The taxpayer may elect to take the credit in any tax year which either begins or ends during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. However, the taxpayer may not take the credit until the base employment level has been exceeded by at least 10 percent.

EXAMPLE: A taxpayer enters into an agreement to increase employment from a base employment level of 200 employees to 225 employees. In year one of the agreement the taxpayer hires 20 new employees which is a 10 percent increase over the base employment level but elects not to take the credit. In year two of the agreement two of the new employees leave employment. The taxpayer elects to take the credit which would be 6 percent of the taxable wages of the 18 employees currently employed. In year three the taxpayer hires seven new employees and elects to take the credit. The credit would be 6 percent of the taxable wages of the seven new employees.

A taxpayer may claim on the taxpayer's individual income tax return the pro rata share of the Iowa new jobs credit from a partnership, subchapter S corporation, estate or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro rata share of the earnings of the partnership, subchapter S corporation, or estate or trust. All partners in a partnership, shareholders in a subchapter S corporation and beneficiaries in an estate or trust shall elect to take the Iowa new jobs credit the same year.

Any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code sections 422.12 and 422.12B may be carried forward for ten years or until it is used, whichever is the earlier.

42.2(8) Tuition and textbooks credit for dependents in grades kindergarten through 12 in Iowa.

For tax years beginning on or after January 1, 1987, but prior to January 1, 1996, individuals who elect the optional standard deduction may claim a tax credit of 5 percent of the qualifying expenditures. For tax years beginning on or after January 1, 1996, all taxpayers, including individuals that have net incomes of \$45,000 or more, may claim a tuition and textbook credit of 10 percent of qualifying expenditures. For tax years beginning on or after January 1, 1998, all taxpayers may claim a tuition and textbook credit of 25 percent of up to \$1,000 of qualifying expenditures for each dependent attending grades kindergarten through 12 in Iowa. Qualifying expenditures include amounts paid for tuition and textbooks described in paragraphs "a" and "b" of 701—subrule 41.5(5) as well as amounts paid for extracurricular activities described in paragraph "c" of 701—subrule 41.5(5). For purposes of this subrule, the qualifying expenditures for tax years beginning in 1996 and 1997 are the same as would have been eligible for the deduction allowed under 701—subrule 41.5(5) if the qualifying expenditures had been paid in a tax year when the deduction was applicable. All the qualifications, definitions, and criteria in 701—subrule 41.5(5) are equally applicable to the credit for amounts paid for tuition and textbooks for dependents attending grades kindergarten through 12 in Iowa. In the case of married taxpayers who are filing separate returns or separately on the combined return, the spouses can allocate the credit for tuition and textbooks between them in the same ratio as described in paragraph "g" of 701—subrule 41.5(5).

42.2(9) Earned income credit. Effective for tax years beginning on or after January 1, 1990, an individual is allowed a state earned income credit equal to a percentage of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The state earned income credit is nonrefundable so the credit may not exceed the remaining income tax liability of the taxpayer after the personal exemption credits and the other nonrefundable credits are deducted. The percentage of the earned income credit for tax years beginning in the 1990 calendar year is 5 percent. The percentage of the earned income credit for tax years beginning on or after January 1, 1991, is 6.5 percent.

For federal income tax purposes, the earned income credit is available for a low-income worker who maintains a household in the United States that is the principal place of abode of the worker and a child or children for more than one-half of the tax year or the worker must have provided a home for the entire tax year for a dependent parent. In addition, the worker must be (1) a married person who files a joint return and is entitled to a dependency exemption for a son or daughter, adopted child or stepchild; (2) a surviving spouse; or (3) an individual who qualifies as a head of household as described in Section 2(b) of the Internal Revenue Code. The federal earned income credit for a taxpayer is determined by computing the taxpayer's earned income on a worksheet provided in the federal income tax return instructions and determining the allowable credit from a table included in the instructions for the 1040 or 1040A. For purposes of the credit, a taxpayer's earned income includes wages, salaries, tips, or other compensation plus net income from self-employment.

In the case of married taxpayers who filed a joint federal return who elect to file separate state returns or separately on the combined return form, the state earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents and part-year residents are allowed the same earned income credits as resident taxpayers.

42.2(10) Investment tax credit. An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received by the Iowa department of economic development on or after July 1, 1999, purchases of real property made in conjunction with the location or expansion of an eligible business, the cost of land and any buildings and structures located on the land will be considered to be new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken.

If the eligible business within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this rule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

- a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- d. Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
- e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by the individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment tax credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return.

Eligible businesses shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than \$4 million during a fiscal year. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects for cooperatives that are not required to file an Iowa income tax return because they are exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

See 701—subrule 52.10(4) for examples illustrating how this subrule is applied.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed.

42.2(11) Research activities credit. Effective for tax years beginning on or after January 1, 2000, the taxes imposed for individual income tax purposes will be reduced by a tax credit for increasing research activities in this state. See subrule 42.2(6) for the research activities credit that was applicable for individual income tax purposes for tax years beginning on or after January 1, 1985, but prior to January 1, 2000.

a. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research activities.

b. In lieu of the credit computed under paragraph "a" of this subrule, a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph "b" of this subrule, such amounts are limited to research activities conducted within this state. For purposes of this subrule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2003.

c. An individual may claim a research activities credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income of the business entity taxed to the individual. The amount claimed by an individual from the business entity is to be based upon the pro-rata share of the individual's earnings from a partnership, S corporation, estate or trust. Any research credit in excess of the individual's tax liability, less the credits authorized in Iowa Code sections 422.11A, 422.12 and 422.12B may be refunded to the individual or may be credited to the individual's tax liability for the following tax year.

This rule is intended to implement Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 681, and Iowa Code sections 422.10, 422.11A, 422.12, and 422.12B.

701—42.3(422) Nonresident and part-year resident credit. For tax years beginning on or after January 1, 1982, an individual who is a nonresident of Iowa for the entire tax year, or an individual who is an Iowa resident for a portion of the tax year, is allowed a credit against the individual's Iowa income tax liability for the Iowa income tax on the portion of the individual's income which was earned outside Iowa while the person was a nonresident of Iowa. This credit is computed on Schedule IA 126 which is included in the Iowa individual income tax booklet. The following subrules clarify how the nonresident and part-year resident credit is computed for nonresidents of Iowa and taxpayers who are part-year residents of Iowa during the tax year.

42.3(1) Nonresident/part-year resident credit for nonresidents of Iowa. A nonresident of Iowa is to complete the Iowa individual return by reporting the individual's total net income, including incomes earned outside Iowa, on the front of the IA 1040 return form similar to the way an Iowa resident completes the return form. A nonresident individual is allowed the same deduction for federal income tax and the same itemized deductions as an Iowa resident taxpayer with identical deductions for these expenditures. Thus, a nonresident with a taxable income of \$40,000 would have the same initial Iowa income tax liability as a resident taxpayer with a taxable income of \$40,000 before the nonresident/part-year resident credit is computed.

The nonresident/part-year resident credit is computed on Schedule IA 126. The lines referred to in this subrule are from Schedule IA 126 and Form IA 1040 for the 1997 tax year. Similar lines on the schedule and form may apply for subsequent tax years. The individual's Iowa source net income from lines 1 through 25 of the schedule is totaled on line 26 of the schedule. If the nonresident's Iowa source net income is less than \$1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa income tax return for the tax year. However, if the Iowa source net income amount is \$1,000 or more, the Iowa source net income is then divided by the person's all source net income on line 27 of Schedule IA 126 to determine the percentage of the Iowa net income to all source net income. This Iowa income percentage is inserted on line 28 of the schedule, and this percentage is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage or the percentage of the individual's total income which was earned outside Iowa. The nonresident/part-year resident credit percentage is entered on line 29 of Schedule IA 126. The Iowa income tax on total income from line 43 of the IA 1040 is entered on line 30 of Schedule IA 126. The total of nonrefundable credits from line 50 of the IA 1040 is then shown on line 31 of Schedule IA 126. The amount on line 31 is subtracted from the amount on line 30 which leaves the Iowa total tax after nonrefundable credits on line 32. This Iowa tax after credits amount is multiplied by the nonresident/part-year resident credit percentage from line 29 to compute the nonresident/part-year resident credit. The amount of the credit is inserted on line 33 of Schedule IA 126 and on line 52 of the IA 1040.

EXAMPLE A. A single resident of Nebraska had Iowa source net income of \$15,000 in 1997 from wages earned from employment in Iowa. The rest of this person's income was attributable to sources outside Iowa. This nonresident of Iowa had an all source net income of \$40,000 and a taxable income of \$30,000 due to a federal tax deduction of \$7,000 and itemized deductions of \$3,000. The Iowa income percentage is computed by dividing the Iowa source net income of \$15,000 by the taxpayer's all source net income of \$40,000, which results in a percentage of 37.5. This percentage is subtracted from 100 percent which leaves a nonresident/part-year resident credit percentage of 62.5.

The Iowa tax from line 43 of the IA 1040 is \$1,789. The total nonrefundable credit from line 50 is \$20, which leaves a tax amount of \$1,769 when the credit is subtracted from \$1,789. When \$1,769 is multiplied by the nonresident/part-year resident credit percentage of 62.5 percent, a nonresident credit of \$1,106 is computed which is entered on line 33 of Schedule IA 126 as well as on line 52 of the IA 1040 for 1997.

EXAMPLE B. A California resident, who was married, had \$20,000 of Iowa source income in 1997 from an Iowa farm. This individual had an additional \$80,000 in income that was attributable to sources outside Iowa, but the individual's spouse had no income. The taxpayers had paid \$18,000 in federal income tax in 1997 and had itemized deductions of \$12,000 in 1997.

701—42.12(422) Franchise tax credit. For tax years beginning on or after January 1, 1997, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code, which has elected to have its income taxed directly to the shareholders, may take a tax credit equal to the shareholder's pro-rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.5 by reducing the shareholder's taxable income by the shareholder's pro-rata share of the items of income and expenses of the financial institution and subtracting the credits allowed in Iowa Code section 422.12. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.5 reduced by the credits allowed in Iowa Code section 422.12.

The resulting amount, not to exceed the shareholder's pro-rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder.

This rule is intended to implement Iowa Code section 422.11 created by 1997 Iowa Acts, Senate File 553.

701—42.13(15E) Eligible housing business tax credit. An individual who qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in Iowa Code section 15E.193B.

42.13(1) Computation of credit. New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's individual income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, S corporation, limited liability company, estate, or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro-rata share of the earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any Iowa eligible housing business tax credit in excess of the individual's tax liability, less the credits authorized in Iowa Code sections 422.12 and 422.12B, may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.13(1). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy.

42.13(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credits shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 15E.193B as amended by 2003 Iowa Acts, Senate File 441.

701—42.14(422) Assistive device tax credit. Effective for tax years beginning on or after January 1, 2000, a taxpayer who is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first \$5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer is not to deduct for Iowa income tax purposes any amount of the cost of an assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

42.14(1) Submitting applications for the credit. A small business wanting to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed \$500,000. The certificate for entitlement of the assistive device credit is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved, the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer is to enter the date that the assistive device project was completed. The certificate for entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2000, and completed the assistive device workplace modification project on January 15, 2001, taxpayer A could claim the assistive device credit on taxpayer A's 2001 Iowa return, assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue and finance will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not attached to the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is a partnership, limited liability company, S corporation, estate, or trust, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the owners with a statement showing how the credit is to be allocated among the individual owners of the business entity. An individual owner is to attach a copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual's state income tax return.

42.14(2) Definitions. The following definitions are applicable to this rule:

"Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

"Business entity" means partnership, limited liability company, S corporation, estate, or trust, where the income of the business is taxed to each of the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

"Disability" means the same as defined in Iowa Code section 225C.46. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;
5. Alcoholism.

"Employee" means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered an employee of the small business for purposes of this rule.

"Small business" means that the business either had gross receipts in the tax year before the current tax year of \$3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

"Workplace modifications" means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

42.14(3) Allocation of credit to owners of a business entity. If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an assistive device credit for a tax year of \$2,500 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an assistive device credit for the tax year of \$625 or 25 percent of the total assistive device credit of the partnership.

This rule is intended to implement Iowa Code section 422.11E.

701—42.15(422) Property rehabilitation tax credit. A property rehabilitation credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa individual income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for approved rehabilitation projects of eligible property in Iowa. The administrative rules for the property rehabilitation credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

42.15(1) Eligible properties for the rehabilitation credit. The following types of property are eligible for the property rehabilitation credit:

- a. Property verified as listed on the National Register of Historic Places or eligible for such listing through the state historic preservation office (SHPO).
- b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation by being located in an area previously surveyed and evaluated as eligible for the National Register of Historic Places.
- c. Property or district designated as a local landmark by a city or county ordinance.
- d. Any barn constructed prior to 1937.

42.15(2) *Application and review process for the property rehabilitation credit.* Taxpayers who want to claim an income tax credit for completing a property rehabilitation project must submit an application for approval of the project. The application forms for the property rehabilitation credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For the fiscal year beginning on July 1, 2000, and ending June 30, 2001, \$2.4 million was appropriated for property rehabilitation tax credits for that year.

Applicants for the property rehabilitation credit must include all information and documentation requested on the application forms for the credit in order for the application to be processed.

The state historic preservation office (SHPO) is to establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process is not to exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO are to be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property that is listed on the National Register of Historic Places or is designated as of historic significance to a district listed in the National Register of Historic Places.

The selection standards are to provide that a taxpayer who qualifies for the rehabilitation investment credit under Section 47 of the Internal Revenue Code shall automatically qualify for the state property rehabilitation credit to the extent that all the property rehabilitation credits appropriated for the fiscal year have not already been awarded.

Once SHPO approves a particular rehabilitation credit project application, the office will encumber an estimated rehabilitation credit under the name of the applicant(s) for the year the project is approved.

42.15(3) *Computation of the amount of the property rehabilitation credit.* The amount of the property rehabilitation credit is 25 percent of the qualified rehabilitation costs made to an eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least \$25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs are not to exceed \$100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the later of either the date of issuance of approval of the project or two years prior to the project completion date.

For purposes of the property rehabilitation credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the property rehabilitation credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation expenses that are equal to the amount of the computed rehabilitation credit for the tax year.

For example, the basis of a commercial building in a historic district was \$500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, \$600,000 in rehabilitation costs were expended to complete the project and \$500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the rehabilitation credit of \$125,000. Therefore, the basis of the building for Iowa income tax purposes was \$975,000, since the qualified rehabilitation costs of \$125,000, which are equal to the amount of the rehabilitation credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was \$1,100,000. However, for tax years beginning only in the 2000 calendar year, the basis of the building for Iowa income tax purposes would have been \$600,000, since for those tax periods, any qualified rehabilitation expenses used to compute the property rehabilitation credit for the tax year could not be added to the basis of the property. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would not be affected by the federal credit.

42.15(4) Completion of the property rehabilitation project and claiming the property rehabilitation tax credit on the Iowa return. After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the rehabilitation credit, the state historic preservation office, in consultation with the Iowa department of economic development, is to issue a property rehabilitation tax credit certificate which is to be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed and the amount of the property rehabilitation credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.15(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the property rehabilitation tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	\$.784
6%	\$.747
7%	\$.713
8%	\$.681
9%	\$.650
10%	\$.621
11%	\$.594
12%	\$.567
13%	\$.543
14%	\$.519
15%	\$.497
16%	\$.476
17%	\$.456
18%	\$.437

EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a rehabilitation credit of \$800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of \$300,000 on the 2001 return, which leaves an excess credit of \$500,000. We will assume that the annual interest rate for tax refunds issued by the department of revenue and finance in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the \$500,000 excess credit, \$500,000 is multiplied by the compound factor for 11 percent of .594 in the table, which results in a refund of \$297,000.

42.15(5) Allocation of property rehabilitation credits to the individual owners of the entity. When the taxpayer that has earned a property rehabilitation credit is a partnership, limited liability company, estate or trust where the individual owners of the business entity are taxed on the income of the entity, the property rehabilitation credit is to be allocated to the individual owners. The business entity is to allocate the property rehabilitation credit to each individual owner on the same pro-rata basis as the earnings of the business are allocated to the owners. For example, if a partner of a partnership received 25 percent of the earnings or income of the partnership for the tax year in which the partnership had earned a property rehabilitation credit, 25 percent of the credit would be allocated to this partner.

42.15(6) Transfer of the property rehabilitation tax credit. For tax periods beginning on or after January 1, 2003, the property rehabilitation tax credit certificates may be transferred to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the property rehabilitation tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

If the property rehabilitation tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 42.15(4) just as the refund would have been discounted on the Iowa income tax return of the taxpayer.

This rule is intended to implement Iowa Code chapter 404A as amended by 2003 Iowa Acts, Senate File 441 and section 422.11D.

701—42.16(422) Ethanol blended gasoline tax credit. Effective for tax years beginning on or after January 1, 2002, a retail gasoline dealer may claim an ethanol blended gasoline tax credit against that individual's individual income tax liability. The taxpayer must operate at least one service station at which more than 60 percent of the total gallons of gasoline sold and dispensed through one or more metered pumps by the taxpayer in the tax year is ethanol blended gasoline. The tax credit shall be calculated separately for each service station site operated by the taxpayer. The amount of the credit for each eligible service station is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at that service station during the tax year in excess of 60 percent of all gasoline sold and dispensed through metered pumps at that service station during the tax year.

For fiscal years ending in 2002, the tax credit is available for each eligible service station based on the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at the taxpayer's service station from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 43.3(8) has not yet expired.

EXAMPLE: A taxpayer sold 100,000 gallons of gasoline at the taxpayer's service station site during the tax year, 70,000 gallons of which were ethanol blended gasoline. The taxpayer is eligible for the credit since more than 60 percent of the total gallons sold were ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 70,000 less 60,000, or 10,000 gallons. Two and one-half cents multiplied by 10,000 equals a \$250 credit available.

The credit may be calculated on Form IA6478. The credit must be calculated separately for each service station operated by the taxpayer. Therefore, if the taxpayer operates more than one service station site, it is possible that one station may be eligible for the credit while another station may not. The credit can be taken only for those service station sites for which more than 60 percent of gasoline sales involve ethanol blended gasoline.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

42.16(1) Definitions. The following definitions are applicable to this rule:

"Ethanol blended gasoline" means the same as defined in Iowa Code section 452A.2.

"Gasoline" means gasoline that meets the specifications required by the department of agriculture and land stewardship pursuant to Iowa Code section 214A.2 that is dispensed through a metered pump.

"Metered pump" means a motor vehicle fuel pump licensed by the department of agriculture and land stewardship pursuant to Iowa Code chapter 214.

"Retail dealer" means a retail dealer as defined in Iowa Code section 214A.1 who operates a metered pump at a service station.

"Sell" means to sell on a retail basis.

"Service station" means each geographic location in this state where a retail dealer sells and dispenses gasoline on a retail basis.

42.16(2) Allocation of credit to owners of a business entity. If the taxpayer that was entitled to the ethanol blended gasoline tax credit is a partnership, limited liability company, S corporation, estate, or trust, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an ethanol blended gasoline tax credit of \$3,000 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an ethanol blended gasoline tax credit for the tax year of \$750 or 25 percent of the total ethanol blended gasoline tax credit of the partnership.

This rule is intended to implement 2001 Iowa Acts, chapter 123, section 6, subsection 2, as amended by 2003 Iowa Acts, House File 689.

701—42.17(15E) Eligible development business investment tax credit. Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code Supplement section 15E.193C.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code Supplement section 15E.193C.

701—42.18(15E,422) Venture capital credits.

42.18(1) *Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a qualifying business or community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue and finance will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

For equity investments made in a qualifying business, only direct investments made by an individual are eligible for the investment tax credit.

42.18(2) *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue and finance will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.43, 15E.51, 422.11F and 422.11G.

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CHAPTER 43
ASSESSMENTS AND REFUNDS
[Prior to 12/17/86, Revenue Department[730]]

701—43.1(422) Notice of discrepancies.

43.1(1) *Notice of adjustments.* An agent, auditor, clerk or employee of the audit and compliance division, designated by the director of the division to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of this discovery by ordinary mail. Such notice shall not be termed an assessment. It may inform the taxpayer what amount would be due if the information discovered is correct.

43.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should then file a claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the agent, auditor, clerk or employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which the taxpayer considers relevant to the situation. Documents and records supporting the taxpayer's position may be required.

43.1(3) *Rescinded, effective 7/24/85.*

This rule is intended to implement Iowa Code sections 422.25 and 422.30.

701—43.2(422) Notice of assessment, supplemental assessments and refund adjustments. If after following the procedure outlined in 43.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment without compliance with 43.1(2) or a jeopardy assessment may be issued. All notices of assessment shall bear the signature of the director.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

This rule is intended to implement Iowa Code sections 422.25 and 422.30.

701—43.3(422) Overpayments of tax. The following are provisions for refunding or crediting to the taxpayer's deposits or payments for tax in excess of amounts legally due.

43.3(1) *Claims for refund.* When an overpayment of tax is not indicated on the face of the return, a claim for refund of individual income tax may be made on a form obtainable from the income tax division. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

43.3(2) Offsetting refunds. A taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department, may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

43.3(3) Setoffs of qualifying debts administered by the department of administrative services. Before any refund or rebate from a taxpayer's individual income tax return is considered for purposes of setoff, the refund or rebate must be applied first to any outstanding tax liability of that taxpayer with the department of revenue. After all outstanding tax liabilities are satisfied, any remaining balance of refund or rebate will be set off against any debt of the taxpayer, setoff of which is overseen by the department of administrative services pursuant to 2003 Iowa Acts, House File 534, section 86.

43.3(4) College loan setoff. Rescinded IAB 11/12/03, effective 12/17/03.

43.3(5) District court debts setoff. Rescinded IAB 11/12/03, effective 12/17/03.

43.3(6) Overpayment credited to estimated tax. Any remaining balance of overpayment, at the election of the taxpayer, will be refunded to the taxpayer or credited as a first payment of the taxpayer's estimated tax for the following year. However, a taxpayer may elect to credit an overpayment from a return to the estimated tax for the following tax year only in cases when the return is filed in the same calendar year that the return is due. For example, a taxpayer's 1994 return is due on April 30, 1995. If the taxpayer files that return on or before December 31, 1995, the taxpayer can elect to credit an overpayment on that return to estimated tax for 1995, and this election will be honored by the department. See also rule 701—49.7(422).

If an overpayment of income tax is shown as a credit to estimated tax for the succeeding taxable year, the amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund of the overpayment shall be allowed on the return where the overpayment arose.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may properly be assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year, the election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

43.3(7) Refunds—statute of limitations for years ending before January 1, 1979. Rescinded IAB 10/12/94, effective 11/16/94.

43.3(8) Refunds—statute of limitations for tax years ending on or after January 1, 1979. The statute of limitations with respect to which refunds or credit may be claimed are:

a. The later of

- (1) Three years after due date of payment upon which refund or credit is claimed; or
- (2) One year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax matter with respect to the particular tax year. The taxpayer, however, must have notified the department of the matter within six months after the specified three-year period, contained in paragraph "a," subparagraph (1), above. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in 43.3(8) "a"(1) above of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W. 2d 113 (Iowa 1987).

d. Three years after the date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

43.3(9) Refunds—statute of limitations for individuals who died as a result of hostile action. Rescinded IAB 10/12/94, effective 11/16/94.

43.3(10) Refunds—statute of limitations for MIAs and spouses of MIAs. Rescinded IAB 10/12/94, effective 11/16/94.

43.3(11) Refunds—statute of limitations for insolvent farmers who received capital gains from farmland sold in 1982 and 1983. Rescinded IAB 10/12/94, effective 11/16/94.

43.3(12) Refunds—statute of limitations for individuals with certain charitable contributions. Rescinded IAB 10/12/94, effective 11/16/94.

43.3(13) Refunds—statute of limitations for taxpayers who paid state income tax on 1988 returns on certain supplemental assistance payments. Notwithstanding the three-year statute of limitations in Iowa Code section 422.73, claims for refunds filed with the department on or before April 30, 1993, will be considered timely if filed on a 1988 state return where the refund claim is for state income tax paid on supplemental assistance payments paid to an individual who provided unskilled in-home health services to a member of the individual's family. For additional information on the retroactive exemption for supplemental assistance payments, see rule 701—40.43(422).

43.3(14) Refunds—statute of limitations for taxpayers who paid state income tax on returns for tax years where federal income tax was refunded due to a provision of the Taxpayer Relief Act of 1997. Notwithstanding the three-year statute of limitations in Iowa Code section 422.73, claims for refund filed with the department on or before June 30, 1999, will be considered timely if the taxpayer's federal income tax was refunded due to a provision in the Taxpayer Relief Act of 1997 which affected the federal adjusted gross income of an individual or an estate or a trust. This particular provision may affect Iowa returns for a tax year beginning on or after January 1, 1977, to the extent the federal adjusted gross incomes on federal returns for the tax year were affected by the Taxpayer Relief Act of 1997.

This rule is intended to implement Iowa Code section 421.17 as amended by 2003 Iowa Acts, House File 534, and sections 422.2, 422.16, and 422.73.

701—43.4(56,422,456A) Optional designations of funds by taxpayer.**43.4(1) Iowa fish and game protection fund.**

a. *For tax years beginning on or after January 1, 1982, but before January 1, 1984.* The taxpayer may designate a portion or all of the overpayment of tax indicated on the face of the return to be donated to the Iowa fish and game protection fund. The donation must be \$1 or more, and the designation must be made on the original return for the current year. The donation is allowed only after obligations of the taxpayer to the Iowa department of revenue and finance, the child support recovery unit of the Iowa department of human services, and the college aid commission have been satisfied. The designation to the fund is irrevocable and cannot be made on an amended return. If the amount of refund as claimed on the original return is adjusted by the department, the amount of the designation to the fund may be adjusted accordingly.

EXAMPLE A: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, only \$20 is an overpayment. The taxpayer would not receive any refund and all \$20 of the overpayment would be credited to the fund.

EXAMPLE B: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, no overpayment occurred, but instead the taxpayer owes \$20. No money would be credited to the fund in this instance.

b. *For tax years beginning on or after January 1, 1984.* The taxpayer may designate an amount to be donated to the Iowa fish and game protection fund. The donation must be \$1 or more, and the designation must be made on the original return for the current year. The donation is allowed only after obligations of the taxpayer to the Iowa department of revenue and finance, the child support recovery unit of the Iowa department of human services, the college aid commission, and the additional political campaign contribution have been satisfied. The designation to the fund is irrevocable and cannot be made on an amended return. If the amount of refund claimed on the original return or the payment remitted with the return is adjusted by the department, the amount of the designation to the fund may be adjusted accordingly.

EXAMPLE A: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, only \$20 is an overpayment. The taxpayer would not receive any refund and all \$20 of the overpayment would be credited to the fund.

EXAMPLE B: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, no overpayment occurred, but instead the taxpayer owes \$20. No money would be credited to the fund in this instance.

EXAMPLE C: Amount shown due on return is \$30. \$20 is designated to the fund. A \$50 payment was made with the return. Due to an error on the return, the taxpayer owes \$40. Only \$10 would be credited to the fund in this situation.

43.4(2) Iowa election campaign fund.

a. For tax years beginning on or after January 1, 1983, but before January 1, 1984, any taxpayer who directs that \$1 of the taxpayer's tax liability be paid over to the Iowa election campaign fund may also donate an additional \$2 to be allocated to or among the qualifying political parties in the same manner as the taxpayer's \$1 designation. If a husband and wife file a joint return each spouse may direct that an additional \$2 be donated pursuant to the provisions of this paragraph. The \$2 donation will reduce the taxpayer's refund or increase the amount due with the return, and must be made on the original return for the current year. The donation is allowed only after the taxpayer's obligations to the Iowa department of revenue and finance, the child support recovery unit, foster care recovery unit, public assistance overpayments, the college aid commission, and the Iowa fish and game protection fund have been satisfied. The designation to the fund is irrevocable and cannot be changed on an amended return. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional \$2 designated by the taxpayer, the amount designated shall be adjusted accordingly.

EXAMPLE A: Overpayment as shown on the original return is \$50. \$25 is designated to the Iowa fish and game protection fund and \$2 to the Iowa election campaign fund. Due to an error on the return, only \$26 is an overpayment. The taxpayer would not receive a refund and \$25 would be credited to the Iowa fish and game protection fund and \$1 would be credited to the Iowa election campaign fund.

EXAMPLE B: Tax due as shown on the original return is \$10. An additional \$2 is designated to the Iowa election campaign fund and a payment of \$12 is made with the return. Due to an error on the return an additional \$20 tax is due. No money would be credited to the fund in this instance.

EXAMPLE C: Overpayment as shown on the original return is \$100. \$25 is designated to the Iowa fish and game protection fund and \$2 to the Iowa election campaign fund. The taxpayer owes either the department for previously unpaid taxes, the child support recovery unit, or the college aid commission \$80. The taxpayer would not receive a refund, \$20 would be credited to the Iowa fish and game protection fund and no contribution to the Iowa election campaign fund would be allowed.

b. For tax years beginning on or after January 1, 1984, but before January 1, 1986, any taxpayer who directs that \$1 of the taxpayer's liability be paid over to the Iowa election campaign fund may also donate an additional \$2 to be allocated to or among the qualifying political parties in the same manner as the taxpayer's \$1 designation. If a husband and wife file a joint return each spouse may direct that an additional \$2 be donated pursuant to the provisions of this paragraph. The \$2 donation will reduce the taxpayer's refund or increase the amount due with the return, and must be made on the original return for the current year. The donation is allowed only after the taxpayer's obligations to the Iowa department of revenue and finance, the child support recovery unit, foster care recovery unit, public assistance overpayments, and the college aid commission have been satisfied. The designation to the fund is irrevocable and cannot be changed on an amended return. If the refund claimed on the original return or the payment remitted with the return is insufficient to pay the additional \$2 designated by the taxpayer, the amount designated shall be adjusted accordingly.

EXAMPLE A: Overpayment as shown on the original return is \$50. \$25 is designated to the Iowa fish and game protection fund and \$2 to the Iowa election campaign fund. Due to an error on the return, only \$26 is an overpayment. The taxpayer would not receive a refund and \$2 would be credited to the Iowa election campaign fund and \$24 would be credited to the Iowa fish and game protection fund.

EXAMPLE B: Tax due as shown on the original return is \$10. An additional \$2 is designated to the Iowa election campaign fund and a payment of \$12 is made with the return. Due to an error on the return an additional \$20 tax is due. No money would be credited to the fund in this instance.

EXAMPLE C: Overpayment as shown on the original return is \$100. \$25 is designated to the Iowa fish and game protection fund and \$2 to the Iowa election campaign fund. The taxpayer owes either the department for previously unpaid taxes, the child support recovery unit, or the college aid commission \$80. The taxpayer would not receive a refund and \$2 would be credited to the Iowa election campaign fund and \$18 would be credited to the Iowa fish and game protection fund.

c. For tax years beginning on or after January 1, 1986, a person with a tax liability of \$1.50 or more on the Iowa individual income tax return may direct or designate that a \$1.50 contribution be made to a specific political party or that the contribution be made to the Iowa election campaign fund to be shared by all political parties as clarified further in this paragraph. In the case of married taxpayers filing a joint Iowa individual return with a tax liability of \$3.00 or more, each spouse may direct or designate that a \$1.50 contribution be made to a specific political party or that a \$1.50 contribution be made to the Iowa election campaign fund as a contribution to be shared by all political parties. The designation or direction of a contribution to a political party or to the election campaign fund is irrevocable and cannot be changed on an amended return. The designation to a political party or the election campaign fund is allowed only after obligations of the taxpayer to the Iowa department of revenue and finance, the child support recovery unit, foster care recovery unit, public assistance overpayment, the college student aid commission, the district courts and other state agencies are satisfied and after designations of contributions to the Iowa fish and game protection fund are satisfied. Note that for purposes of this rule, "political party" means a party as defined in Iowa Code section 43.2.

In a tax year when there are two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on individual income tax returns for that tax year are to be divided equally between the two parties. In a tax year where there are more than two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on income tax returns for that tax year are to be divided among the political parties on the basis of the number of registered voters for a particular political party on December 31 of that tax year to the total number of registered voters on December 31 of that tax year that have declared an affiliation with any of the recognized political parties.

Thus, if there were 400,000 registered voters for "x" political party, 500,000 registered voters for "y" political party, and 100,000 registered voters for "z" political party on December 31 of a tax year where there were three recognized political parties, 40 percent of the undesignated political contributions on 1997 returns would be paid to "x" political party since 40 percent of the registered voters with an affiliation to a political party on December 31 had an affiliation with party "x" on that day.

43.4(3) *United States Olympic fund checkoff.* For tax years beginning on or after January 1, 1988, but prior to January 1, 1994, a taxpayer may designate a checkoff of \$2 to the United States Olympic fund on the taxpayer's state individual income tax return. In the case of married taxpayers filing a joint state return or filing separately on the combined return form, each spouse may designate a \$2 checkoff to the Olympic fund. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the Olympic fund by the taxpayer, the amount credited to the Olympic fund will be reduced accordingly. The designation to the Olympic fund is irrevocable and cannot be revised on an amended return.

A designation to the Olympic fund may be allowed for a taxpayer only after obligations of the taxpayer to the department of revenue and finance, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign fund checkoff, and the Iowa fish and game protection fund checkoff are satisfied.

On or before March 1 of each year, starting in the year 1990 and ending in March 1991, the department shall pay all the moneys in the Olympic fund to the United States Olympic Committee. One-half of the amount paid is to be made available in the year of payment for local amateur sports and special Olympic programs in Iowa with the advice of the governor's council on physical fitness.

On or before March 1 of each year, starting in the year 1992, the department shall pay one-half of the moneys in the fund to the United States Olympic Committee. Fifty percent of the remaining moneys in the fund shall be spent in the same year for local amateur sports for which there is Olympic competition with advice from the governor's council on physical fitness. The other half of the remaining moneys shall be paid in the same year to Iowa special Olympics, incorporated, for special Olympic programs.

43.4(4) *Domestic abuse services checkoff.* For tax years beginning on or after January 1, 1991, but before January 1, 1996, and for tax years beginning on or after January 1, 1997, a taxpayer filing a state individual income tax return can designate a checkoff of \$1 or more to the general fund of the state to be used for the purposes of providing services to victims of domestic abuse or sexual assault. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the domestic abuse services checkoff, the amount credited to the domestic abuse services checkoff will be reduced accordingly. The designation to the domestic abuse services checkoff is irrevocable and cannot be revised on an amended return.

A designation to the domestic abuse services checkoff may be allowed only after obligations of the taxpayer to the department of revenue and finance, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, and the state fair foundation checkoff are satisfied.

On or before January 31 of the year following the year in which returns with domestic abuse services checkoff are due, the department of revenue and finance is to certify the total amount designated to the domestic abuse services checkoff to the state treasurer.

43.4(5) State fair foundation checkoff. For tax years beginning on or after January 1, 1993, a taxpayer filing a state individual income tax return can designate a checkoff of \$1 or more to the Iowa state fair foundation. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the state fair foundation checkoff, the amount credited to the state fair foundation checkoff will be reduced accordingly. The designation to the state fair foundation checkoff is irrevocable.

A designation to the state fair foundation checkoff may be allowed only after obligations of the taxpayer to the department of revenue and finance, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the United States Olympic fund checkoff, and the domestic abuse services checkoff are satisfied.

On or before January 31 of the year following the year in which returns with the state fair foundation checkoff are due, the department of revenue and finance shall transfer the total amount designated to the state fair foundation to the state fair foundation fund.

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CHAPTER 49 ESTIMATED INCOME TAX FOR INDIVIDUALS

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

701—49.1(422) Who must pay estimated income tax.

49.1(1) General rule. For tax years beginning on or after January 1, 1986, every taxpayer, including a nonresident taxpayer, other than an estate or a trust, must make estimated payments on forms prescribed by the director, if the taxpayer's income tax liability attributable to incomes other than salaries or wages subject to withholding tax is reasonably expected to be \$50 or more for the tax year if the tax year began prior to January 1, 1990. In the case of tax years beginning on or after January 1, 1990, estimated payments are required if the taxpayer's income tax liability attributable to incomes not subject to withholding is expected to be \$200 or more. The amount of estimated tax paid must be used as a credit on the taxpayer's individual income tax return. For tax years beginning prior to January 1, 1986, taxpayers subject to estimated income tax were required to make estimated declarations as described in 701—Chapter 47.

49.1(2) Joint estimate payments by married taxpayers. A husband and wife may make a joint estimate tax payment on one form as if they were one taxpayer. If a joint estimate payment is made, but the husband and wife elect to file separate returns or separately on the combined return form, the estimate tax paid for the tax year by the husband and wife may be allocated between the spouses on their returns as the taxpayers choose.

49.1(3) Separate estimate tax payments by married taxpayers. A husband and wife may each make separate estimate payments. If separate estimate payments are made by married taxpayers, each spouse is to claim only the estimate payments made by that spouse.

49.1(4) Examples of types of taxpayers who may be required to make estimate payments. Listed below are examples of various types of taxpayers who may be required to make estimated tax payments. The list is for illustrative purposes and is not deemed to be all-inclusive.

1. *Self-employed.* An individual having taxable income from a trade or business where the individual has control of the work, the services rendered, and the fees and charges for services rendered or merchandise sold.

2. *Retiree.* An individual receiving pensions, annuities, and social security benefits or other incomes not subject to withholding after the taxpayer has withdrawn from active employment.

3. *Farmers and fishers.* Individuals deriving at least two-thirds of yearly income from farming or fishing activities.

4. *Nonresident.* Any individual who resides out of state and receives taxable income from an Iowa source which is not subject to withholding.

5. *Beneficiaries of estates and trusts.* Any resident or nonresident individual who is the recipient of income from an estate or trust from an Iowa source.

6. *Taxpayers with income in addition to wages.* An individual drawing salary or wages subject to withholding tax, having additional taxable income from an Iowa source which is not subject to withholding, such as interest, dividends, capital gains, rents, royalties, business income, or farm income.

7. *Agricultural worker.* Any worker receiving a wage or salary for agricultural labor which is excluded by law for withholding tax purposes.

This rule is intended to implement Iowa Code section 422.16.

701—49.2(422) Time for filing and payment of tax.

49.2(1) Time for filing.

a. *General rule.* The date for filing the first estimate tax payment is on or before the last day of the fourth month of the tax year. The estimate tax form is to be sent to: Estimate Processing, Iowa Department of Revenue, P.O. Box 10466, Des Moines, Iowa 50306.

b. Special rule for farmers and fishers. If the estimated gross income of a taxpayer from farming or fishing is at least two-thirds of the estimated gross income from all sources for the taxable year, one of the following three methods is available to the taxpayer for satisfying the requirement to make estimate tax payments.

(1) Make the first estimate payment on April 30 and make the other three payments by the dates specified under subrule 49.2(2).

(2) Make the entire estimate payment for the tax year by January 15 of the subsequent tax year and file the individual income tax return by April 30 of the subsequent tax year.

(3) File the individual income tax return and pay the tax in full on or before March 1 of the subsequent tax year.

c. Amended estimate payments.

(1) *General rule.* Whenever a taxpayer who is required to make estimate payments has reason to believe that the anticipated income tax liability on which the estimate payments are based has increased or decreased, any subsequent estimate payments should be amended or adjusted accordingly.

(2) *Example.* A married couple is making joint estimate tax payments on a calendar year basis, anticipating taxable income of \$8,500, with an estimated tax liability of \$300. The taxpayers paid the first quarter installment of \$75 by the due date of April 30 of the current year and the second installment of \$75 on June 30. On July 15, real estate owned jointly by the taxpayers is sold, creating additional taxable income for the year of \$7,500. The new tax liability for the tax year is \$900 less the estimate payments of \$150 already paid for the first and second quarters. There is a balance of \$750 to be paid in two equal installments of \$375 each by September 30 of the current year and by January 31 of the succeeding year.

49.2(2) Payment of estimated tax.

a. General rule. Estimated tax due for the tax year may be paid in full on the date on which the first payment is due or in four equal installments. The taxpayer may elect to pay any installment prior to the date when the installment is due.

b. Calendar-year installments. The first estimate tax payment is due by April 30. The other installments shall be paid on or before June 30 and September 30 of the current year, and on or before January 31 of the succeeding year.

c. Fiscal-year installments. The installment dates for a taxpayer filing estimate tax payments on a fiscal-year basis are:

Installment No. 1. The last day of the fourth month of the fiscal year.

Installment No. 2. The last day of the sixth month of the fiscal year.

Installment No. 3. The last day of the ninth month of the fiscal year.

Installment No. 4. The last day of the first month of the next fiscal year.

This rule is intended to implement Iowa Code section 422.16.

701—49.3(422) Estimated tax for nonresidents.

49.3(1) General rule. Except as noted in 49.3(2), payers of Iowa income to nonresidents of Iowa are required to withhold Iowa income tax and to remit the tax to the department. See rule 701—46.4(422) for withholding on payments to nonresidents.

49.3(2) Estimate payments in lieu of withholding. Nonresidents who prefer to pay estimated tax in lieu of having state income tax withheld by a state withholding agent must obtain a certificate or release from withholding. The nonresident estimated tax form must be accompanied by full payment and must include a list of the name(s) and address(es) of any tenant or farm manager, or cooperative elevator, or other Iowa agent or payer from which the taxpayer anticipates receiving income. The total gross income anticipated for the year must also be shown on the nonresident estimated tax form.

After the department's receipt of and approval of the completed nonresident estimate tax form with the full payment of the tax shown due on the form, the certificate of release from withholding will be forwarded to the withholding agent or payer designated on the form. Since the nonresident estimate form is filed for the purpose of obtaining a release from withholding, the form must be filed prior to the time of the transactions which would subject the taxpayer to the state withholding tax requirements. The nonresident estimate tax form and payment should be mailed to Estimate Processing, Iowa Department of Revenue, P.O. Box 10466, Des Moines, Iowa 50306.

49.3(3) Example. Nonresident estimated tax payments may be illustrated with the following example:

A nonresident individual owns a farm in Iowa which is operated by a farm manager. For tax purposes the farm manager is considered to be the Iowa withholding agent when distributing proceeds from the farm to the nonresident. A crop is sold through the local farm cooperative elevator and a check is issued to the farm manager, who then sends the check to the nonresident. Before doing so, Iowa income taxes must be withheld from the gross proceeds and remitted to the Iowa department of revenue for deposit and credit to the income tax liability of the nonresident, unless the farm manager has possession of a certificate of release from withholding issued by the department of revenue. In the event that the farm cooperative elevator sends the check for payment of the crops directly to the nonresident, the cooperative becomes the withholding agent.

49.3(4) Election by withholding agents to make estimated payments on behalf of nonresident taxpayers with net incomes from agricultural commodities or products. Effective for tax years beginning on or after January 1, 1989, withholding agents such as farm management companies can elect to make estimate tax payments on behalf of nonresidents for net incomes that the nonresidents will have for the tax year from sales of agricultural commodities or products. If the withholding agent elects to make the estimate tax payments for the nonresident taxpayers, the estimate tax payments should be submitted to the department of revenue on or before the last day of the first month after the end of the tax year of the nonresidents. The estimate payments should be sent with Form IA 1040ES (45-002) and mailed to: Estimate Processing, Iowa Department of Revenue, P.O. Box 10466, Des Moines, Iowa 50306. Net income from agricultural commodities or products means net incomes from those agricultural commodities or products described in paragraph "a" of 701—subrule 46.4(6). If the estimate tax payments made on behalf of the nonresident taxpayers by the withholding agents are not sufficient to pay the Iowa income taxes on the net incomes of the nonresidents from the agricultural commodities or products, the nonresidents may be subject to penalties for underpayment of estimated taxes.

This rule is intended to implement Iowa Code sections 422.16 and 422.17.

701—49.4(422) Special estimated tax periods.

49.4(1) Short taxable year. A taxpayer having a taxable year of less than 12 months must make estimated tax payments if anticipating an Iowa tax liability of \$50 or more for that short tax year if that tax year began prior to January 1, 1990. In the case of short tax years beginning on or after January 1, 1990, taxpayers would be required to make estimated payments if their anticipated Iowa tax liabilities were \$200 or more from incomes not subject to withholding.

49.4(2) Part-year resident.

a. *General rule.* Part-year residents moving into or out of the state must determine their Iowa estimated tax on the ratio of income from Iowa sources not subject to withholding tax to incomes from all sources.

b. *Example.* An individual moving into the state on April 15, having taxable income from an Iowa source which is not subject to withholding and an expected tax liability of \$150, must make the first estimate payment of \$50 by June 30 and pay the remaining balance of \$100 in two equal installments of \$50 each by September 30 and by January 31 of the succeeding year if the tax year for which the estimate payments were made began prior to January 1, 1990. A similar procedure for making estimate payments would be followed for tax years beginning on or after January 1, 1990, when no estimate payments would be required unless the anticipated state income tax liability for the balance of the tax year would be \$200 or more.

This rule is intended to implement Iowa Code section 422.16.

701—49.5(422) Reporting forms.

49.5(1) Resident forms. Resident taxpayers who have filed a prior year estimate tax form will receive by mail a preaddressed estimate tax reporting form. Blank estimate tax forms are available from the department for those individuals making state estimate payments for the first time or when the pre-addressed form is misplaced or lost.

49.5(2) Nonresident forms. A special nonresident estimate tax form with instructions is available from the department for any nonresident wishing to make estimate tax payments in lieu of having Iowa income tax withheld by an Iowa withholding agent.

This rule is intended to implement Iowa Code section 422.16.

701—49.6(422) Penalty—underpayment of estimated tax. The civil penalty provided by the Internal Revenue Code for underpayment of federal estimated tax also applies to persons required to make payments of estimated tax under provisions of the Iowa Code. The Iowa penalty for underpayment of estimated tax is computed on Form IA 2210 for individual taxpayers other than farmers and fishers and Form IA 2210F for individuals who have two-thirds of their gross annual incomes from farming or fishing activities.

49.6(1) Exceptions which may avoid the underpayment penalty. The following are the two exceptions under which taxpayers may avoid the penalty for underpayment of estimated tax:

a. Current year payments equal or exceed prior year's liability. Taxpayers may avoid the penalty for underpayment of estimated tax if the estimated tax payments and other tax payments for the current tax year, such as withholding tax, are equal to or exceed the tax liability for the prior tax year. The prior tax year must cover a 12-month period and there must have been a tax liability on the return for the prior year. For tax years beginning on or after January 1, 1987, the requirement that the return for the prior tax year must have had a tax liability is eliminated although the return must have covered a 12-month period.

b. Current year payments equal or exceed 80 percent, or 90 percent for tax years beginning on or after January 1, 1987, of the tax on the taxpayer's annualized income. Taxpayers may also avoid the penalty for underpayment of estimated tax, if their tax payments for the tax year are equal to or exceed 80 percent of the tax on the taxpayer's annualized income for periods from the first of the tax year to the end of the month preceding the month in which an installment of estimated tax is due. For tax years beginning on or after January 1, 1987, taxpayers may avoid the penalty for underpayment of estimated tax if their tax payments for the tax year are equal to or exceed 90 percent of the tax on the taxpayer's annualized income.

49.6(2) Waiver of penalty for underpayment of estimated tax. The following are two situations under which the penalty for underpayment of estimated tax may be waived for tax years beginning on or after January 1, 1986:

a. The underpayment was due to casualty, disaster, or other unusual circumstances and imposition of the penalty would be against equity and good conscience.

b. The underpayment was made by an individual who retired after having attained age 62, or who became disabled in the tax year for which the estimated payment was due or in the preceding tax year, and the underpayment was due to reasonable cause and not due to willful neglect.

49.6(3) Special provision for penalty for underpayment of estimated tax for tax years beginning on or after January 1, 1987, but before January 1, 1988. No penalty for underpayment of estimated tax will be applicable for tax years beginning on or after January 1, 1987, but before January 1, 1988, to the extent the underpayment of estimated tax related to a provision of the Tax Reform Act of 1986 or to the Act (House File 689) which brought the Iowa individual income tax law into conformity with the provisions of the Tax Reform Act of 1986. For example, a taxpayer filing the 1987 return had a potential penalty of \$400 for underpayment of estimated tax. However, of the \$400 in potential penalty for underpayment of estimated tax only \$200 of the potential penalty was applicable. The other \$200 in potential penalty for underpayment of estimated tax related either to deductions that were disallowed under the Tax Reform Act that were allowed under prior law or to incomes that were subject to tax under the Tax Reform Act that had been exempt under prior law. Therefore, since only \$200 of the potential penalty for underpayment of estimated tax related to provisions that were relevant to Iowa income tax law prior to the Tax Reform Act, only \$200 of the penalty was applicable.

This rule is intended to implement Iowa Code section 422.16.

701—49.7(422) Estimated tax carryforwards and how the carryforward amounts are affected under different circumstances. For tax years beginning on or after January 1, 1994, taxpayers that timely file their Iowa returns and have overpayments shown on their returns may elect to have the overpayments credited to their estimated tax payments for the following tax year.

For purposes of this rule, filing a return for a calendar-year period on or before the last day of the year in which the return is due will constitute timely filing of that return for purposes of being eligible to have an overpayment from that return applied to the estimated tax payments for the next tax year. The 1994 Iowa return is due on May 1, 1995, because the regular due date of April 30 falls on Sunday. Therefore, if a taxpayer files the 1994 return on or before December 31, 1995, showing an overpayment on the return, the taxpayer can elect to have the overpayment credited to the taxpayer's estimated tax for the 1995 calendar year.

However, if a taxpayer files the 1994 return anytime after the end of the 1995 calendar year with an overpayment shown on the return, the overpayment will be refunded to the taxpayer notwithstanding that the taxpayer has shown that the overpayment is to be credited to estimated tax for 1995.

EXAMPLE 1. Mark Jones filed his 1994 return on October 31, 1995, showing an overpayment of \$400, and a credit to 1995 estimated tax for \$400. Because the 1994 return was filed on or before December 31, 1995, Mr. Jones' election to credit the \$400 overpayment to 1995 estimated tax was honored.

EXAMPLE 2. Fred Mack filed his 1994 and 1995 Iowa returns in March 1996. The 1994 return showed an overpayment of \$300 and credit to 1995 estimated tax of \$300. The 1995 return showed an overpayment of \$200 which was determined from estimated payments of \$800, including the \$300 credit from the 1994 return. The overpayment from the 1994 return was to be refunded because the taxpayer had filed that return after the deadline for crediting overpayments to estimated payments for 1994 returns. Because the \$300 credit to 1995 estimated tax was not allowed, there was tax due of \$100 on the 1995 return. The tax due for 1995 was satisfied with part of the refund from the 1994 return.

The following subrules show how the amounts of tax carryforwards from overpayments shown on state returns are affected by certain circumstances:

49.7(1) *Estimated tax carryforward and how amount of carryover credit is affected by error on return.* If a state return is filed timely with an overpayment shown on the return and the overpayment is to be credited to the taxpayer's estimated payments for the following year, the amount credited to estimated payments will be affected by an error on the return. Thus, if the error on the return is corrected and results in a smaller overpayment than was shown when the return was filed, the credit to estimated tax from the return will be reduced accordingly.

EXAMPLE. Mike Green filed his 1994 return on March 20, 1995, showing an overpayment of \$400 and a credit to 1995 estimated tax of \$400. During processing of the return, it was determined that the federal income tax refund received was subtracted from net income instead of being added to net income. Correction of this error resulted in an overpayment of \$200 instead of \$400. Thus, the amount credited to the taxpayer's estimated payments for 1995 was \$200 instead of the \$400 shown on the return form. The department notified Mr. Green of the error and advised him that only \$200 was being credited to the taxpayer's estimated tax for 1995 instead of the \$400 shown on the return.

49.7(2) *Estimated tax credit carryover, carryforward amount affected by amended return.* A taxpayer files an original return timely with an overpayment and with the overpayment credited to the following year's estimated tax payments. If the taxpayer files an amended return correcting an error on the original return and with a different amount credited to estimated tax than on the original return, the credit amount from the amended return will be credited to estimated tax, if the amended return is filed on or before the end of the year in which the return is due. Thus, if an amended 1994 return is filed by December 31, 1995, the amount shown as a credit to estimated tax from that amended return will be the amount credited to the taxpayer's 1995 estimated tax, instead of the amount credited from the original 1994 return.

EXAMPLE. Velma Fox filed her original 1994 return on April 15, 1995, with an overpayment of \$500 and all of that overpayment credited to her estimated tax for 1995. Later, in 1995, Ms. Fox determined that she had failed to claim a deduction on the return for depreciation on some business equipment she acquired in 1994. Therefore, she filed an amended 1994 Iowa return on October 31, 1995, showing an overpayment of \$700 and a credit to 1995 estimated tax of the same amount. Ms. Fox's amended return was filed on or before December 31, 1995, so the \$700 credit to Ms. Fox's 1995 estimated tax from the amended return was allowed.

Note that if the amended return had not been filed until sometime in January 1996, the credit from Ms. Fox's original return would have been applied to Ms. Fox's estimated payments for 1995. Since the amended return would have been filed too late for purposes of crediting the overpayment to the taxpayer's estimated tax for the next year, the department would issue Ms. Fox a refund of \$200 which is the portion of the overpayment from the amended return that had not been credited to estimated tax from the original return for 1994.

49.7(3) *Estimated tax carryforward and how amount of carryover credit is affected by state tax liability or other state liability of the taxpayer.* A taxpayer who files an Iowa return with an overpayment shown on the return and elects to have the overpayment credited to the taxpayer's estimated tax for the next tax year will not have the overpayment credited to estimated tax if the taxpayer has tax liabilities or other liabilities with the state that are subject to setoff. Other liabilities with the state that are subject to setoff are those liabilities described in Iowa Code section 421.17, subsection 21A, and 2003 Iowa Acts, House File 534, section 86. These liabilities are for debts owed the state for public assistance overpayments, defaults on guaranteed student or parental college loans, district court debts, delinquent child support, and any other debts of the taxpayer with a board, commission, department, or other administrative office or unit of the state of Iowa.

EXAMPLE 1. Rose Peters filed her 1994 Iowa return in April 1995 showing an overpayment of \$400 and a credit to 1995 estimated tax of \$400. During processing of Rose's 1994 return it was determined that she had a liability of \$150 from her 1993 Iowa return. Thus, \$150 of the 1994 overpayment was offset against the tax liability from the 1993 return. The remaining portion of the 1994 overpayment of \$250 was credited to Ms. Peters' estimated tax for 1995.

EXAMPLE 2. Mike Moore filed his 1994 Iowa return in May 1995 with an overpayment of \$500, a credit to 1995 estimated tax of \$300 and a refund of \$200. Mr. Moore is a "self-employed individual" as that phrase is to be understood for the purposes of Iowa Code section 252B.5, subsection 8, as amended by 2003 Iowa Acts, House File 534, section 220. During processing it was determined that Mr. Moore had a liability for unpaid child support of \$1,000. After Mr. Moore was notified by the child support recovery unit of the department of human services that the overpayment from the 1994 return was going to be applied to the child support liability, the entire overpayment of \$500 was set off against Mr. Moore's liability for unpaid child support. Thus, since the \$300 credit to estimated tax was set off against the delinquent child support, there was no credit to estimated tax for 1995. Responsibility for offsetting this type of obligation remains, as of July 1, 2003, with the department of revenue and has not been transferred to the department of administrative services.

This rule is intended to implement Iowa Code section 421.17, subsections 21A and 21B, and section 422.16.

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Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.10(3) Research activities credit. An additional research activities credit of 6½ percent of the state's apportioned share of "qualifying expenditures" is available to an eligible business. The credit is available for qualifying expenditures incurred after May 1, 1994. The additional research activities credit is in addition to the credit set forth in Iowa Code section 422.33(5).

See rule 701—52.7(422) for the computation of the research activities credit.

See also subrule 52.7(3) for the computation of the research activities credit for tax years beginning on or after January 1, 2000, and subrule 52.7(4) for the research activities credit for an eligible business for tax years beginning on or after January 1, 2000.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier. This is in contrast to the research activities credit in Iowa Code section 422.33(5) where any credit in excess of the tax liability for the tax year may be carried forward until used or refunded. For tax years ending on or after July 1, 1996, the additional research activities credit may at the option of the taxpayer be refunded.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.10(4) Investment tax credit—value-added agricultural products. For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation tax return, and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than \$4 million during a fiscal year. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects for cooperatives that are not required to file an Iowa income tax return because they are exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1. Corporation A completes a value-added agricultural project in October 2001 and has an investment tax credit of \$1 million. Corporation A is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation A applies for a tax credit certificate for the entire unused credit of \$1 million in May 2002. The entire \$1 million is approved by the Iowa department of economic development, so the tax credit certificate is attached to the tax return for the year ending December 31, 2002. Corporation A will request a refund of \$1 million on this tax return.

EXAMPLE 2. Corporation B completes a value-added agricultural project in October 2001 and has an investment tax credit of \$1 million. Corporation B is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation B applies for a tax credit of \$1 million in May 2002. Due to the proration of available credits, Corporation B is awarded a tax credit certificate for \$400,000. The tax credit certificate is attached to the tax return for the year ending December 31, 2002. Corporation B will request a refund of \$400,000 on this tax return. The remaining \$600,000 of unused credit can be carried forward for the following seven tax years or until the credit is depleted, whichever occurs first. If Corporation B expects no tax liability for the tax period ending December 31, 2002, Corporation B may apply for a tax credit certificate in May 2003 for this \$600,000 amount.

EXAMPLE 3. Corporation C completes a value-added agricultural project in March 2002 and has an investment tax credit of \$1 million. Corporation C is required to file an Iowa income tax return and expects a tax liability of \$200,000 for the tax period ending December 31, 2002. Thus, Corporation C applies for a tax credit certificate for the unused credit of \$800,000 in May 2002. A tax credit certificate is awarded for the entire \$800,000. The tax credit certificate for \$800,000 shall be attached to the tax return for the period ending December 31, 2003, since the certificate is not valid until the year following the project's completion. The tax return for the period ending December 31, 2002, reports a tax liability of \$150,000. The investment credit is limited to \$150,000 for the period ending December 31, 2002, and the remaining \$650,000 can be carried forward for the following seven tax years.

EXAMPLE 4. Corporation D is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation D has an investment tax credit of \$500,000. Corporation D is not required to file an Iowa income tax return because Corporation D is exempt from federal income tax. When filing for the tax credit certificate in May 2003 for the \$500,000 unused credit, Corporation D must attach a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue tax credit certificates to each member on the list based on each member's interest in the cooperative. The members can attach the tax credit certificate to their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 5. Corporation E is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation E has an investment tax credit of \$500,000. Corporation E is required to file an Iowa income tax return because Corporation E is not exempt from federal income tax. Corporation E expects a tax liability of \$100,000 on its Iowa income tax return for the year ending December 31, 2002. Corporation E applies for a tax credit certificate for the unused credit of \$400,000 and elects to transfer the \$400,000 unused credit to its members. When applying for the tax credit certificate in May 2003, Corporation E must provide a list of its members and the pro rata share of each member's earnings in the cooperative. The Iowa department of economic development will issue tax credit certificates to each member of the cooperative. The members can attach the tax credit certificate to their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 6. Corporation F is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation F is a limited liability company that files a partnership return for federal income tax purposes. Corporation F is required to file an Iowa partnership return because Corporation F is not exempt from federal income tax. Corporation F has an investment tax credit of \$500,000 which must be claimed by the individual partners of the partnership based on their pro-rata share of individual earnings of the partnership. Corporation F expects a tax liability of \$200,000 for the individual partners. Corporation F may apply for a tax credit certificate in May 2003 for the unused credit of \$300,000. Corporation F must list the names of each partner and the ownership interest of each partner in order to allocate the investment credit for each partner. The tax credit certificate may be claimed on the partner's Iowa income tax return for the period ending December 31, 2003.

This rule is intended to implement Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 681, and Iowa Code section 15.335.

701—52.11(422) Refunds and overpayments.

52.11(1) to 52.11(6) Reserved.

52.11(7) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974.* If the amount of tax for any year is reduced as a result of a net operating loss or net capital loss carryback from another year, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or 60 days after payment of the tax, whichever is later. If the net operating loss or net capital loss carryback to a prior year eliminates or reduces an outstanding assessment or underpayment of tax for the prior year, the full amount of the outstanding assessment or underpayment shall bear interest at the statutory rate from the original due date of the tax for the prior year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

52.11(8) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974, and ending on or after July 1, 1980.* If the amount of tax for any year is reduced as a result of a net operating loss or net capital loss carryback from another year, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or 30 days after payment of the tax, whichever is later. If the net operating loss or net capital loss carryback to a prior year eliminates or reduces an outstanding assessment or underpayment of tax for the prior year, the full amount of the outstanding assessment or underpayment shall bear interest at the statutory rate from the original due date of the tax for the prior year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

52.11(9) Computation of interest on refunds resulting from net operating losses or net capital losses for tax years ending on or after April 30, 1981. If the amount of tax is reduced as a result of a net operating loss or a net capital loss carryback, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or the first day of the second calendar month following the actual payment date, whichever is the later.

52.11(10) For refund claims received by the department after June 11, 1984. If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

52.11(11) Overpayment—interest accruing before July 1, 1980. If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred prior to April 30, 1980, interest shall accrue from 60 days after the date of payment, at the statutory rate, to the date refunded.

52.11(12) Interest commencing on or after January 1, 1982. See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

52.11(13) Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981. If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred on or after April 30, 1980, and before April 30, 1981, interest shall accrue from 30 days after the date of payment or due date of the return, whichever is the later, at the statutory rate, to the date refunded. Date of payment means the date the return is filed.

52.11(14) Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981. If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

701—52.12(422) Deduction of credits. The credits against computed tax set forth in Iowa Code section 422.33 shall be deducted in the following sequence.

1. Property rehabilitation credit.
2. New jobs credit.
3. Investment tax credit.
4. Franchise tax credit.
5. Alternative minimum tax credit.
6. Research activities credit.
7. Assistive device credit.
8. Motor fuel credit.
9. Estimated tax and payments with vouchers.

This rule is intended to implement Iowa Code sections 15.333, 15.335, 422.33, 422.91 and 422.110.

701—52.13(422) Livestock production credits. For rules relating to the livestock production income tax credit refunds see rule 701—43.8(422).

This rule is intended to implement 1996 Iowa Acts, chapter 1197, sections 19, 20, and 21.

701—52.14(422) Enterprise zone tax credits. An eligible business in an enterprise zone may take the following tax credits:

1. New jobs credit from withholding as provided in Iowa Code section 15.331 (see rule 701—52.8(422)).
2. Investment tax credit as provided in Iowa Code section 15.333 (see rule 701—52.10(15)).
3. Research activities credit as provided in Iowa Code section 15.335 (see rule 701—52.10(15) for tax years ending after May 1, 1994, but prior to tax years beginning on or after January 1, 2000) and subrule 52.7(5) for the research credit for increasing research activities within a quality jobs enterprise zone for tax years beginning on or after January 1, 2000.

If an eligible business in an enterprise zone fails to maintain the requirements of the enterprise zone program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the enterprise zone program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Effective July 1, 2003, eligible businesses in an enterprise zone may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

This rule is intended to implement Iowa Code section 15E.193 as amended by 2003 Iowa Acts, House File 576, and section 15E.186.

701—52.15(15E) Eligible housing business tax credit. A corporation which qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in Iowa Code section 15E.193B.

52.15(1) Computation of tax credit. New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's corporation income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate, or trust. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, or estate or trust.

Any Iowa eligible housing business tax credit in excess of the corporation's tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.15(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy.

52.15(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 15E.193B as amended by 2001 Iowa Acts, Senate File 441.

701—52.16(422) *Franchise tax credit.* For tax years beginning on or after January 1, 1998, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro-rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.33 by reducing the shareholder's taxable income by the shareholder's pro-rata share of the items of income and expenses of the financial institution and deducting from the recomputed tax the credits allowed by Iowa Code section 422.33. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.33 reduced by the credits allowed in Iowa Code section 422.33.

The resulting amount, not to exceed the shareholder's pro-rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder.

This rule is intended to implement Iowa Code section 422.33, as amended by 1999 Iowa Acts, chapter 95.

701—52.17(422) Assistive device tax credit. Effective for tax years beginning on or after January 1, 2000, a taxpayer who is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first \$5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer is not to deduct for Iowa income tax purposes any amount of the cost of the assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

52.17(1) Submitting applications for the credit. A small business wanting to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed \$500,000. The certificate for entitlement of the assistive device credit is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved and the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer is to enter the date that the assistive device project was completed. The certificate for entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2000, and completed the assistive device workplace modification project on January 15, 2001, taxpayer A could claim the assistive device credit on taxpayer A's 2001 Iowa return assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue and finance will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not attached to the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is an S corporation, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the shareholders with a statement showing how the credit is to be allocated among the individual owners of the S corporation. An individual owner is to attach a copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual's state income tax return.

52.17(2) Definitions. The following definitions are applicable to this subrule:

"Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

“Business entity” means partnership, limited liability company, S corporation, estate or trust, where the income of the business is taxed to the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

“Disability” means the same as defined in Iowa Code section 225C.46. Therefore, “disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. “Disability” does not include any of the following:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;
5. Alcoholism.

“Employee” means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered to be an employee of the small business for purposes of this rule.

“Small business” means that the business either had gross receipts in the tax year before the current tax year of \$3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

“Workplace modifications” means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

52.17(3) Allocation of credit to owners of a business entity. If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner’s pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if an S corporation has an assistive device credit for a tax year of \$2,500 and one shareholder of the S corporation receives 25 percent of the earnings of the corporation, that shareholder would receive an assistive device credit for the tax year of \$625 or 25 percent of the total assistive device credit of the S corporation.

This rule is intended to implement Iowa Code section 422.33.

701—52.18(422) Property rehabilitation tax credit. A property rehabilitation credit, subject to the availability of the credit, may be claimed against a taxpayer’s Iowa corporate income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for the rehabilitation of eligible property in Iowa. The administrative rules for the property rehabilitation credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

52.18(1) Eligible property for the rehabilitation credit. The following types of property are eligible for the property rehabilitation credit:

- a. Property verified as listed on the National Register of Historic Places or eligible for such listing through the state historic preservation office (SHPO).
- b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation by being located in an area previously surveyed and evaluated as eligible for the National Register of Historic Places.
- c. Property or district designated as a local landmark by a city or county ordinance.
- d. Any barn constructed prior to 1937.

52.18(2) *Application and review process for the property rehabilitation credit.* Taxpayers who want to claim an income tax credit for completing a property rehabilitation project must submit an application for approval of the project. The application forms for the property rehabilitation credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For the fiscal year beginning on July 1, 2000, and ending June 30, 2001, \$2.4 million was appropriated for property rehabilitation tax credits for that year.

Applicants for the property rehabilitation credit must include all information and documentation requested on the application forms for the credit in order for the applications to be processed.

The state historic preservation office (SHPO) is to establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process is not to exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards are to be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property that is listed on the National Register of Historic Places or is designated as of historic significance to a district listed in the National Register of Historic Places.

The selection standards are to provide that a taxpayer who qualifies for the rehabilitation investment credit under Section 47 of the Internal Revenue Code shall automatically qualify for the state property rehabilitation credit to the extent that all the property rehabilitation credits appropriated for the fiscal year have not already been awarded.

Once SHPO approves a particular rehabilitation credit project application, the office will encumber an estimated rehabilitation credit under the name of the applicant(s) for the year the project is approved.

52.18(3) *Computation of the amount of the property rehabilitation credit.* The amount of the property rehabilitation credit is 25 percent of the qualified rehabilitation costs made to eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least \$25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs are not to exceed \$100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the later of either the date of issuance of approval of the project or two years prior to the project completion date.

For purposes of the property rehabilitation credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the property rehabilitation credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation costs that are equal to the amount of the computed property rehabilitation credit for the tax year.

For example, the basis of a commercial building in a historic district was \$500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, \$600,000 in rehabilitation costs were expended to complete the project and \$500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for a rehabilitation credit of \$125,000. Therefore, the basis of the building for Iowa income tax purposes was \$975,000, since the qualified rehabilitation costs of \$125,000, which are equal to the amount of the rehabilitation credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was \$1,100,000. However, for tax years beginning only in the 2000 calendar year, the basis of the rehabilitated property would have been \$600,000, since for those tax periods any qualified rehabilitation costs used to compute the property rehabilitation credit for the tax year could not be added to the basis of the property. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would not be affected by the federal credit.

52.18(4) *Completion of the property rehabilitation project and claiming the property rehabilitation tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the rehabilitation credit, the state historic preservation office, in consultation with the Iowa department of economic development, is to issue a property rehabilitation tax credit certificate which is to be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, and the amount of the property rehabilitation credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.18(6). In addition, if the taxpayer is an S corporation, where the tax credit is allocated to the shareholders of the corporation, a list of the shareholders and the amount of credit allocated to each shareholder should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the property rehabilitation tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	\$.784
6%	\$.747
7%	\$.713
8%	\$.681
9%	\$.650
10%	\$.621
11%	\$.594
12%	\$.567
13%	\$.543
14%	\$.519
15%	\$.497
16%	\$.476
17%	\$.456
18%	\$.437

EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An Iowa corporation has a rehabilitation credit of \$800,000 for a project completed in 2001. The corporation had an income tax liability prior to the credit of \$300,000 on the 2001 return, which leaves an excess credit of \$500,000. We will assume that the annual interest rate for tax refunds issued by the department of revenue and finance in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the \$500,000 excess credit, \$500,000 is multiplied by the compound factor for 2001 which is 11 percent or .594 which results in a refund of \$297,000.

52.18(5) Allocation of the property rehabilitation credit to the shareholders of the corporation. When the corporation that has earned a property rehabilitation credit is an S corporation where the shareholders are taxed on the income of the corporation, the property rehabilitation credit is to be allocated to the shareholders. The corporation is to allocate the property rehabilitation credit to each individual shareholder in the same pro-rata basis that the earnings or profits of the corporation are allocated to the shareholders. For example, if a shareholder of an S corporation received 25 percent of the earnings of the corporation and the corporation had earned a property rehabilitation credit, 25 percent of the credit would be allocated to the shareholder.

52.18(6) Transfer of the property rehabilitation tax credit. For tax periods beginning on or after January 1, 2003, the property rehabilitation tax credit certificates may be transferred to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the property rehabilitation tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

If the property rehabilitation tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 52.18(4) just as the refund would have been discounted on the Iowa income tax return of the taxpayer.

This rule is intended to implement Iowa Code chapter 404A as amended by 2003 Iowa Acts, Senate File 441, and section 422.33.

701—52.19(422) Ethanol blended gasoline tax credit. Effective for tax years beginning on or after January 1, 2002, an ethanol blended gasoline tax credit may be claimed against a taxpayer's corporation income tax liability for retail dealers of gasoline. The taxpayer must operate at least one service station at which more than 60 percent of the total gallons of gasoline sold and dispensed through one or more metered pumps by the taxpayer in the tax year is ethanol blended gasoline. The tax credit shall be calculated separately for each service station site operated by the taxpayer. The amount of the credit for each eligible service station is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at that service station during the tax year in excess of 60 percent of all gasoline sold and dispensed through metered pumps at that service station during the tax year.

For fiscal years ending in 2002, the tax credit is available for each eligible service station based on the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at the taxpayer's service station from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 55.3(5) has not yet expired.

EXAMPLE: A taxpayer sold 100,000 gallons of gasoline at the taxpayer's service station site during the tax year, 70,000 gallons of which were ethanol blended gasoline. The taxpayer is eligible for the credit since more than 60 percent of the total gallons sold were ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 70,000 less 60,000, or 10,000 gallons. Two and one-half cents multiplied by 10,000 equals a \$250 credit available.

The credit may be calculated on Form IA6478. The credit must be calculated separately for each service station operated by the taxpayer. Therefore, if the taxpayer operates more than one service station site, it is possible that one station may be eligible for the credit while another station may not. The credit can be taken only for those service station sites for which more than 60 percent of gasoline sales involve ethanol blended gasoline.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

52.19(1) Definitions. The following definitions are applicable to this rule:

"Ethanol blended gasoline" means the same as defined in Iowa Code section 452A.2.

"Gasoline" means gasoline that meets the specifications required by the department of agriculture and land stewardship pursuant to Iowa Code section 214A.2 that is dispensed through a metered pump.

"Metered pump" means a motor vehicle fuel pump licensed by the department of agriculture and land stewardship pursuant to Iowa Code chapter 214.

“*Retail dealer*” means a retail dealer as defined in Iowa Code section 214A.1 who operates a metered pump at a service station.

“*Sell*” means to sell on a retail basis.

“*Service station*” means each geographic location in this state where a retail dealer sells and dispenses gasoline on a retail basis.

52.19(2) Allocation of credit to owners of a business entity. If the taxpayer that was entitled to the ethanol blended gasoline tax credit is a partnership, limited liability company, S corporation, estate, or trust, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner’s pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an ethanol blended gasoline tax credit of \$3,000 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an ethanol blended gasoline tax credit for the tax year of \$750 or 25 percent of the total ethanol blended gasoline tax credit of the partnership.

This rule is intended to implement Iowa Code section 422.33 as amended by 2003 Iowa Acts, House File 689.

701—52.20(15E) Eligible development business investment tax credit. Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code Supplement section 15E.193C.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual’s pro-rata share of the individual’s earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business’s approved application for the investment tax credit.

This rule is intended to implement Iowa Code Supplement section 15E.193C.

701—52.21(15E,422) Venture capital credits.

52.21(1) *Investment tax credit for an equity investment in a community-based seed capital fund.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue and finance will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.21(2) *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue and finance will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.43, 15E.51, 422.11F and 422.33(13).

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58.6(10) Overpayment—interest accruing before July 1, 1980. If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred prior to April 30, 1980, interest shall accrue from 60 days after the date of payment at the statutory rate, to the date refunded.

58.6(11) Interest commencing on or after January 1, 1982. See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

58.6(12) Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981. If the amount of tax determined to be due by the department is less than the amount paid, and the date of payment occurred on or after April 30, 1980, and before April 30, 1981, interest shall accrue from 30 days after the date of payment or due date of the return, whichever is later, at the statutory rate, to the date refunded. “Date of payment” means the date the return is filed.

58.6(13) Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981. If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

58.6(14) Renumbered as 701—subrule 10.66(5), IAB 1/23/91.

701—58.7(422) Allocation of franchise tax revenues. Each quarterly distribution shall be made up of the tax shown due on the franchise tax returns received during that quarter, net of all refunds of franchise tax established during that quarter. In determining the portion of franchise tax revenues to be distributed to cities and counties, each financial institution, as defined by Iowa Code section 422.61, is required to submit the appropriate allocation data with the filing of its Iowa franchise tax return. Each financial institution shall accumulate or maintain data to properly determine the business activity ratios as prescribed in subrules 58.7(1) and 58.7(2). The allocation shall be made on the basis of business activity for each office location. The word “office” shall mean a branch office, a drive-in bank depository or any other establishment whereby the business pertaining to the financial institution is carried on.

58.7(1) Business activity determination for a production credit association. A production credit association shall measure its business activity on the basis of loan volume. “Loan volume” shall mean total loans originated during the taxable period. The business activity for each office location shall be that percentage of loans originated by each office to total loans originated for all office locations during the taxable period.

58.7(2) Business activity determination for a financial institution other than a production credit association. A financial institution, other than a production credit association, shall measure its business activity on a basis of net deposits. The business activity of each office shall be that percentage of average “savings and demand deposits net of withdrawals” for each office location to the total average “savings and demand deposits net of withdrawals” for all office locations.

This rule is intended to implement Iowa Code section 422.61.

701—58.8(15E) Eligible housing business tax credit. For tax years beginning on or after January 1, 2000, a financial institution may claim on the franchise tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate or trust which has been approved as an eligible housing business by the Iowa department of economic development.

An eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, estate or trust. Any eligible housing business tax credit in excess of the franchise tax liability must be carried forward for seven years or until it is used, whichever is the earlier.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

58.8(1) *Computation of credit.* New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B, as amended by 2003 Iowa Acts, Senate File 441, to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B as amended by 2003 Iowa Acts, Senate File 441. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit, and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 58.8(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy.

58.8(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the Iowa department of economic development, along with a statement which contains the transferee's name, address and tax identification number, and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the Iowa department of economic development will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 15E.193B as amended by 2003 Iowa Acts, Senate File 441.

701—58.9(15E) Eligible development business investment tax credit. Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code Supplement section 15E.193C.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code Supplement section 15E.193C.

701—58.10(422) Property rehabilitation tax credit. For tax years beginning on or after January 1, 2001, a property rehabilitation credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa franchise tax liability for 25 percent of the qualified rehabilitation costs to the extent the costs were incurred for the rehabilitation of eligible property in Iowa. For information on those types of property that are eligible for the rehabilitation credit, how to file applications for the credit, how the property rehabilitation credit is computed, how the property rehabilitation credit can be transferred for tax periods beginning on or after January 1, 2003, and other details about the credit, see rule 701—52.18(422). See also the administrative rules for the property rehabilitation credit for the historical division of the department of cultural affairs under 223—Chapter 48.

This rule is intended to implement Iowa Code chapter 404A as amended by 2003 Iowa Acts, Senate File 441, and section 422.60.

701—58.11(15E,422) Venture capital credits.

58.11(1) *Investment tax credit for an equity investment in a community-based seed capital fund.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue and finance will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a community-based seed capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

58.11(2) *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board.

The department of revenue and finance will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.43, 15E.51, 422.11F and 422.60(5).

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(2) Restrictive suppliers will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months.

The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or \$2,000, whichever is greater.

(3) Blenders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months.

The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or \$2,000, whichever is greater.

(4) L.P.G. and C.N.G. dealers and users will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months. The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or \$500, whichever is greater.

d. Eligible purchasers and end users will be required to post a bond or security when they have failed to pay the tax to a supplier. They will not be allowed to register as an eligible purchaser or end user again until the bond or security requirement has been complied with.

The bond or security will be an amount sufficient to cover six months' fuel tax based on previous purchases.

e. Waiver of bond. If a licensee has been requested to post a bond or security or if an applicant for a license has been requested to post a bond or security, upon the filing of the bond or security if the licensee maintains a good filing record for a period of two years, the licensee may request that the department waive the continued bond or security requirement. Importer bonds will not be waived.

67.21(2) Type of security or bond. When it is determined that a licensee or applicant for a fuel tax permit is required to post collateral to secure the collection of the fuel tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities, or certificates of deposit. "Cash" means guaranteed funds including, but not limited to, cashier's check, money order, or certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An assignment from the bank must accompany the original certificate of deposit filed with the department for the bank to be released from liability. When a licensee elects to post cash rather than a certificate of deposit as a bond, conversion to a certificate of deposit will not be allowed. When the licensee is a corporation, an officer of the corporation may assume personal responsibility for the payment of fuel tax. Security requirements for the officer will be evaluated as provided in 67.21(1) above as if the officer applied for a fuel tax license as an individual.

This rule is intended to implement Iowa Code sections 422.52(3) and 452A.66.

701—67.22(452A) Tax refund offset. The department may apply any fuel tax refund against any other liability outstanding.

This rule is intended to implement Iowa Code sections 452A.17 and 421.17.

701—67.23(452A) Supplier, restrictive supplier, importer, exporter, blender, dealer, or user licenses.

67.23(1) Requirements for license. In order to become licensed as a fuel supplier, restrictive supplier, importer, exporter, blender, dealer, or user, the person must file a written application with the department. The license is valid until revoked or canceled, and is nonassignable. The application is to include, but not be limited to, the following information:

a. The name under which the licensee will transact business in the state.

b. The location of the principal place of business of the licensee and the mailing address if different.

- c. The social security number or federal identification number of the licensee.
- d. The type of ownership.
- e. The name and complete residency address of the owner(s) of the business or, if a corporation or association, the names and addresses of the principal officers.
- f. The type of license being requested.
- g. Exporters only — the state and license number for that state in which the fuel is being exported.
- h. The signature of the person making the application. For electronically transmitted applications, the application form shall state that, in lieu of the person's handwritten signature, the person's E-mail address or the person's fax signature will constitute a valid signature.

67.23(2) Assignment of a license. The following are nonexclusive situations that are considered assignments, and the acquiring person must apply for a new license.

- a. A sale of the taxpayer's business, even if the new owner operates under the same name.
- b. A change of the name under which the licensee conducts business.
- c. A merger or other business combination which results in a new or different entity.

67.23(3) Denial of a license. The department may deny a license to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax and will deny a permit of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If the applicant is a partnership, a license may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a license is a corporation, the department may deny the applicant a license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. See rule 701—13.16(422) for a characterization of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. If the application for a license is denied, see rule 701—7.55(17A) for rights to appeal.

67.23(4) Revocation of a license. The department may revoke the license of any licensee who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax and will revoke a license of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If a licensee is a corporation, the department may revoke the license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. If the licensee is a partnership, the license may not be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. The department may also revoke the license of any licensee who abuses the privileges for which the license was issued, who files a false return, or who fails to file a return (including supporting schedules), pay the full amount of tax due, produce records requested, or extend cooperation to the department. See rule 701—7.55(17A) for rights to appeal.

This rule is intended to implement Iowa Code sections 452A.4 and 452A.6.

701—67.24(452A) Reinstatement of license canceled for cause. A license canceled for cause will be reinstated only on such terms and conditions as the cause may warrant. Terms and conditions will include payments of any applicable fuel tax liability including interest and penalty which is due the department.

Pursuant to the director's statutory authority in Iowa Code section 452A.68 to restore licenses after being canceled for cause, the director has determined that upon the cancellation of a motor vehicle fuel tax license the initial time, the licensee will be required to pay all delinquent fuel tax liabilities including interest and penalty, to file returns, and to post a bond and have refrained from activities requiring a license under sections 452A.4 and 452A.6 during the waiting period as required by the director prior to the reinstatement or issuance of a new motor vehicle fuel tax license.

As set forth above, the director may impose a waiting period during which the licensee must refrain from activities requiring a license pursuant to the penalties provided in Iowa Code section 452A.74 for a period not to exceed 90 days as a condition for the restoration of a license or the issuance of a new license after cancellation for cause. The department may require a statement that the licensee has fulfilled all requirements of said order canceling the license for cause and the dates on which the license holder refrained from restricted activities.

Each of the following situations will be considered one offense for the purpose of determining the waiting period to reinstate a license canceled for cause or issuing a new license after being canceled for cause unless otherwise noted.

Failure to post a bond as required.

Failure to file a report or return timely.

Failure to pay tax timely (including unhonored checks, failure to pay and late payments).

Failure to file a return and pay tax as shown on the return (counts as one offense).

The hearing officer or director of revenue and finance may order a waiting period after the cancellation for cause not to exceed:

Five days for one through five offenses.

Seven days for six or seven offenses.

Ten days for eight or nine offenses.

Thirty days for ten offenses or more.

The hearing officer or director of revenue and finance may order a waiting period not to exceed: Forty-five days if the second cancellation for cause occurs within 24 months of the first cancellation for cause.

Sixty days if the second cancellation for cause occurs within 18 months of the first cancellation for cause.

Ninety days if the second cancellation for cause occurs within 12 months of the first cancellation for cause.

Ninety days if the third cancellation for cause occurs within 36 months of the second cancellation for cause. See 701—subrule 7.24(1) for rights to appeal.

This rule is intended to implement Iowa Code section 452A.68 as amended by 1999 Iowa Acts, Senate File 136.

701—67.25(452A) Fuel used in implements of husbandry. Dyed special fuel is exempt from tax. Motor fuel or undyed special fuel is subject to refund when used in implements of husbandry as defined in Iowa Code section 321.1(32). A vehicle as defined in Iowa Code section 321.1(90) is not an implement of husbandry. The department of revenue and finance, the state department of transportation, the department of public safety, and any other peace officer as requested by such department is empowered to enforce the use of special fuel or motor fuel in any illegal manner, including the inspection and testing of fuel in the fuel supply tank of an implement of husbandry.

This rule is intended to implement Iowa Code section 452A.76 as amended by 1995 Iowa Acts, chapter 155.

701—67.26(452A) Excess tax collected. If a licensee collects tax on exempt fuel or collects more tax than is due, the licensee must return the excess tax paid to the purchaser if the tax has not been paid to the department. If the tax has been paid to the department, the department will return the excess tax paid to the consumer upon appropriate documentation.

This rule is intended to implement 1999 Iowa Acts, Senate File 136, section 66.

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701—78.6(427,441) Taxable status of property.

78.6(1) The status of property on July 1 of the fiscal year which commences during the assessment year determines its eligibility for exemption in situations where no claim is required to be filed to procure a tax exemption. If the property is in a taxable status on July 1, no exemption is allowable for that fiscal year. If the property is in an exempt status on July 1, no taxes are to be levied against the property during that fiscal year.

Exceptions to this rule are as follows:

a. Land acquired by the state of Iowa or a political subdivision thereof after July 1 in connection with the establishment, improvement or maintenance of a public road shall be taxable for that portion of the fiscal year in which the property was privately owned.

b. All current and delinquent tax liabilities are to be canceled and no future taxes levied against property acquired by the United States or its instrumentalities, regardless of the date of acquisition, unless the United States Congress has authorized the taxation of specific federally owned property. (1980 O.A.G. 80-1-19.) The following exceptions apply:

(1) Real and personal property owned by the Federal Housing Authority (FHA) and real property owned by the Federal Land Bank Association is subject to taxation and any tax liabilities existing at the time of the acquisition are not to be canceled. However, the personal property of the Federal Land Bank Association is exempt from taxation. (1982 O.A.G. 82-1-16; 12 USCS §2055.)

(2) Existing tax liabilities against property acquired by the Small Business Administration are not to be canceled if the acquisition takes place after the date of levy. However, no taxes are to be levied if the acquisition takes place prior to the levy date or for subsequent fiscal years in which the Small Business Administration owns the property on July 1. (15 USCS §646.)

c. Land owned by the state and leased by the department of corrections or the department of human services pursuant to Iowa Code section 904.302, 904.705, or 904.706 to an entity that is not exempt from property tax is subject to taxation for the term of the lease. This provision applies to leases entered into on or after July 1, 2003. The lessor shall file a copy of the lease with the county assessor of the county where the land is located.

78.6(2) The status of property during the fiscal year for which an exemption was claimed determines its eligibility for exemption in situations where a claim is required to be filed to procure a tax exemption. If the property is used for an appropriate purpose for which an exemption is allowable for all of the fiscal year for which the exemption is claimed, no taxes are to be levied against the property during that fiscal year. If the property for which an exemption has been received is used for an appropriate purpose for which an exemption is allowable for only a portion of the fiscal year for which the exemption is claimed, the taxes shall be prorated in accordance with the period of time the property was in a taxable status during the fiscal year.

This rule is intended to implement Iowa Code section 427.1(1) as amended by 2003 Iowa Acts, House File 665, and sections 427.1(2), 427.2, 427.18, and 427.19.

701—78.7 Personal property. Rescinded IAB 10/14/92, effective 11/18/92.

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c. A homestead tax credit shall not be allowed if the property taxes levied against the homestead property have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

d. Only one homestead tax credit can be allowed per legally described tract of land. For purposes of this rule, a legally described tract of land shall mean all land contained in a single legal description. (1962 O.A.G. 435)

e. If the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission*, 235 Iowa 222, 16 N.W.2d 215)

f. If the homestead property contains two dwelling houses and one of the dwelling houses and a portion of the land is sold after a valid application for homestead tax credit has been filed, the assessor shall prorate the assessment so as to allow the seller a homestead tax credit on that portion of the property which is retained and also allow the purchaser a homestead tax credit on that portion of the property which is purchased, provided the purchaser files a valid application for homestead tax credit by July 1 of the claim year.

g. A homestead tax credit shall be allowed against the assessed value of the land on which a dwelling house did not exist as of January 1 of the year in which the credit is claimed provided a dwelling house is owned and occupied by the claimant on July 1 of that year.

This rule is intended to implement Iowa Code chapter 425 as amended by 2002 Iowa Acts, House File 2622.

701—80.2(22,35,426A) Military service tax exemption.

80.2(1) Application for exemption.

a. No military service tax exemption shall be allowed unless the first application for the military service tax exemption is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year (1970 O.A.G. 437). Once filed, the claim for exemption is applicable to subsequent years and no further filing shall be required provided the claimant or the claimant's spouse owns the property on July 1 of each year. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 427.6 as amended by 1999 Iowa Acts, chapter 151, section 88. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. In the event July 1 falls on either a Saturday or Sunday, applications for the military service tax exemption may be filed the following Monday.

c. In the event July 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

d. An assessor may not refuse to accept an application for a military service tax exemption. If it is the opinion of the assessor that a military service tax exemption should not be allowed, the assessor shall accept the application for exemption and recommend disallowance.

e. If the owner of the property is on active duty in the armed forces of this state or of the United States, or is 65 years of age or older or is disabled, the application for military service tax exemption may be signed and delivered by a member of the owner's family or the owner's guardian, conservator or designated attorney-in-fact. For purposes of this rule, any person related to the owner by blood, marriage or adoption shall be considered a member of the owner's family.

80.2(2) Eligibility for exemption.

- a. A person who was discharged from the draft is not considered a veteran of the military service and is not entitled to a military service tax exemption. (1942 O.A.G. 79)
- b. A military service tax exemption shall not be allowed to a person whose only service in the military was with a foreign government. (1932 O.A.G. 242; 1942 O.A.G. 79)
- c. Former members of the United States armed forces, including members of the Coast Guard, must have served on active duty during one of the war or conflict time periods enumerated in Iowa Code section 35.1. Former members who opted to serve five years in the reserve forces of the United States qualify if any portion of their enlistment would have occurred during the Korean Conflict (June 25, 1950, to January 31, 1955). There is no minimum number of days a former member of the armed forces of the United States must have served on active duty. Former members of the Iowa national guard and reserve forces of the United States need not have performed any active duty if they served at least 20 years after January 28, 1973. Otherwise, they must have been activated for federal duty, for purposes other than training, for a minimum of 90 days. Also, it is not a requirement for a member of the Iowa national guard or a reservist to have performed service within a designated war or conflict time period.
- d. A military service tax exemption shall not be allowed unless the veteran has received a complete and final separation from active duty service. (*Jones v. Iowa State Tax Commission*, 247 Iowa 530, 74 N.W.2d 563, 567-1956; *In re Douglas A. Coyle*, State Board of Tax Review, No. 197, August 14, 1979; 1976 O.A.G. 44)
- e. As used in Iowa Code subsection 426A.12(3), the term minor child means a person less than 18 years of age or less than 21 years of age and enrolled as a full-time student at an educational institution.
- f. A veteran of more than one qualifying war period is entitled to only one military service tax exemption, which shall be the greater of the two exemptions. (1946 O.A.G. 71)
- g. The person claiming a military service tax exemption must be an Iowa resident. However, the veteran need not be an Iowa resident if such person's exemption is claimed by a qualified individual enumerated in Iowa Code section 426A.12. (1942 O.A.G. 140)
- h. A person who has a life estate interest in property may claim a military service tax exemption on such property. (1946 O.A.G. 155; 1976 O.A.G. 125)
- i. A remainder is not eligible to receive a military service tax exemption on property to which a remainder interest is paid until expiration of the life estate. (1946 O.A.G. 155)
- j. A military service tax exemption shall not be allowed on a mobile home which is not assessed as real estate. (1962 O.A.G. 450)
- k. A divorced person may not claim the military service tax exemption of a former spouse who qualifies for the exemption. (Letter O.A.G. August 8, 1961)
- l. A surviving spouse of a qualified veteran, upon remarriage, loses the right to claim the deceased veteran's military exemption as the surviving spouse is no longer an unremarried surviving spouse of the qualified veteran. (1950 O.A.G. 44)
- m. An annulled marriage is considered to have never taken place and the parties to such a marriage are restored to their former status. Neither party to an annulled marriage can thereafter be considered a spouse or surviving spouse of the other party for purposes of receiving the military service tax exemption. (Op. Att'y. Gen. 61-8-10(L))
- n. No military service tax exemption shall be allowed on property that is owned by a corporation, except for a family farm corporation where a shareholder occupies a homestead as defined in Iowa Code section 425.11(1), partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441)
- o. In the event both a husband and wife are qualified veterans, they may each claim their military service tax exemption on their jointly owned property. (1946 O.A.G. 194) If property is solely owned by one spouse, the owner spouse may claim both exemptions on such property providing the nonowner spouse does not claim his or her exemption on other property.

p. No military service tax exemption shall be allowed if on July 1 of the claim year, the claimant or the claimant's unmarried surviving spouse is no longer the owner of the property upon which the exemption was claimed.

q. A person shall not be denied a military service tax exemption even though the property upon which the exemption is claimed has been pledged to another person as security for a loan. (1960 O.A.G. 263)

r. A qualified veteran who has conveyed property to a trustee shall be eligible to receive a military service tax exemption on such property providing the trust agreement gives the claimant a beneficial interest in the property. (1962 O.A.G. 434)

s. A person owning property pursuant to Iowa Code chapter 499A or 499B is eligible for a military service tax exemption. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

t. The person claiming the exemption shall have recorded in the office of the county recorder evidence of property ownership and the military certificate of satisfactory service. The military certificate of satisfactory service shall be considered a confidential record pursuant to Iowa Code section 22.7.

80.2(3) Application of exemption.

a. When the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission*, 235 Iowa 222, 16 N.W.2d 215)

b. If a portion of the property upon which a valid military service tax exemption was claimed is sold on or before July 1 of the year in which the exemption is claimed, the seller shall be allowed a military service tax exemption on that portion of the property which is retained by the seller on July 1. The purchaser is also eligible to receive a military service tax exemption on that portion of the property which was purchased, provided the purchaser is qualified for the exemptions and files a valid application for the exemption on or before July 1 of the claim year.

c. A military service tax exemption may be allowed even though the taxes levied on the property upon which the exemption is claimed have been suspended by the board of supervisors. (1938 O.A.G. 288)

d. A military service tax exemption shall not be allowed if the taxes levied on the property upon which the exemption is claimed have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

This rule is intended to implement Iowa Code section 22.7 as amended by 2003 Iowa Acts, Senate File 94; section 35.1 as amended by 2003 Iowa Acts, House File 674; and chapter 426A.

701—80.3(427) Pollution control and recycling property tax exemption.

80.3(1) To secure an exemption for pollution control or recycling property, an application must be filed with the assessing authority on or before February 1 of the assessment year for which the exemption is first claimed. It is the responsibility of the taxpayer to secure the necessary certification from the department of natural resources in sufficient time to file the application for exemption with the assessing authority on or before February 1. An exemption for new pollution control or recycling property can be secured by filing an application with the assessing authority by February 1 of the assessment year following the year in which the property is installed or constructed. If no application is timely filed in that year, the property will first qualify for exemption in any subsequent year in which an application is filed with the assessing authority on or before February 1.

80.3(2) In the event February 1 falls on either a Saturday or Sunday, applications for the exemption may be filed the following Monday.

80.3(3) In the event February 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

80.3(4) No exemption shall be allowed unless the application is signed by the owner of the property or the owner’s qualified designee.

80.3(5) An assessor may not refuse to accept an application for a pollution control exemption if timely filed and if the necessary certification has been obtained from the department of natural resources.

80.3(6) The sale, transfer, or lease of property does not affect its eligibility for exemption as long as the requirements of Iowa Code subsection 427.1(19) and rule 701—80.3(427), Iowa Administrative Code, are satisfied.

80.3(7) No exemption shall be allowed unless the department of natural resources has certified that the primary use of the property for which the taxpayer is seeking an exemption is to control or abate air or water pollution or to enhance the quality of any air or water in this state or that the primary use of the property is for recycling.

80.3(8) In the event that qualified property is assessed as a unit with other property not having a pollution control or recycling function, the exemption shall be limited to the increase in the assessed valuation of the unit which is attributable to the pollution control or recycling property.

EXAMPLE

Valuation of unit with pollution control or recycling property	\$100,000
Valuation of unit without pollution control or recycling property	<u>50,000</u>
Allowable amount of exemption	\$ 50,000

80.3(9) The value of property to be exempt from taxation shall be the fair and reasonable market value of such property as of January 1 of each year for which the exemption is claimed, rather than the original cost of such property.

This rule is intended to implement Iowa Code subsection 427.1(19).

701—80.4(427) Low-rent housing for the elderly and persons with disabilities.

80.4(1) As used in Iowa Code subsection 427.1(21), the term “nonprofit organization” means an organization, no part of the net income of which is distributable to its members, directors or officers.

80.4(2) As used in Iowa Code subsection 427.1(21), the term “low-rent housing” means housing the rent for which is less than that being received or which could be received for similar properties on the open market in the same assessing jurisdiction. Federal rent subsidies received by the occupant shall be excluded in determining whether the rental fee charged meets this definition.

80.4(3) As used in Iowa Code subsection 427.1(21), the term “elderly” means any person at least 62 years of age.

80.4(4) As used in Iowa Code subsection 427.1(21), the term “persons with physical or mental disabilities” means a person whose physical or mental condition is such that the person is unable to engage in substantial gainful employment.

80.4(5) The exemption granted in Iowa Code subsection 427.1(21) extends only to property which is both owned and operated by a nonprofit organization. Property either owned or operated by a private person is not eligible for exemption under Iowa Code subsection 427.1(21).

80.4(6) The income of persons living in housing eligible for exemption under Iowa Code subsection 427.1(21) shall not be considered in determining the property’s taxable status.

701—80.7(427B) Assessment of computers and industrial machinery and equipment.

80.7(1) Computers and industrial machinery and equipment are to be assessed at 30 percent of the property's net acquisition cost through the 1998 assessment year, 22 percent of the net acquisition cost in the 1999 assessment year, 14 percent of the net acquisition cost in the 2000 assessment year, and 6 percent of the net acquisition cost in the 2001 assessment year. The property will be exempt from tax beginning with the 2002 assessment year.

Computers and industrial machinery and equipment acquired after December 31, 1993, and not previously assessed in Iowa, are exempt from tax.

Computers and industrial machinery and equipment assessed pursuant to Iowa Code section 427B.17 are not eligible to receive the partial property tax exemption under Iowa Code sections 427B.1 to 427B.7.

80.7(2) Computers assessed under Iowa Code section 427A.1(1)“j” are limited to the percent of the computer's net acquisition cost as provided in Iowa Code section 427B.17 regardless of the classification of the real estate in which the computer is located.

80.7(3) For computers and industrial machinery and equipment, the net acquisition cost shall be the acquired cost of the property.

80.7(4) Computation of taxpayer's value. Assume a machine is acquired at a net acquisition cost of \$10,000. Assume also that the actual depreciated value of the machine is \$9,000. The value on which taxes would be levied would be limited to \$3,000 ($\$10,000 \times .30$). This percent will change over the course of the phaseout of the tax.

80.7(5) If all or a portion of the value of property assessed pursuant to Iowa Code section 427B.17 is eligible to receive an exemption from taxation, the amount of value to be exempt shall be subtracted from the net acquisition cost of the property before the taxpayer's value prescribed in Iowa Code section 427B.17 is determined. For example, if property has a net acquisition cost of \$30,000 and is eligible to receive a pollution exemption for \$15,000 of value, the taxable net acquisition cost would be \$15,000 and the taxpayer's value would be \$4,500 ($\$15,000 \times .30$). This percent will change over the course of the phaseout of the tax.

80.7(6) In the event the actual depreciated fair market value of property assessed pursuant to Iowa Code section 427B.17 is less than the valuation determined as a percent of the net acquisition cost of the property as provided in Iowa Code section 427B.17, the taxpayer's assessed value would be equal to the actual depreciated fair market value of the property.

80.7(7) Property ineligible for phaseout and exemption. Computers and industrial machinery and equipment, the taxes on which are used to fund a new jobs training project approved on or before June 30, 1995, do not qualify for the exemption provided in Iowa Code section 427B.17(2) nor the phaseout contained in Iowa Code section 427B.17(3) until the assessment year following the calendar year in which the funding obligations have been retired, refinanced, or refunded. At that time, the property will be subject to phaseout if acquired prior to January 1, 1994, or exempt from tax if acquired after December 31, 1993, and not previously assessed in Iowa. See subrule 80.7(1). The community college must notify the assessor by February 15 of each assessment year if the community college will be using a taxpayer's machinery and equipment taxes to finance a project that year. In any year in which the community college does rely on a taxpayer's machinery and equipment taxes for funding, the phaseout and exemption will not apply to that taxpayer that year.

80.7(8) County replacement.

a. For fiscal years beginning July 1, 1996, and ending June 30, 2001, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, multiplied by the tax levy rate for that fiscal year. If there is an increase in valuation (the January 1, 1994, value is less), there will be no replacement for that fiscal year.

b. For fiscal years beginning July 1, 2001, and ending June 30, 2004, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, less, if any, the increase in the assessed value of commercial and industrial property as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, multiplied by the tax levy rate for that fiscal year. If the calculation results in a negative amount, there will be no replacement for that fiscal year.

c. The replacement amounts shall be determined for each taxing district and a replacement claim summarizing the total amounts for the county prepared and submitted by the county auditor to the department of revenue and finance by September 1 of each year. The department shall pay the replacement amount to the county treasurer in September and March of each year.

d. No replacement is allowable if a community college elects not to fund a new jobs training project with a tax on computers and industrial machinery and equipment.

This rule is intended to implement Iowa Code chapter 427B as amended by 2003 Iowa Acts, Senate File 453.

701—80.8(404) Urban revitalization partial exemption.

80.8(1) Area designated. An area containing only one building or structure cannot be designated as an urban revitalization area (1980 O.A.G. 786).

80.8(2) Prior approval. To obtain prior approval for a project, a property owner's proposal must be approved by a specific resolution addressing the proposal and passed by the city council or county board of supervisors. The original ordinance providing for the urban revitalization area does not constitute the granting of prior approval for any particular project. Also, prior approval for a project can only be granted by resolution of the city council or county board of supervisors; an official or representative of a city or county does not have the independent authority to grant prior approval for a project.

80.8(3) Eligibility for exemption. Improvements made as a result of a project begun more than one year prior to a city's or county's adoption of an urban revitalization ordinance are not eligible to receive the partial exemption even though some of the improvements are added during the time the area was designated as an urban revitalization area. For a project commenced within one year prior to the adoption of an urban revitalization ordinance, the partial exemption can be allowed only for those improvements constructed on or after the effective date of the ordinance. (1982 O.A.G. 358)

80.8(4) Minimum value added. Once the minimum value added required by Iowa Code section 404.3(7) has been assessed, any amount of additional value added to the property in subsequent years is eligible for the partial exemption. The value added subject to partial exemption for the first year for which an exemption is claimed and allowed shall include value added to the property for a previous year even if the value added in the previous year was not by itself sufficient to qualify for the partial exemption.

For example, assume that an urban revitalization project is begun on commercial property having an actual value of \$50,000 as of January 1, 1984. As a result of improvements made during 1984, the actual value of the property as of January 1, 1985, is determined to be \$55,000. Additional improvements made during 1985 increase the actual value of the property to \$70,000 for the 1986 assessment. In this example, no partial exemption can be allowed for 1985 since the value added for that year is less than 15 percent of the actual value of the property prior to construction of the improvements. A partial exemption can be allowed for 1986 and subsequent years for the \$20,000 value added in both 1985 and 1986, providing a valid application for the partial exemption is filed between January 1, 1986, and February 1, 1986, inclusive.

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1. The first part of the report is a general
introduction to the subject of the study.
It discusses the importance of the study and
the objectives of the research. The second part
of the report is a detailed description of the
methodology used in the study. This includes
a description of the data sources, the
sampling method, and the statistical methods
used to analyze the data. The third part of
the report is a discussion of the results of
the study. This includes a description of the
main findings and a discussion of their
implications. The fourth part of the report is
a conclusion and a list of references.

TITLE XVIII
DEBT COLLECTION

CHAPTER 150
FEDERAL OFFSET FOR IOWA INCOME TAX OBLIGATIONS

701—150.1(421,26USC6402) Purpose and general application of offset of a federal tax overpayment to collect an Iowa income tax obligation. Effective for refunds of overpayments to the Internal Revenue Service (IRS) that are payable beginning January 1, 2000, the IRS may offset, in whole or in part, an amount of federal refund payable to an Iowa resident by the amount of any past due legally enforceable Iowa income tax obligation owed by such taxpayer. The purpose of this chapter is to establish a procedure to identify taxpayers that owe Iowa income tax liabilities and to establish a procedure for requesting the offset of the taxpayer's federal tax overpayment to collect a past due legally enforceable Iowa income tax obligation.

701—150.2(421,26USC6402) Definitions. The following definitions are applicable to the federal offset program:

"Assessment" means the determination of a past due tax obligation and includes self-assessments. An assessment includes the Iowa income tax, interest, penalties, fees or other charges associated with the past due legally enforceable Iowa income tax obligation.

"Department," "state of Iowa," "Iowa" or "the state" means the Iowa department of revenue.

"Director" means the director of the Iowa department of revenue.

"Overpayment" means a federal tax refund due and owing to a person or persons.

"Past due legally enforceable Iowa income tax obligation" means a debt which resulted from a judgment rendered by a court of competent jurisdiction which has determined an amount of state income tax to be due or a determination after an administrative hearing which has determined an amount of state income tax to be due and which is no longer subject to judicial review. In addition, this term also includes a debt which resulted from a state income tax which has been assessed but not collected, for which the time for redetermination has expired, and which has not been delinquent for more than ten years.

"Resident of Iowa" means any person with a federal overpayment for the year in which Iowa seeks offset and such person has an Iowa address listed on that person's federal return for the tax period of overpayment.

"Secretary" means the Secretary of the Treasury for the federal government.

"State income tax obligation" or "Iowa income tax obligation" is intended to cover all Iowa income taxes. This term includes all local income taxes administered by the Iowa department of revenue or determined to be a "state income tax" under Iowa law. Such taxes may include, but are not limited to, individual income tax, income surtax, fiduciary income tax, withholding tax, or corporate income tax, and penalties, interest, fines, judgments, or court costs relating to such tax obligations.

"Tax refund offset" means withholding or reducing, in whole or in part, a federal tax refund payment by an amount necessary to satisfy a past due legally enforceable state income tax obligation owed by the payee (taxpayer) of the tax refund payment. This rule only involves the offset of tax refund payments under 26 U.S.C. 6402(e); it does not cover the offset of federal payments other than tax refund payments for the collection of past due legally enforceable state income tax obligations.

"Tax refund payment" means the amount to be refunded to a taxpayer by the federal government after the Internal Revenue Service (IRS) has applied the taxpayer's overpayment to the taxpayer's past due tax liabilities in accordance with 26 U.S.C. 6402(a) and 26 CFR 301.6402-3(a)(6)(i).

701—150.3(421,26USC6402) Prerequisites for requesting a federal offset. The following are the requirements that the state of Iowa must meet before the state can request an offset of a federal overpayment against an Iowa income tax obligation:

150.3(1) Pre-offset notice. At least 60 days prior to requesting the offset of a taxpayer's federal overpayment for an Iowa income tax obligation, the state of Iowa must provide notice by certified mail, return receipt requested, to the person owing the Iowa income tax liability. This notice must state the following information:

- a. That the state proposes to request the offset of the person's federal overpayment against a specified Iowa income tax obligation and that such an obligation is past due and legally enforceable;
- b. That the authority for this offset is Internal Revenue Service Restructuring and Reforms Act of 1998, Pub. L. 105-206, 112 Stat. 685, 779 (1998), as implemented by this chapter;
- c. That the person owing the obligation has 60 days from the date of the notice to present evidence to the department that all or part of the obligation at issue is not past due or not legally enforceable;
- d. The mailing address for submitting such evidence;
- e. That failure to timely submit the evidence waives the taxpayer's right to protest the amount, validity or qualification of the Iowa income tax obligation for offset at any time in the future; and
- f. Where contact can be made with the department for additional information or questions.

150.3(2) The state must consider any evidence presented by the person owing the obligation and determine whether the amount or amounts are past due and legally enforceable.

150.3(3) The state must have made written demand on the taxpayer to obtain payment of the state income tax obligation for which the request for offset is being submitted.

150.3(4) Additional pre-offset notices. The department must provide a taxpayer with an additional pre-offset notice if the amount of the obligation to be subject to offset is increased due to a new assessment. However, a new pre-offset notice is not required to be sent to the taxpayer by the department if there is an increase in the amount to be offset due to accrued interest, penalties or other charges associated with an Iowa income tax obligation in which notice has previously been given.

150.3(5) Before offset of the federal refund can be requested by the state of Iowa, the person's Iowa income tax liability must be at least \$25, unless otherwise provided based on the discretion of the department and the Secretary. If an individual owes more than one Iowa income tax obligation, the minimum amount will be applied to the aggregate amounts of such obligations owed to Iowa.

150.3(6) Offset applies to residents of Iowa as defined under these rules.

701—150.4(421,26USC6402) Procedure after submission of evidence. Upon timely receipt of evidence by the department from the taxpayer as set forth in 150.3(1) "c," the department has 60 days to review the evidence and notify the taxpayer whether the evidence submitted is sufficient to terminate the intended offset. If the department determines that the evidence is sufficient, the procedure to initiate the federal offset shall be terminated for that obligation and the taxpayer's record of Iowa income tax obligation for that particular obligation shall be adjusted accordingly. However, if the department determines that the evidence is insufficient to show that the amount or amounts at issue are not, in whole or in part, a past due and legally enforceable income tax obligation, the department must notify the taxpayer within 60 days of receiving the evidence from the taxpayer.

The contest of an offset under these rules is subject to judicial review under Iowa Code section 17A.19 as "other agency action."

In cases in which a taxpayer claims immunity from state taxation due to being an enrolled member of an Indian tribe who lives on that member's reservation and derives all of that member's income from that reservation, Iowa must consider such claims de novo on the merits, unless such claims have been previously adjudicated by a court of competent jurisdiction.

701—150.5(421,26USC6402) Notice by Iowa to the Secretary to request federal offset. Iowa must notify the Secretary of an Iowa income tax obligation in the manner prescribed by the Secretary.

701—150.6(421,26USC6402) Erroneous payments to Iowa. If Iowa receives a notice from the Secretary that an erroneous payment has been made to Iowa under these rules, Iowa must promptly pay to the Secretary, in accordance with such rules and regulations as the Secretary may prescribe, an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to Iowa under these rules have been paid to Iowa). In the alternative, Iowa may return the erroneous payment directly to the taxpayer. If this latter alternative is used by Iowa, then Iowa must notify the Secretary of the erroneous offset being paid to the taxpayer, and the taxpayer's records will be adjusted accordingly.

701—150.7(421,26USC6402) Correcting and updating notice to the Secretary. Iowa must notify the Secretary of any deletion or decrease in the amount of past due legally enforceable Iowa income tax obligation referred to the Secretary for collection by offset under these rules. Iowa may also notify the Secretary of any increases in the amount or amounts referred to the Secretary for collection by offset under these rules provided that Iowa has complied with the requirements of these rules with regard to such amount or amounts.

These rules are intended to implement Iowa Code chapter 421 and 26 U.S.C. 6402(e) et seq.

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CHAPTER 22
ALTERNATIVE VOTING SYSTEMS
[Prior to 7/13/88, see Secretary of State[750] Ch 10]

TESTING AND EXAMINATION OF VOTING EQUIPMENT

721—22.1(52) Definitions for certification of voting equipment.

"Accredited independent test authority" means a person or agency that is formally recognized by the National Association of State Election Directors as competent to design and perform qualification tests for voting system hardware and software.

"Certification" means formal approval of voting machines or electronic voting equipment for use in Iowa pursuant to Iowa Code sections 52.5, 52.7 and 52.26.

"Electronic transmission" means using hardware and software components to send data over distances both within and external to the polling place and to receive an accurate copy of the transmission.

"Examiners" means the board of examiners for voting machines and electronic voting systems described in Iowa Code section 52.4.

"Qualification test" means the examination and testing of an electronic voting system by an independent test authority using the voting system standards required by rule 721—22.2(52) to determine whether the system complies with those standards.

"Vendor" means a person or representative of a person owning or being interested in a voting machine or electronic voting system seeking certification of the equipment for use in elections in Iowa.

"Voting booth" means an enclosure designed to be used by a voter while marking a paper ballot, special paper ballot or ballot card.

"Voting equipment" means voting machines and electronic voting systems which are required by Iowa Code sections 52.5, 52.7, and 52.26 to be approved for use by the examiners.

721—22.2(52) Voting system standards. All electronic voting systems and machines approved for use by the Board of Examiners after April 9, 2003, shall meet Voting Systems Performance and Test Standards, as adopted by the Federal Election Commission April 30, 2002. The report of an accredited independent test authority certifying that the system is in compliance with these standards shall be submitted with the application for examination.

This rule is intended to implement Iowa Code section 52.5.

721—22.3(52) Examiners. The examiners annually shall elect a chairperson. All three examiners must be present for any formal action. Approval by two of the three examiners is required to approve any action to be taken by the examiners.

22.3(1) Notice of the time and place of any meeting by the board of examiners must be published pursuant to Iowa Code section 21.4.

22.3(2) Meetings of the examiners are open to the public, except that closed meetings may be held as permitted by Iowa Code section 21.5.

22.3(3) Correspondence and materials required to be filed with the board of examiners shall be addressed to the examiners in care of the Elections Division, Office of the Secretary of State, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

721—22.4(52) Fees and expenses paid to the examiners.

22.4(1) The examiners shall be reimbursed for travel to and from the meeting place at the rate specified in Iowa Code section 70A.9. The examiners shall also be reimbursed for actual expenses for meals and lodging, if necessary.

a. If the meeting was called for the purpose of examining, reexamining, testing, or discussing the certification of voting equipment offered by a vendor, the examiners' expenses shall be paid by the vendor within seven days following the completion of the examination and testing of the voting equipment.

b. If the meeting was called for the purpose of advising the secretary of state regarding administrative rules for the examiners, or to hear complaints or requests for decertification of voting equipment, or any other business of interest to the examiners, the expenses shall be paid by the secretary of state.

22.4(2) The vendor shall pay the examiners the amount of compensation specified in Iowa Code section 52.6 at the beginning of each meeting for which compensation is required to be provided to the examiners. The fee shall be paid as follows:

a. For each meeting or series of meetings held for the purpose of certifying a voting machine, electronic voting system or voting booth.

b. For each meeting or series of meetings for reconsideration of a voting machine, electronic voting system or voting booth after denial of certification.

c. If the examiners schedule examinations of voting booths offered by more than one vendor at a single meeting, the fee shall be divided equally among the vendors.

d. The examiners shall waive the examination fee if a voting booth is submitted for examination by a county commissioner of elections pursuant to rule 22.19(52).

This rule is intended to implement Iowa Code sections 17A.19, 49.25(3), 52.5, 52.6, and 52.26.

721—22.5(52) Examination of voting equipment—application. Any vendor who wishes to apply for certification of voting equipment for use in the state of Iowa shall apply to the secretary of state for an appointment with the examiners. The application shall include five copies of each of the following:

22.5(1) History of the equipment to be examined. This history shall include a complete description of the equipment to be examined, descriptions of any previous models of the equipment, the date the system to be examined went into production, and a complete list of jurisdictions which have used the equipment. The user list shall include jurisdictions which used the equipment experimentally without purchasing it, jurisdictions which purchased earlier versions of the equipment to be examined, and jurisdictions which purchased the current version of the equipment to be examined.

22.5(2) Copies of all manuals developed for use with the system including, but not limited to, technical manuals for repair and maintenance of the equipment, operations manuals for election officials, printer's manuals for ballot production, and any other written documents prepared by the vendor that describe the operation, use, and maintenance of the machine.

22.5(3) Report of an accredited independent test authority certifying that the system is in compliance with the voting systems standards required by rule 721—22.2(52). Copies of these reports are confidential records as defined by Iowa Code section 22.7 and Iowa Code chapter 550. Independent test authority reports shall be available to the secretary of state, deputy secretary of state, director of elections, members of the board of examiners, and any other person designated by the secretary of state to have a bona fide need to review the report. No other person shall have access to the reports, and no copies shall be made. All independent test authority reports shall be marked "CONFIDENTIAL" and shall also be accompanied by a list of those persons who are authorized to examine the report. The reports shall be kept in a locked cabinet.

22.5(4) Copies of the reports of any test authority who has examined the equipment in conjunction with certification requirements of other states.

STATE OF IOWA
REQUEST FOR EXAMINATION OF VOTING BOOTH
BY THE BOARD OF EXAMINERS FOR VOTING MACHINES
AND ELECTRONIC VOTING SYSTEMS

Name of model(s) to be examined: _____
Vendor or Commissioner: _____
Address: _____
City, State, Zip: _____
Telephone number: _____
Person to contact: _____

I request that the Iowa Board of Examiners for Voting Machines and Electronic Voting Systems examine the voting booth(s) described above and in the attached documents for the purpose of determining whether this voting booth will be approved for use in the State of Iowa. If required to do so, I will pay the costs of this examination, including the examiners' fees and expenses. I understand that the examiners' fee of one hundred fifty dollars (\$150) each is to be paid before the examination begins. If more than one vendor presents booths to be examined, I understand that the examiners' fees will be divided equally among the vendors. (Fees shall be waived for examination of voting booths for county commissioners.)

I understand that a production model of the voting booth submitted for certification shall be made available to the examiners.

I agree to submit subsequent models of this voting booth for further examination if any changes are made following its approval for use. I understand that certification will be denied or rescinded if the examiners determine that this voting booth does not meet the requirements of the Code of Iowa and Iowa Administrative Code.

I understand that voting booths that have not been approved by the examiners cannot be used at any election in the State of Iowa.

Signed: _____
Title: _____

State of _____
County of _____

Signed and sworn to (or affirmed) before me on _____ (date)
by _____.

NOTARY PUBLIC (or title of other officer
authorized to perform notarial acts)

721—22.20(52) Review of application by examiners. Upon receipt of the application, the secretary of state shall immediately forward copies of the application to each of the examiners. The examiners shall review the application and within seven days a date shall be set for the examiners to meet and examine the voting booth. If additional information is needed by the examiners, they may delay setting a date for the examination pending the submission of the requested materials.

721—22.21(52) Contact other users. The examiners shall contact a representative sample of the users of the voting booth to determine the nature of the experience of other users.

721—22.22(52) Criteria for approval. Voting booths must meet the following criteria:

1. Voting booths must provide for voting in secrecy.
2. Voting booths must be sturdy.

3. Voting booths must have a light, or be adaptable to having lighting attached if needed.
4. Handicapped accessible booths must accommodate voters seated either in wheelchairs or in chairs provided at the precinct.

721—22.23(52) Report. The examiners shall prepare a report clearly stating whether the voting booth has been approved or denied approval for use in Iowa.

22.23(1) *Approval permits use.* If the report states that the voting booth has been approved for use, it may be adopted for use at elections.

22.23(2) *Copy filed with the secretary of state.* A copy of the report shall be filed with the secretary of state. A copy of the application of the vendor and all other documents submitted by the vendor shall be filed with the report and retained by the secretary of state.

721—22.24(52) Notification. The examiners shall promptly notify the vendor of their decision and shall provide the vendor with a copy of their report.

721—22.25(52) Denial of certification. If the examiners find that the voting booth does not meet the requirements prescribed by the Code of Iowa and the Iowa Administrative Code, the examiners shall deny certification to the voting booth. The report of the board shall specify the reasons for the denial, as well as all areas in which the voting booth complied with the requirements of the law. Certification may be denied for any of the following reasons:

22.25(1) Failure to meet criteria established by rule 22.22(52).

22.25(2) Failure to pay the examiners' fees and expenses, if required.

22.25(3) Failure to provide the examiners with a sufficient application as required by rule 22.19(52).

721—22.26(52) Application for reconsideration. Following denial of certification a vendor may make the necessary modifications to the voting booth and apply for reconsideration. Aspects of the voting booth which were approved in the initial application do not need to be reexamined unless the examiners find that the modifications may have affected the ability of the voting booth to comply in other areas.

721—22.27(52) Appeal. If the vendor believes the denial of certification is in error, the vendor must file written exceptions with the examiners within 30 days after issuance of the report. The examiners will issue a response to the exceptions within 30 days after filing of the exceptions. A vendor who is aggrieved or adversely affected by a denial after a ruling on exceptions may seek judicial review pursuant to Iowa Code section 17A.19.

721—22.28(52) Reexamination following changes in voting booth. The vendor shall notify the examiners of any changes in the voting booth and shall provide to the examiners the following information when requesting recertification:

22.28(1) Description of the changes made.

22.28(2) Reports of test results conducted for other states following the modifications to the voting booth.

22.28(3) Copies of manuals, instructions, advertisements and other documents required to be included with the application that have been modified since the original application was submitted.

22.28(4) A new request for examination as required by subrule 22.19(8).

721—22.29(52) Rescinding certification.

22.29(1) *Grounds for rescinding certification.* Certification may be rescinded if it is found that:

- a. The voting booth does not meet the criteria for approval established in rule 22.22(52).
- b. Material changes have been made in the voting booth that do not comply with criteria for approval.
- c. A voting booth which has been certified for use has not been purchased by any county in Iowa, or is no longer used by any county in Iowa, is no longer available for purchase from the manufacturer. The examiners may rescind certification of such voting booths without a complaint or contested case proceedings.

22.29(2) *Procedure for rescinding certification.* Complaints regarding voting booths certified for use in Iowa should be filed with the examiners. The examiners shall review all complaints and may initiate a contested case to rescind approval on any ground listed above. The contested case may be conducted before the examiners or before an administrative law judge. A contested case for rescinding approval shall be conducted, to the extent applicable, in accordance with the procedural rules specified in 481—Chapter 10, Iowa Administrative Code.

22.29(3) *Suspension of certification.* If the administrative law judge hearing the contested case, or the examiners, as the case may be, find that the voting booth can be modified to correct the deficiency, certification may be suspended until the deficiency is corrected. If it is found that the deficiency is limited to a specific flaw not present in all models of the voting booth, the suspension may be limited to the deficient models. While certification is suspended, the voting booth may not be used for any election.

After the required modifications have been made, the vendor may apply for reexamination of the voting booth following the procedure described in rule 22.28(52).

22.29(4) *Further use prohibited.* If certification of voting booth is rescinded without qualification, no further use shall be permitted by any county.

Rules 22.19(52) to 22.29(52) are intended to implement Iowa Code sections 17A.19, 49.25(3), 52.5, 52.6, and 52.26.

721—22.30(50,52) Electronic transmission of election results.

22.30(1) *Certification of equipment.* On or after December 17, 2003, new components for transmission of election results by any electronic means may be used in elections in Iowa only if the components are approved by the board of examiners for use with a certified voting system. Existing systems containing electronic transmission components in use before December 17, 2003, may continue to be used until January 1, 2006, when the Help America Vote Act voting system requirements become effective.

The examiners shall review the qualification test report submitted with the application for examination and testing of the voting system. If the test report for the voting system under examination shows that the electronic transmission components have met the voting system standards and the examiners concur, the electronic transmission components may be used in conjunction with the voting system. If the qualification test report or the examiners conclude that the electronic transmission components do not meet the voting system standards, or if this feature is not mentioned in the report, purchasers of the voting system may not transmit election results electronically.

22.30(2) *Procedures on election day.* The election results may be transmitted electronically from voting equipment to the county commissioner of elections' office only after the precinct election officials have produced a written report of the election results as required by Iowa Code section 50.11. All election officials of the precinct shall sign the printed report of the election results. The signed copy shall be the official tabulation from that precinct.

22.30(3) *Procedures after election day.* Before the canvass by the board of supervisors, the county commissioner of elections shall compare the signed, printed report from each precinct with the results transmitted electronically from the precinct on election night. The commissioner shall report any discrepancies between the two sets of election results to the board of supervisors. The signed, printed results produced pursuant to Iowa Code section 50.11 shall be considered the correct results.

This rule is intended to implement Iowa Code sections 50.11 and 52.41.

721—22.31 to 22.39 Reserved.

721—22.40(52) Public testing of voting machines. All voting machines shall be tested publicly before use at any election, as required by Iowa Code section 52.9.

22.40(1) The machine shall be inspected to determine that the machine has been prepared properly for the election at which it will be used. The following information shall be verified:

a. Each machine has the correct ballot labels or strips for the election and the precinct in which it will be used.

b. All ballot strips or labels are aligned with the correct levers or buttons.

c. All counters are set at zero before the beginning of the test.

22.40(2) The machine shall be tested to determine the following:

a. The lever or button to be used to cast votes for each candidate operates correctly.

b. The voter cannot cast votes for more candidates for any office than the number to be elected.

c. The voter may change any vote cast (except a write-in vote) before pressing the button or lever to record the voter's ballot.

d. All unassigned buttons or levers are locked out or will not operate to cast votes.

e. The machine records all votes cast and no others. A written tally of the test votes shall be prepared before the test. The results of the test voting shall be recorded. The results of the machine tabulation shall be printed and compared with the test plan. If there are differences, the cause of the discrepancy shall be determined. If the cause of the discrepancy cannot be determined and corrected, the program or equipment shall not be used at the election. Both the test plan and the results shall be kept as part of the record of the election, as required by Iowa Code section 50.19.

f. The voter may cast as many write-in votes for each office on the ballot as there are positions to be filled. The write-in mechanism works correctly.

g. For primary elections: The voter may cast votes for the candidates of only one political party.

h. For general elections: The straight party mechanism casts one vote for each candidate of the designated political party and casts no other votes. The voter may override a straight party vote by removing a vote cast for any candidate and then may vote for another candidate.

22.40(3) Following the test the machine shall be inspected to determine that:

a. All counters have been returned to zero.

b. All required locks or seals are in place.

c. The machine is ready for operation at the polls.

This rule is intended to implement Iowa Code chapter 52.

721—22.41(52) Public testing of optical scan systems. All automatic tabulating equipment shall be tested before use at any election, as required by Iowa Code sections 52.35 and 52.38.

22.41(1) The equipment shall be inspected to determine whether it has been prepared properly for the election at which it will be used. The following information shall be verified:

a. The correct program cartridge is in place for the election and the precinct or precincts in which it will be used.

b. The appropriate ballots are available for the test of each automatic tabulating device to be used in the election.

c. All counters are set at zero before beginning the test.

22.41(2) Each automatic tabulating device shall be tested to determine the following:

a. The device and its programs will accurately tabulate votes for each candidate and question on the ballot.

MARKING YOUR BALLOT

1. **Vote in secrecy.** Mark your ballot so that no one else will know how you voted, unless you need help to vote.
2. **Study the ballot guide carefully before voting on the “Official Ballot” card.** Marks cannot be erased without spoiling the ballot.
3. **Use a #2 pencil.** Marks made by other pens or pencils might not be seen by the machine that counts the votes. Do not use a red pen or red pencil.
4. **Voting for candidates.** After you have decided who you want to vote for, find the position number printed next to the candidate’s name.

position # → 1 CANDIDATE NAME

Then on the “**Official Ballot**” card fill in the rectangle with the same number. For some offices you may vote for more than one person. Watch for instructions under each office title that say, “Vote for no more than ____.”

5. **Write-in votes.** If you want to vote for a person whose name is not listed in the ballot guide:
 - a. Write the office, position number and the name of the person in the space provided on the back of the ballot card, AND
 - b. Mark the appropriately numbered rectangle next to the write-in position following the names of the candidates for the office for which you wish to write in a vote on the “**Official Ballot**” card. Marking a rectangle without writing a name will not spoil the rest of the ballot.
6. **Overvoting.** If you mark more rectangles for an office than the number of people that can be elected, your vote for that office will not be counted.
7. **No extra marks.** Make no marks on the ballot card except the marks you make to vote.

RETURNING YOUR BALLOT

This ballot must be returned to the county auditor even if you don’t vote.

1. **Affidavit.** After marking your ballot card,
 - a. Read the affidavit on the affidavit envelope,
 - b. Fill in all of the information requested, and
 - c. Sign your name.
 - d. Be sure to include today’s date.

☛ **Your ballot will not be counted if you don’t complete and sign the affidavit.**

2. **Use the secrecy envelope.** Do not fold the ballot card; place it in the secrecy envelope. Do not return the paper ballot listing offices and candidates.
3. Put the secrecy envelope containing the ballot card in the affidavit envelope.
4. **Securely seal the affidavit envelope.** Your ballot will not be counted if the affidavit envelope is not sealed, or if the envelope has been opened and resealed.
5. Enclose the affidavit envelope in the envelope addressed to the county auditor.
6. **Postmark before election day.** If you mail your ballot, the envelope must be postmarked no later than the day before the election.

7. Return postage for this ballot is ____.

8. **Personal delivery.** You may also return your ballot in person, or send it back to the auditor with someone you trust. If the ballot is not mailed, it must be received by the auditor no later than ____ p.m. on election day. Do not return the ballot to a polling place; it will not be counted if you do.

IF YOUR BALLOT IS REJECTED BEFORE THE BALLOT ENVELOPE IS OPENED, YOU WILL BE NOTIFIED OF THE REASON.

22.461(8) In addition to the instructions provided above, the following information shall be inserted in the instructions provided to voters at the general election:

a. Voting on questions. To vote in favor of a question, blacken the rectangle with the same number that appears next to the word "YES" in the question listed in the ballot guide. To vote against a question, blacken the rectangle with the same number as the word "NO."

b. Voting on judges. To vote to keep a judge in office, blacken the rectangle on the ballot card with the same number as the one next to the word "YES" opposite the judge's name listed in the ballot guide. To vote to remove a judge from office, blacken the rectangle with the same number as the word "NO."

c. Straight party voting. To vote for all of the candidates of a political party, blacken the rectangle on the ballot card with the same number as the one next to the name of that party. You can override a straight party vote by voting for a candidate of another party. If you can vote for more than one person for an office, you must mark all of your choices if you are splitting your vote between candidates of two or more parties.

This rule is intended to implement Iowa Code section 52.5.

721—22.462(52) Fidler & Chambers' Absentee Voting System. Rescinded IAB 10/30/02, effective 1/1/03.

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CHAPTER 23 VOTER REGISTRATION IN STATE AGENCIES

721—23.1(75GA,ch1169) Definitions.

“Agency” means a voter registration agency as defined in 1994 Iowa Acts, chapter 1169, section 20.

“Applicant” means a person who is provided an application for services or assistance by a voter registration agency. This includes persons who have been accepted for services or assistance and who are submitting change of address notices or applications for renewal or recertification. The term also includes a person who has submitted an application for services or assistance and whose application has been rejected by the agency.

“Application” means the forms used to request services or assistance from a voter registration agency and which are used to determine eligibility. If no written form is required or used, “application” means the act of requesting services or assistance.

“Recertification” means a process initiated by the agency to reevaluate the applicant’s qualifications for services or assistance. This does not include regular reports by applicants to show continuing eligibility or compliance with agency requirements.

“Renewal” means the process of applying to continue to receive services or assistance from an agency after the prescribed time of service has passed.

721—23.2(75GA,ch1169) Registration forms. The use of electronic registration records and combined forms for voter registration and for application for services is encouraged. These forms shall be approved by the voter registration commission. Otherwise, the Iowa mail registration form shall be used. Agencies, such as military recruiting offices, which serve a substantial number of applicants who live outside the state of Iowa shall keep a supply of the Federal Election Commission’s national registration form.

721—23.3(75GA,ch1169) Declination forms. The offer of voter registration shall include a declination form in substantially the following form:

STATE OF IOWA

Voter Registration Information

You can apply to register to vote when you apply for assistance. This agency is required to offer you the chance to register to vote.

Registration Rules—You must be registered before you can vote in an election.

To register to vote in Iowa you must—

- § be a citizen of the United States
- § be a resident of Iowa
- § be at least 17½ years old (you must be 18 to vote)
- § not have been convicted of a felony (or have had your rights restored)
- § not currently be judged “mentally incompetent” by a court
- § give up the right to vote in any other place.

Help: If you would like help in filling out the voter registration form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.

Benefits: Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.

Privacy: If you register to vote, the name of the office where you turn in the form will be kept private. If you do not register to vote, this fact will be kept private. This information will be used only for voter registration purposes.

Complaints: If you believe that someone has interfered with your right to

- § register or to decline to register to vote,
- § privacy in deciding whether to register,
- § privacy in applying to register to vote,
- § choose your own political party or other political preference,

you may file a complaint with:

Voter Registration Commission

Level B

Hoover State Office Building

Des Moines, Iowa 50319

Telephone:

515) 281-5781

If you are not registered to vote where you live now, would you like to apply to register to vote here today?

☐ Yes, I want to register to vote.

☐ No, I do not want to register to vote.

If you do not check either box, you will be considered to have decided not to register to vote at this time.

Sign here: X _____

Print your name: _____

Date: _____

721—23.4(75GA,ch1169) Electronic declination records. The agency may offer the opportunity to register to vote orally and record the applicant's responses electronically. The agency shall ask each applicant the following questions:

"Did you receive a copy of the Voter Registration Information brochure?" If the applicant has not received it, the agency shall provide the applicant with a copy of the brochure and shall review it with the applicant. Then the applicant shall be asked the following question:

"If you are not registered to vote where you live now, would you like to apply to register to vote here today?" (The applicant may answer yes or no. If the applicant does not answer, the applicant shall be presumed to have declined to register to vote.)

721—23.5(75GA,ch1169) Retention and storage of declination forms. Declination forms shall be retained by the agency receiving them for 22 months after the next general election following receipt of the form. Declination forms signed during the ten days before a general election, when registration is closed, shall be retained for 22 months after the general election to be held in two years. The forms shall be stored in a secure location where the safety and confidentiality of the records can be protected. If the applicant's responses are stored electronically, the declination record shall be retained by the agency for the same period of time required for paper declination forms. The following schedule shall be followed:

<u>Date declination signed</u>	<u>Election date</u>	<u>Earliest date to destroy</u>
01/01/95 – 10/26/96	11/05/96	09/05/98
10/27/96 – 10/24/98	11/03/98	09/03/00
10/25/98 – 10/28/00	11/07/00	09/07/02
10/29/00 – 10/26/02	11/05/02	09/05/04
10/27/02 – 10/23/04	11/02/04	09/02/06
10/24/04 – 10/28/06	11/07/06	09/07/08
10/29/06 – 10/26/08	11/04/08	09/04/10
10/27/08 – 10/23/10	11/02/10	09/02/12

721—23.6(75GA,ch1169) Distribution of voter registration forms. Every person who receives an application for services or assistance from a designated voter registration agency shall be given, along with the application, a voter registration form and the declination form described in rule 23.3(75GA,ch1169).

721—23.7(75GA,ch1169) Applications, recertifications, renewals and changes of address received from applicant representatives. Agencies which permit applicants to be represented by another person shall offer the opportunity to register to vote to each applicant. The declination form and registration form shall be given to the applicant's representative. If the applicant registers to vote, the applicant shall sign the form. The declination form and registration form shall be returned to the agency.

721—23.8(75GA,ch1169) Recertification and renewal applications. Applicants who apply in person for recertification and renewal of agency services or assistance shall be offered the opportunity to register to vote in the same way the offer is made to applicants making initial applications for services or assistance.

If the agency accepts recertification and renewal applications by telephone or by mail, the agency shall mail the applicant the declination form and a voter registration form.

721—23.9(75GA,ch1169) Change of address notices.

23.9(1) *In person.* The agency shall offer the opportunity to register to vote to each applicant who submits a change of address notice in person. The applicant shall be provided with the declination form and the voter registration form.

23.9(2) *By telephone.* Agencies are strongly urged to offer the opportunity to register to vote to applicants who submit changes of address by telephone. The applicant may be asked whether the change of address is intended for voter registration purposes. If the applicant says yes, the applicant shall be mailed a voter registration form.

23.9(3) *By mail.* Change of address forms provided by the agency shall include the declination form and a voter registration form. If the change of address is reported without the use of the form, the agency shall provide the applicant with a written verification of the reported change of address which instructs the applicant how to obtain a voter registration form.

721—23.10(75GA,ch1169) Ineligible applicants. The opportunity to register to vote must be offered to every applicant. The applicant, not the agency, is responsible for determining the applicant's eligibility to register to vote. The agency shall accept a registration form even if it is submitted by an applicant the agency believes to be ineligible to register to vote.

Applicants who are not accepted for services or assistance by an agency shall be offered the opportunity to register to vote. Voter registration forms shall be processed as required by 1994 Iowa Acts, chapter 1169, section 22, even if the applicant will not receive services or assistance from the agency.

These rules are intended to implement 1994 Iowa Acts, chapter 1169, section 20, subsection 3.

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CHAPTER 24
UNOFFICIAL CANVASS OF VOTES

721—24.1(47) Unofficial canvass. The state commissioner of elections, in cooperation with the county commissioners of elections, shall conduct an unofficial canvass of election results after the closing of the polls on the day of a general election. The unofficial canvass shall report election results for national offices, statewide offices, the office of state representative, the office of state senator, and other offices or public measures at the discretion of the state commissioner. The purpose of the unofficial canvass is to provide the public with a convenient source of general election results before the official canvass.

721—24.2(47) Duties of the county commissioner of elections. The county commissioner of elections shall provide election results to the state commissioner after all precincts have reported election results to the county commissioner, and before the closing of the office as provided in Iowa Code section 50.11. If the county commissioner determines that all precincts will not report election results, the county commissioner shall report the most complete results available before the closing of the office as provided in Iowa Code section 50.11. The county commissioner shall specify the number of precincts included in the report to the state commissioner.

721—24.3(47) Duties of the state commissioner of elections.

24.3(1) Before the general election, the state commissioner of elections shall provide a form and instructions for reporting unofficial election results.

24.3(2) The state commissioner shall tabulate unofficial election results, as the results are received from the county commissioners of elections, and shall make available to the public periodic reports of the results.

These rules are intended to implement Iowa Code section 47.1.

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CHAPTER 25
ELECTION ADMINISTRATION—ADMINISTRATIVE COMPLAINT PROCEDURE

721—25.1(17A,39A,47) General provisions.

25.1(1) *Scope of jurisdiction.* The administrative complaint procedure set forth in this chapter is established to comply with Title IV, Section 402, of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15512. The procedure is available to any person who believes that a violation of any provision of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15481-15485, has occurred, is occurring, or is about to occur in connection with a federal election.

25.1(2) *Timely resolution.* A final determination with respect to a complaint shall be issued within 90 days of the date the complaint is filed with the state commissioner of elections, unless the complainant consents to a longer period for making such determination. If a determination is not issued within this 90-day period and the complainant does not agree to allow a longer period for making the determination, the complaint shall be resolved within 60 days pursuant to the alternate dispute resolution procedure established in rule 721—25.34(17A).

25.1(3) *Definitions.* For purposes of this chapter, the following terms shall have the following meanings:

“*Complainant*” means the person who files a complaint under this chapter.

“*Federal election*” means a primary or general election at which a federal office appears on the ballot.

“*Party*” means the complainant, respondent, and any other person or persons allowed by the presiding officer to intervene in pending complaint proceedings.

“*Presiding officer*” means the state commissioner of elections or an alternate decision maker designated pursuant to rule 721—25.7(17A,39A,47).

“*Respondent*” means any state or local election official whose actions are asserted, in a complaint under this chapter, to be in violation of Title III.

“*State or local election official*” means the state commissioner of elections, any county commissioner of elections, or any person employed or appointed by either the state commissioner of elections or a county commissioner of elections whose responsibilities include or directly relate to the administration of any federal election.

“*Title III*” means Title III of the Help America Vote Act of 2002, Public Law 107-252, codified at 42 United States Code 15481-15485.

721—25.2(17A,39A,47) Form of complaint. This complaint procedure is limited to allegations of violations of Title III in a federal election. Any person who believes that there is a violation of any provision of Title III, including a violation which has occurred, is occurring, or is about to occur, by any state or local election official may file a complaint under this chapter. The complainant may either submit a complaint on a form provided by the state commissioner of elections or in any other form that complies with this rule. All complaints shall be in writing, signed and notarized, and be sworn under oath. The complaint must identify the complainant by name and mailing address and include a clear and concise description of the alleged violation that is sufficiently detailed to apprise both the respondent and the presiding officer of the nature of the alleged violation. The complainant shall provide copies of any written documentation supporting the allegations set forth in the complaint as attachments to the complaint.

721—25.3(17A,39A,47) Filing, service, and initial review of complaint.

25.3(1) Filing. The complaint shall be filed with the state commissioner of elections and shall be accompanied by adequate proof of service of the complaint, as required by subrule 25.3(2).

25.3(2) Service. Service of a complaint upon each respondent shall be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the respondent or the respondent's duly authorized legal representative.

25.3(3) Initial review of complaint.

a. The director of elections within the office of the state commissioner of elections shall examine each complaint to determine whether it falls within the jurisdiction of these rules and may reject it if:

- (1) It is not signed, notarized, or sworn under oath;
- (2) It does not identify the complainant or include an adequate mailing address;
- (3) It does not, on its face, allege a violation of Title III with regard to a federal election; or
- (4) More than 90 days have elapsed since the final certification of the results of the federal election at issue.

b. A determination as to jurisdiction shall be made within five business days of the date of filing of the complaint.

c. If the complaint is rejected, the director shall issue a written statement specifying the reasons for the rejection and provide copies of the statement to the complainant and all respondents by regular mail.

d. If the complaint is accepted, the complaint and any accompanying documentation shall be forwarded to the presiding officer for further action in accordance with these rules.

721—25.4(17A,39A,47) Notice of proceedings. Upon receipt of a complaint from the director of elections, the presiding officer shall establish a schedule under which the complainant and respondent(s), as well as any other interested persons, may file any written submissions or documentary evidence concerning the complaint and under which a hearing on the complaint will be conducted, if requested. The presiding officer shall serve notice of the proceeding upon the complainant and the respondent(s). The notice shall include:

1. A statement of the legal authority and jurisdiction under which the proceeding is being conducted;
2. A reference to the particular section or sections of Title III which are involved;
3. A reference to the procedural rules governing conduct of the proceeding;
4. A short and plain statement of the matters asserted in the complaint;
5. Identification of all parties or known representatives of parties;
6. The deadline for submission of an answer by the respondent(s) or written documentation by any interested persons;
7. The deadline by which either party may request an evidentiary hearing; and
8. Any other information deemed appropriate.

721—25.5(17A,39A,47) Informal settlement. The presiding officer, or a designated staff member, may attempt to informally settle a complaint proceeding before or after a notice of the proceeding is issued. If a staff member is designated to initiate settlement discussions, the designee shall have authority to negotiate on behalf of the presiding officer, but shall not have authority to bind the presiding officer to particular terms of settlement. If the presiding officer and respondent(s) agree to settlement of a pending complaint, a consent order shall be issued. By electing to sign a consent order, the respondent(s) waives all rights to a hearing and all attendant procedures. The consent order shall have the force and effect of a final order of the presiding officer and shall be served and published as provided in rule 721—25.28(17A).

721—25.6(17A,39A,47) Answer.

25.6(1) Within ten days of the date of service of notice of the proceedings, each respondent shall file an answer to the allegations contained therein and serve a copy of the answer upon all parties to the proceedings, pursuant to rule 721—25.16(17A,39A,47).

25.6(2) The answer shall contain the following information:

- a. The full name, address and telephone number of the respondent and the respondent's counsel, if any; and
- b. A specific statement admitting or denying each allegation in the complaint.

25.6(3) The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the proceeding, including explanations, remarks or statements of mitigating circumstances, and any relevant documentation.

721—25.7(17A,39A,47) Presiding officer.

25.7(1) In complaint proceedings in which all of the respondents are local election officials, the presiding officer shall be the state commissioner of elections.

25.7(2) In complaint proceedings in which one of the respondents is the state commissioner of elections or a person or persons employed or appointed by the state commissioner of elections, the presiding officer shall be a panel consisting of all members of the state voter registration commission appointed pursuant to Iowa Code section 47.8, except the state commissioner of elections or the state commissioner's designee.

25.7(3) Any party to a complaint proceeding who wishes to request that the presiding officer be an administrative law judge employed by the department of inspections and appeals must file a written request within five days after service of a notice of proceedings which identifies the presiding officer as the state commissioner of elections or voter registration commission. The state commissioner of elections or voter registration commission may deny the request only upon a finding that one or more of the following apply:

- a. The presiding officer under whose authority the proceeding is to take place is not a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. The proceeding involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d. The demeanor of the witnesses is likely to assist the presiding officer in resolving disputed factual issues.
- e. The request was not timely filed.
- f. The request is not consistent with a specified statute.

25.7(4) The originally designated presiding officer shall issue a written ruling specifying the grounds for the ruling within ten days after a request for an administrative law judge is filed. If the request is granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision shall have a J.D. degree, unless waived by the originally designated presiding officer.

25.7(5) The state commissioner of elections or voter registration commission, when acting as presiding officer, may request that an administrative law judge perform certain functions as an aid to the presiding officer, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the state commissioner of elections or voter registration commission.

25.7(6) All rulings by an administrative law judge whether the judge is acting as presiding officer or assistant to the state commissioner or voter registration commission are subject to appeal to the originally designated presiding officer pursuant to rules 721—25.29(17A) and 25.30(17A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies.

25.7(7) Unless otherwise provided by law, the state commissioner or voter registration commission, when reviewing a proposed decision of an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

721—25.8(17A,39A,47) Proceedings based upon written submissions.

25.8(1) In order to expedite resolution of complaint proceedings, complaints shall be evaluated and a decision rendered based upon written submissions unless the complainant or respondent requests a hearing on the record or the presiding officer determines that an evidentiary hearing will assist in resolution of outstanding factual disputes.

25.8(2) The presiding officer will not issue a decision upon the written submissions prior to the expiration of the time within which the complainant and respondent may request a hearing on the record unless both the complainant and respondent file a written waiver of the right to hearing under these rules.

721—25.9(17A,39A,47) Written decisions, available remedies.

25.9(1) Decision format. All final determinations resolving complaint proceedings shall be in writing and shall include findings of fact and conclusions of law as required by Iowa Code section 17A.16(1).

25.9(2) Violation found—remedies. If, based upon a preponderance of evidence provided through written submissions or at hearing, the presiding officer determines that a violation of Title III has been established, the presiding officer shall issue an order providing for an appropriate remedy. The remedy so provided shall be designed to ensure compliance with the requirements of Title III and may include an order to any respondent directing the respondent to take specified action or prohibiting the respondent from taking specified action with respect to a past, immediately pending, or future election. The remedy shall not include an award of monetary damages or attorney's fees.

25.9(3) No violation found. If, based upon a preponderance of evidence provided through written submissions or at hearing, the presiding officer determines that no violation of Title III has been established, the presiding officer shall issue an order dismissing the complaint.

721—25.10(17A,39A,47) Hearings.

25.10(1) If a hearing is desired by the complainant, a request for a hearing on the record shall be included within the complaint or made by submitting a written request for hearing no later than ten days following service of the answer by the respondent.

25.10(2) If a hearing is desired by the respondent, a request for a hearing on the record shall be included within the answer.

25.10(3) Hearings shall be conducted pursuant to rules 721—25.23(17A) through 25.26(17A).

25.10(4) Notice of the time and place of hearing will be provided to each party by the presiding officer. When possible, a written notice will be served upon each party a minimum of seven days prior to the time of hearing. If the circumstances underlying the complaint necessitate expedited resolution prior to a pending election, the period of notice may be shortened and notice may be provided by facsimile, telephone, or E-mail.

721—25.11(17A,39A,47) Time requirements.

25.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

25.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

721—25.12(17A,39A,47) Waiver of procedures. Unless otherwise precluded by law, the parties in a complaint proceeding may waive any provision of this chapter. However, the presiding officer in the presiding officer's discretion may refuse to give effect to such a waiver when the presiding officer deems the waiver to be inconsistent with the public interest.

721—25.13(17A,39A,47) Telephone and electronic proceedings. The presiding officer may, on the presiding officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the proceeding, will be considered when location is chosen. Objections, if any, shall be filed with the presiding officer and served on all parties at least three business days in advance of hearing.

721—25.14(17A,39A,47) Disqualification.

25.14(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a complaint proceeding if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated, in connection with that proceeding, the specific controversy underlying that proceeding, another pending factually related complaint proceeding, or a pending factually related controversy that may culminate in a complaint proceeding involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that complaint proceeding, the specific controversy underlying that complaint proceeding, or a pending factually related complaint proceeding or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the proceeding or any other significant personal interest that could be substantially affected by the outcome of the proceeding;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the proceeding, or an officer, director or trustee of a party; (2) is a lawyer in the proceeding; (3) is known to have an interest that could be substantially affected by the outcome of the proceeding; or (4) is likely to be a material witness in the proceeding; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that proceeding.

25.14(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is jurisdiction to initiate a proceeding, or exposure to factual information while performing other functions, including fact gathering for purposes other than investigation of the matter which culminates in a complaint proceeding. Factual information relevant to the merits of a complaint proceeding received by a person who later serves as presiding officer in that proceeding shall be disclosed if required by Iowa Code section 17A.17(3) and rule 721—25.26(17A).

25.14(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

25.14(4) If a party asserts disqualification on any appropriate ground, including those listed in sub-rule 25.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

25.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

25.14(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect.

721—25.15(17A,39A,47) Consolidation—severance.

25.15(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more complaint proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

25.15(2) Severance. The presiding officer may, for good cause shown, order any complaint proceedings or portions thereof severed.

721—25.16(17A,39A,47) Service and filing of pleadings and other papers.

25.16(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a complaint proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding simultaneously with their filing. Except for an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties. Once a presiding officer has been assigned to a proceeding, copies of all motions or other written submissions shall also be served on the presiding officer.

25.16(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person’s last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

25.16(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a complaint proceeding shall be filed with the presiding officer. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the presiding officer.

25.16(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is received by the state commissioner of elections or the assigned presiding officer. If a document required to be filed within a prescribed period or on or before a particular date is received after such period or date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing.

25.16(5) Proof of mailing. Proof of mailing includes either a legible, nonmetered United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (insert name of presiding officer) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)_____ (Signature)_____

25.16(6) Electronic service. The presiding officer may by order permit service or filing of particular documents by facsimile, E-mail or similar electronic means unless precluded by a provision of law. In the absence of such an order, facsimile or electronic transmission shall not satisfy service or filing requirements, but may be used to supplement service or filing when rapid notice is desirable.

721—25.17(17A) Discovery.

25.17(1) Discovery procedures applicable in civil actions are applicable in complaint proceedings. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure. Discovery may be limited if the circumstances underlying the complaint necessitate expedited resolution of the allegations prior to a pending election.

25.17(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 25.17(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

25.17(3) Evidence obtained in discovery may be used in the complaint proceeding if that evidence would otherwise be admissible in that proceeding.

721—25.18(17A) Issuance of subpoenas in a complaint proceeding.

25.18(1) Subpoenas issued in a complaint proceeding may compel the attendance of witnesses at depositions or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. Subpoenas shall be issued by the presiding officer upon written request. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- a. The nature of the issues in the proceeding reasonably justifies the issuance of the requested subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

25.18(2) A request for a subpoena shall include the following information, as applicable:

- a. The name, address and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other real evidence requested;
- f. The date, time, and location for production or inspection and copying;
- g. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 25.18(1) have been satisfied.

25.18(3) Each subpoena shall contain, as applicable:

- a. The caption of the proceeding;
- b. The name, address and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records or other real evidence the person is commanded to produce;
- g. The date, time, and location for production or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address and telephone number of the executive secretary or designee;
- j. The date of issuance;
- k. A return of service.

25.18(4) The presiding officer or designee shall mail copies of all subpoenas to the parties to the complaint proceeding. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

25.18(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the complaint proceeding who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the presiding officer a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

25.18(6) Upon receipt of a timely motion to quash or modify a subpoena, the presiding officer may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the presiding officer may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the presiding officer or administrative law judge may schedule oral argument or hearing by telephone or in person.

25.18(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge the ruling must appeal the ruling to the presiding officer in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 721—25.29(17A) and 25.30(17A), provided that all of the time frames are reduced by one-half.

25.18(8) If the person contesting the subpoena is not a party to the proceeding, the presiding officer's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the proceeding, the presiding officer's decision is not final for purposes of judicial review until there is a final decision in the complaint proceeding.

721—25.19(17A) Motions.

25.19(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

25.19(2) Any party may file a written response to a motion within ten days after the motion is served unless the time period is extended or shortened by ruling of the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

25.19(3) The presiding officer may schedule oral argument on any motion. If the presiding officer requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 721—25.29(17A).

25.19(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by an order of the presiding officer.

25.19(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

25.19(6) Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a complaint proceeding is subject to rehearing pursuant to rule 721—25.31(17A) and appeal pursuant to rule 721—25.30(17A).

721—25.20(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

25.20(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

25.20(2) In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance, and may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

721—25.21(17A) Withdrawals. A complainant may withdraw a complaint prior to the hearing upon written notice filed with the presiding officer and served on all parties. Unless otherwise ordered by the presiding officer, a withdrawal shall be with prejudice.

721—25.22(17A) Intervention.

25.22(1) Motion. A motion for leave to intervene in a complaint proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. Any party may file a response within seven days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

25.22(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed at least ten days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. An intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the proceeding unless binding the intervenor would be inequitable or unjust. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

25.22(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

25.22(4) Effect of intervention. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

721—25.23(17A) Hearing procedures. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections. The presiding officer may request that an administrative law judge assist in performing any of these functions.

25.23(1) Examination of witnesses. All witnesses shall be sworn or affirmed by the presiding officer or the court reporter, if a court reporter is provided by one of the parties, and shall be subject to cross-examination. The presiding officer and the administrative law judge have the right to examine a witness at any stage of the witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

25.23(2) Public hearing. The hearing shall be open to the public.

25.23(3) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the state commissioner of elections for at least five years from the date of decision.

25.23(4) Order of proceedings. Before testimony is presented, the record shall show the identity of the presiding officer, the identity of the administrative law judge, if any, the identity of the parties and their representatives, and the fact that all testimony is being recorded.

a. The presiding officer or designated person may read a summary of the complaint and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The complainant shall make a brief opening statement, which may include a summary of allegations within the complaint and the witnesses and documents to support such charges.

c. Each respondent shall be offered an opportunity to make an opening statement, including the names of any witnesses the respondent desires to call in defense. A respondent may elect to defer making the opening statement until just prior to the presentation of evidence by the respondent.

- d. Evidence on behalf of the complainant shall be presented.
 - e. Evidence on behalf of the respondent(s) shall be presented.
 - f. Rebuttal evidence on behalf of the complainant, if any, shall be presented.
 - g. Rebuttal evidence on behalf of the respondent(s), if any, shall be presented.
 - h. Closing arguments first on behalf of the complainant, then on behalf of the respondent(s), and then rebuttal, if any, on behalf of the complainant shall be made.
- The order of proceedings may be tailored to the nature of the complaint proceeding.
- 25.23(5) *Decorum.*** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.
- 25.23(6) *Sequestering witnesses.*** The presiding officer, on the presiding officer's own motion or upon the request of a party, may sequester witnesses.

721—25.24(17A) Evidence.

25.24(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

25.24(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

25.24(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

25.24(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties and the presiding officer. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

25.24(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

25.24(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

25.24(7) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

721—25.25(17A) Default.

25.25(1) If a party fails to appear or participate in a complaint proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

25.25(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a complaint proceeding become final action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 721—25.30(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the complaint proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

25.25(3) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

25.25(4) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

25.25(5) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

25.25(6) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

25.25(7) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 721—25.32(17A).

721—25.26(17A) Ex parte communication.

25.26(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such proceeding in connection with any issue of fact or law in the proceeding except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with those engaged in personally investigating as defined in subrule 25.14(2), or advocating in either the proceeding under consideration or a pending factually related proceeding involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

25.26(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a complaint proceeding and continue for as long as the proceeding is pending.

25.26(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

25.26(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 721—25.4(17A,39A,47) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

25.26(5) Persons who jointly act as presiding officers in a pending complaint proceeding may communicate with each other without notice or opportunity for parties to participate.

25.26(6) The director of elections or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the director or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and comply with subrule 25.26(1).

25.26(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 721—25.20(17A).

25.26(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a complaint proceeding must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

25.26(9) Promptly after being assigned to serve as presiding officer at any stage in a complaint proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

25.26(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, or censure.

721—25.27(17A) Recording costs. Upon request, the presiding officer shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

721—25.28(17A) Final decisions, publication and party notification.

25.28(1) Final decision. When the state commissioner of elections or the voter registration commission presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the presiding officer shall be filed with the state commissioner of elections. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to all parties of record.

25.28(2) Publication of decisions. Final decisions in all complaint proceedings, including consent agreements and consent orders, are public records which shall be indexed and made available for public inspection by the office of the state commissioner of elections as required by Iowa Code section 17A.3(1)“e.” In addition, all final decisions shall be published by posting on the Internet Web site maintained by the office of the state commissioner of elections.

721—25.29(17A) Interlocutory appeals. Upon written request of a party or on the presiding officer's own motion, the presiding officer may review a preliminary order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the presiding officer shall weigh the extent to which the presiding officer's granting of the interlocutory appeal would expedite final resolution of the proceeding and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within seven days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

721—25.30(17A) Appeals and review.

25.30(1) Proposed decision. Decisions issued by an administrative law judge are proposed decisions. All complaint proceeding decisions must be issued by the state commissioner of elections or voter registration commission, as appropriate. A proposed decision issued by an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the state commissioner of elections or voter registration commission, as appropriate.

25.30(2) Appeal by party. Any adversely affected party may appeal a proposed decision to the state commissioner of elections or voter registration commission within 15 days after issuance of the proposed decision.

25.30(3) Review. The state commissioner of elections or voter registration commission may initiate review of a proposed decision at any time within 15 days following the issuance of such a decision.

25.30(4) Notice of appeal. An appeal of a proposed decision is initiated by the filing of a timely notice of appeal with the state commissioner of elections or voter registration commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order which is being appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

25.30(5) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within seven days of service of the notice of appeal. The state commissioner of elections or voter registration commission may remand a proceeding to the administrative law judge for further hearing or may preside at the taking of additional evidence.

25.30(6) Scheduling. The state commissioner of elections or voter registration commission shall issue a schedule for consideration of the appeal.

25.30(7) Briefs and arguments. Unless otherwise ordered, within ten days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within ten days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The state commissioner of elections or voter registration commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The state commissioner of elections or voter registration commission may shorten or extend the briefing period, as appropriate.

25.30(8) Record. The record on appeal or review shall be the entire record made before the administrative law judge.

721—25.31(17A) Applications for rehearing.

25.31(1) *By whom filed.* Any party to a complaint proceeding may file an application for rehearing from a final order.

25.31(2) *Contents of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the final decision on the existing record and whether, on the basis of the grounds enumerated in subrule 25.31(3), the applicant requests an opportunity to submit additional evidence.

25.31(3) *Additional evidence.* A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

25.31(4) *Time of filing.* The application shall be filed with the state commissioner of elections within 20 days after issuance of the final decision. The final decision is issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for rehearing is deemed filed on the date it is received by the state commissioner of elections.

25.31(5) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the state commissioner of elections shall serve copies of the application on all parties.

25.31(6) *Disposition.* An application for rehearing shall be deemed denied unless the presiding officer grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the state commissioner of elections.

25.31(7) *Proceedings.* If the presiding officer grants an application for rehearing, the presiding officer may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the presiding officer may issue a ruling without oral argument or hearing. The presiding officer may, on the request of a party or on the presiding officer's own motion, order or permit the parties to provide written argument on one or more designated issues. The presiding officer may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

721—25.32(17A) Stays of orders.

25.32(1) *When available.* Any party to a complaint proceeding may petition the presiding officer for a stay or other temporary remedy, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

25.32(2) *When granted.* In determining whether to grant a stay, the presiding officer shall consider the factors listed in Iowa Code section 17A.19(5) "c."

721—25.33(17A) No factual dispute complaint proceedings. If the parties agree that no dispute of material fact exists, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

721—25.34(17A) Alternate dispute resolution. If, as required by subrule 25.1(2), a final determination is not issued within 90 days of the date of the filing of a complaint and the complainant does not agree to allow a longer period for making the determination, the complaint shall be transferred to a board of arbitration, which shall resolve the complaint within 60 days from the date of transfer.

25.34(1) The board of arbitration shall be composed of the following three members: one member designated by the complainant, one member designated by the state commissioner of elections, and a third member jointly agreed to by the first two members.

25.34(2) The board of arbitration shall have access to the record compiled in proceedings prior to the transfer, including the tape or transcript of any hearing, but may not conduct any further hearing or receive additional testimony, evidence, or other submissions. The board of arbitration shall determine the appropriate resolution of the complaint by a majority vote and shall issue a written decision as required by rule 721—25.9(17A,39A,47). The board's decision shall be considered the final decision upon the complaint for purposes of publication, rehearing and judicial review.

721—25.35(17A) Judicial review. Judicial review of the final decision may be sought in accordance with the terms of Iowa Code chapter 17A.

25.35(1) Consistent with Iowa Code section 17A.19(3) if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the final decision. The final decision is issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

25.35(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in rule 721—25.31(17A).

These rules are intended to implement 42 U.S.C. 15512(a)(1).

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