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The Iowa Administrative Code (IAC) Supplement is published biweekly pursuant to Iowa Code sections 2B.5A and 17A.6. The Supplement is a compilation of updated Iowa Administrative Code chapters that reflect rule changes which have been adopted by agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17, 17A.4, and 17A.5 and published in the Iowa Administrative Bulletin bearing the same publication date as the one for this Supplement. To determine the specific changes to the rules, refer to the Iowa Administrative Bulletin. To maintain a loose-leaf set of the IAC, insert the chapters according to the instructions included in the Supplement.

In addition to the rule changes adopted by agencies, the chapters 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(6); an effective date delay or suspension imposed by the ARRC pursuant to section 17A.8(9) or 17A.8(10); rescission of a rule by the Governor pursuant to section 17A.4(8); nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa; other action relating to rules enacted by the General Assembly; updated chapters for the Uniform Rules on Agency Procedure; or an editorial change to a rule by the Administrative Code Editor pursuant to Iowa Code section 2B.13(2).

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone 515.281.3355 or 515.242.6873

Accountancy Examining Board[193A]

- Replace Analysis
- Replace Chapters 1 to 18
- Replace Chapters 20 and 21

Engineering and Land Surveying Examining Board[193C]

- Replace Analysis
- Replace Chapters 1 to 13

Utilities Division[199]

- Replace Analysis
- Replace Chapters 33 and 34

Arts Division[222]

- Replace Analysis
- Remove Reserved Chapters 1 to 3, Chapter 4, and Reserved Chapters 5 to 30

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- Insert Chapters 1 to 10 and Reserved Chapter 11

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- Replace Chapter 25
- Replace Chapter 27
- Replace Chapter 32
- Replace Chapters 35 to 37
- Remove Reserved Chapter 47 and Chapters 48 and 49
- Insert Reserved Chapters 47 and 48 and Chapter 49
- Replace Chapter 61
- Replace Chapter 80
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Human Rights Department[421]

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Insert Chapter 1 and Reserved Chapters 2 to 19

Human Services Department[441]

Replace Analysis
Replace Chapter 1
Replace Chapter 9

Child Advocacy Board[489]

Replace Analysis
Remove Chapters 1 to 5
Insert Chapters 1 to 4 and Reserved Chapter 5

Racing and Gaming Commission[491]

Replace Analysis
Replace Chapters 1 to 4

Public Health Department[641]

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Remove Reserved Chapters 159 to 169 and Chapters 170 to 176
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Replace Analysis
Replace Chapter 115
Replace Chapter 202
Replace Chapter 216
Replace Chapter 218
Remove Reserved Chapter 279 and Chapters 280 to 282
Insert Reserved Chapters 279 to 281 and Chapter 282

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CHAPTER 1 DEFINITIONS

[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—1.1(542) Definitions. The following definitions apply to the rules of the board of accountancy.

“*Act*” means the Accountancy Act of 2001 as amended by 2008 Iowa Acts, chapter 1106.

“*AICPA*” means the American Institute of Certified Public Accountants.

“*AICPA Code of Professional Conduct*” means the AICPA code of professional conduct as amended through January 1, 2024.

“*Attest*” or “*attest service*” means the same as defined in Iowa Code section 542.3(1).

“*Attest engagement team*” means the team of individuals participating in attest service, including those who perform concurring and second partner reviews. The attest engagement team includes all employees and contractors retained by the firm who participate in attest service, irrespective of their functional classification.

“*Audit*” means the procedures performed in accordance with applicable auditing standards for the purpose of expressing or disclaiming an opinion on the fairness with which the historical financial or other information is presented in conformity with generally accepted accounting principles, another comprehensive basis of accounting, or a basis of accounting described in the report.

“*Board*” means the same as defined in Iowa Code section 542.3(2).

“*Certificate*” means the same as defined in Iowa Code section 542.3(3).

“*Client*” means the same as defined in Iowa Code section 542.3(6).

“*Commission*” means the same as defined in Iowa Code section 542.3(7) and includes any form of compensation in a fixed or variable amount or percentage received for selling, recommending or referring any product or service of another, including a referral fee.

“*Compensation*” means anything of value received by a CPA or LPA while practicing public accounting for selling, recommending or referring a product or service of another.

“*Compilation*” means the same as defined in Iowa Code section 542.3(8).

“*Contingent fee*” means the same as defined in Iowa Code section 542.3(9).

“*Certified public accountant*” or “*CPA*” means the same as defined in Iowa Code section 542.3(4).

“*Examination of prospective financial information*” means an evaluation by a CPA of a forecast or projection, the support underlying the assumptions in the forecast or projection, whether the presentation of the forecast or projection is in conformity with AICPA presentation guidelines, and whether the assumptions in the forecast or projection provide a reasonable basis for the projection or forecast.

“*FASB*” means the Financial Accounting Standards Board.

“*Financial statement*” means a presentation of financial data, including accompanying notes derived from accounting records and intended to communicate an entity’s economic resources or obligations at a point in time or the changes therein for a period of time in conformity with a comprehensive basis of accounting, but does not include incidental financial data included in management advisory services reports to support recommendations to a client, nor does it include tax returns and supporting documents.

“*Firm*” means a sole proprietorship, partnership, corporation, professional corporation, professional limited liability company, limited liability partnership or any other form of organization issued a permit to practice as a firm under Iowa Code section 542.7 or 542.8 or the office of the auditor of state, state of Iowa, when the auditor of state is a certified public accountant.

“*Forecast*” means prospective financial statements that present, to the best of the responsible party’s knowledge and belief, an entity’s expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party’s assumptions reflecting conditions it expects to exist and the course of action it expects to take.

“*GASB*” means the Governmental Accounting Standards Board.

“*Home office*” means the same as defined in Iowa Code section 542.3(10).

“*IASB*” means International Accounting Standards Board.

“*IFRS*” means International Financial Reporting Standards.

“*IRS*” means the Internal Revenue Service, United States Department of the Treasury.

“*License*” means the same as defined in Iowa Code section 542.3(11).

“*Licensed public accountant*” or “*LPA*” means the same as defined in Iowa Code section 542.3(12).

“*Licensed public accounting firm*” means the same as defined in Iowa Code section 542.3(13).

“*Licensee*” means the same as defined in Iowa Code section 542.3(14).

“*Managing partner,*” “*managing shareholder,*” or “*managing member*” means the designated individual with ultimate responsibility for the operation of a firm’s practice.

“*NASBA*” means the same as defined in Iowa Code section 542.3(17).

“*NSA*” means the National Society of Accountants.

“*Office*” means the same as defined in Iowa Code section 542.3(18).

“*Owner*” means any person who has equity ownership interest in a CPA or LPA firm.

“*PCAOB*” means the Public Company Accounting Oversight Board created by the Sarbanes-Oxley Act of 2002.

“*Peer review,*” as used in 193A—Chapters 11 and 12, means the same as defined in Iowa Code section 542.3(19).

“*Person,*” unless the context indicates otherwise, means individuals, sole proprietorships, partnerships, corporations, limited liability companies, limited liability partnerships or other forms of entities.

“*Person associated with a CPA or LPA*” means any owner, partner, shareholder, member, employee, assistant, or independent contractor of a CPA or LPA firm.

“*Practice of public accounting*” means the same as defined in Iowa Code section 542.3(24).

“*Practice privilege*” means the same as defined in Iowa Code section 542.3(25).

“*Principal place of business*” means the same as defined in Iowa Code section 542.3(26).

“*Projection*” means prospective financial statements that present, to the best of the responsible party’s knowledge and belief given one or more hypothetical assumptions, an entity’s expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party’s assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions.

“*Report*” means the same as defined in Iowa Code section 542.3(27).

“*Respondent*” means any person against whom a formal statement of charges has been filed.

“*Review*” means the same as Iowa Code section 542.3(1) “a”(2).

“*SAS*” means statements on auditing standards.

“*SEC*” means the United States Securities and Exchange Commission.

“*SSARS*” means the statements on standards for accounting and review services.

“*State*” means the same as defined in Iowa Code section 542.3(28).

“*Substantial equivalency*” means the same as defined in Iowa Code section 542.3(29).

“*Year,*” when used in the context as a time measurement of experience in accounting work, means a period of 365 days.

[ARC 7677C, IAB 3/6/24, effective 4/10/24]

This rule is intended to implement Iowa Code chapter 542.

[Filed and effective September 22, 1975 under ch 17A, C ’73]

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[Filed ARC 2152C (Notice ARC 2058C, IAB 7/8/15), IAB 9/30/15, effective 11/4/15]
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[Filed ARC 7677C (Notice ARC 7384C, IAB 1/10/24), IAB 3/6/24, effective 4/10/24]

CHAPTER 2
ORGANIZATION AND ADMINISTRATION

[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—2.1(542) Description.

2.1(1) The accountancy examining board administers and enforces the provisions of Iowa Code chapter 542 with regard to the practice of accountancy in the state.

2.1(2) The primary mission of the board is to protect the public interest.
[ARC 7678C, IAB 3/6/24, effective 4/10/24]

193A—2.2(542) Advisory committees. The board chair may appoint advisory committees composed of board members to make recommendations on matters within the board's jurisdiction.
[ARC 7678C, IAB 3/6/24, effective 4/10/24]

193A—2.3(542) Annual meeting. At the first board meeting scheduled after April 30 of each year (the annual meeting), the board will elect a chair and vice-chair to serve until their successors are elected.
[ARC 7678C, IAB 3/6/24, effective 4/10/24]

193A—2.4(542) Other meetings. Other meetings throughout the year may be established by the chairperson, by board resolution, or by a request of a majority of board members.
[ARC 7678C, IAB 3/6/24, effective 4/10/24]

193A—2.5(542) Board administrator's duties. The board administrator's duties include the following:

2.5(1) Ensuring that complete records are kept of all applications for examination and registration; all certificates, licenses and permits granted; and all necessary information in regard thereto. The board administrator is the lawful custodian of the board records.

2.5(2) Determining when the prerequisites for licensure have been satisfied with regard to issuance of certificates, licenses or registrations.

2.5(3) Submitting to the board any questionable application.

2.5(4) Keeping accurate minutes of board meetings.

2.5(5) Keeping a list of persons issued certificates as certified public accountants, persons issued licenses as licensed public accountants, and all firms issued permits to practice.

2.5(6) Performing such additional administrative duties as assigned.
[ARC 7678C, IAB 3/6/24, effective 4/10/24]

193A—2.6(542) Disclosure of confidential information.

2.6(1) Persons who take the examination may consent to the publication of their names on a list of passing candidates.

2.6(2) Information relating to the examination results, including the specific grades by subject matter, may only be given to the person who took the examination, except that the board may:

a. Disclose the specific grades by subject matter to the regulatory authority of any other state or foreign country in connection with the candidate's application for a reciprocal certificate or license from the other state or foreign country, but only if requested by the applicant.

b. Disclose the specific grades by subject matter to educational institutions, professional organizations, or others, provided the names of the persons taking the examination are not provided in conjunction with the scores.

[ARC 7678C, IAB 3/6/24, effective 4/10/24]

193A—2.7(17A,21,22,272C,542) Uniform rules. Administrative and procedural rules can be found in rules of the professional licensing and regulation bureau[193].

[ARC 7678C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapters 17A, 21, 22, 272C and 542.

[Filed and effective 9/22/75 under ch 17A, C '73]

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CHAPTER 3
CERTIFICATION OF CPAs
[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—3.1(542) Qualifications for a certificate as a certified public accountant.

3.1(1) A person who meets the qualifications of Iowa Code section 542.5 and this chapter and applies pursuant to Iowa Code section 542.6 may be granted a certificate as a certified public accountant.

3.1(2) An application may be denied if the applicant is in violation of any of the requirements of Iowa Code chapter 542, prior enforcement proceedings under 193A—Chapter 17, or Iowa Code section 272C.15.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.2(542) Colleges or universities recognized by the board. Pursuant to Iowa Code section 542.5(7), the board recognizes educational institutions accredited by the Association to Advance Collegiate Schools of Business and the regional accrediting bodies listed in the Accredited Institutions of Postsecondary Education as published on January 1, 2024.

This rule is intended to implement Iowa Code section 542.5.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.3(542) Accounting concentration.

3.3(1) A candidate will be deemed to have met the educational requirement if, as part of the 150 semester hours of education as outlined in Iowa Code section 542.5, the candidate has met one of the following four conditions:

a. Earned a graduate degree with a concentration in accounting from a program that is accredited in accounting by an accrediting agency recognized by the board.

b. Earned a graduate degree in business from a program that is accredited in business by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting, including courses covering the subjects of financial accounting, auditing, taxation, and management accounting. Such accounting hours exclude elementary accounting or principles of accounting, internships or life experience.

c. Earned a baccalaureate degree in business or accounting from a program that is accredited in business by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting. Such accounting hours exclude elementary accounting or principles of accounting, internships or life experience.

d. Earned a baccalaureate or higher degree and completed the following hours from an accredited institution recognized by the board:

(1) At least 24 semester hours in accounting courses above elementary accounting or principles of accounting covering the subjects of financial accounting, auditing, taxation, and management accounting, not including internships or life experience; and

(2) At least 24 additional semester hours in business-related courses, not including internships or life experience. Elementary accounting hours that do not qualify under subparagraph 3.3(1)“d”(1) may apply toward business-related courses.

Quarter hours will be accepted in lieu of semester hours at a 3:2 ratio; that is, three quarter hours are equivalent to two semester hours. Internships and life experience hours may apply toward the total required 150 hours.

3.3(2) The board will consider correspondence study and study in other schools not meeting the above requirements on an individual basis if the candidate can provide evidence that such study would be acceptable for credit by a college or university recognized by the board; provided, however, that at least 18 of the required hours in accounting and at least 16 of the required hours in business-related subjects are obtained from a college or university recognized by the board.

3.3(3) The applicant needs to have an official transcript of credit issued by a recognized institution sent by the institution to the board's test administrator at the time of application in order for the applicant's claimed college or university credits to be confirmed.

3.3(4) Graduates of foreign colleges or universities will have their education evaluated by a foreign credentials evaluation advisory service specified by the board.
[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.4(542) Examination applications.

3.4(1) An individual desiring to take the certified public accountant examination as an initial candidate should apply to the board's test administrator. Only a complete application will be considered. A complete application includes a completed application form, the designated fee, and all applicable college transcripts.

3.4(2) To be eligible to apply for the examination, a candidate needs to fulfill the requirements of rule 193A—3.3(542). A candidate may apply for the examination before the educational requirements are met pursuant to Iowa Code section 542.5(9).

3.4(3) A candidate whose application is denied under subrule 3.1(2) may be denied admittance to the examination by the board.

3.4(4) A candidate may be considered as a reexamination applicant regardless of whether or not the candidate sat for the examination once initially approved. Reexamination applicants may apply to the board's test administrator.

3.4(5) A nonrefundable proctoring fee will be collected from a candidate who wishes to be proctored in Iowa.
[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.5(542) Content and grading of the examination.

3.5(1) The board may use the Uniform Certified Public Accountant Examination prepared by the American Institute of Certified Public Accountants or another nationally recognized organization under a plan of cooperation with the boards of all states and territories of the United States.

3.5(2) The board may also make use of the advisory grading service provided by the American Institute of Certified Public Accountants or another nationally recognized organization under a plan of cooperation with the boards of all states and territories of the United States.
[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.6(542) Conditional requirements.

3.6(1) Effective with the implementation of the computer-based examination, a candidate may take the test subjects individually and in any order. Except as provided in rule 193A—3.7(542), credit for any subjects passed will be valid for 30 months from the actual date initial credit is earned, without the candidate having to attain a minimum score on any failed subject(s) and without regard to whether the candidate sat for any other subjects. The candidate needs to pass all four subjects of the examination within a rolling 30-month period that begins on the date initial credit is earned, which is calculated on the date the examination administrator provides scores to the boards, the candidate, or both. If all four subjects are not passed within the 30-month period, credit for any subject taken outside the 30-month period will expire.

3.6(2) A candidate will be deemed to have passed the examination once the candidate holds, at the same time, valid credit for passing each of the four subjects of the examination. For purposes of this rule, credit for passing a subject of the examination is valid from the actual date of the testing event for that subject, regardless of the date the candidate actually received notice of the passing score.

This rule is intended to implement Iowa Code section 542.5.
[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.7(542) Extension of conditional status.

3.7(1) The time limit within which a candidate needs to pass all subjects under these rules will not include any period during which the candidate was serving in the armed forces of the United States. This

exception does not apply if the candidate takes an examination while so serving. The board may extend the time limit in particular instances on a case-by-case basis.

3.7(2) The time limit within which a candidate needs to pass all subjects under these rules may be extended for hardship cases, such as when the applicant for the examination is prevented from attending for such reasons as unexpected illness, verified by a medical doctor, or a death in the family, verified in writing.

3.7(3) The time limit within which a candidate needs to pass all subjects under these rules may be extended if circumstances occur that prevent the score from an examination from reaching the candidate in a reasonable period of time. Such circumstances would allow the candidate the opportunity to retake a failed subject.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.8(542) Transfer of credit from another jurisdiction. A candidate requesting transfer of grades from any other jurisdiction will be subject to the same provisions of these rules as an Iowa candidate, provided that the examination given by the licensing authority in the other state was an examination approved by the Iowa board.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.9(542) Examination procedures. At the examination, a candidate needs to provide evidence of identification and comply with the requirements of the examination administrator.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.10(542) Conduct of the examination.

3.10(1) Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of certification in Iowa, be barred from accountancy licensing and certification examinations in Iowa, or be subject to the imposition of other sanctions the board deems appropriate.

3.10(2) Individuals are subject to the conduct rules and regulations of the examination administrator.

3.10(3) Any examination candidate who wishes to appeal a decision of the board under this rule may request a contested case hearing. The request for hearing needs to be in writing, briefly describe the basis for the appeal, and be filed in the board's office within 30 days of the date of the board decision being appealed. Any hearing requested under this subrule will be governed by the rules applicable to contested case hearings under 193—Chapter 7.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.11(542) Refunding of examination fees. Examination fees will not be refunded except in hardship cases, such as when the candidate for the examination is prevented from attending for such reasons as unexpected illness, verified by a medical doctor, a death in the family, or a call to active military service, in which case 50 percent of the fee may be returned. Written documentation including evidence of the hardship will be provided to the board's test administrator.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.12(542) Experience for certificate.

3.12(1) One year of experience will consist of full- or part-time employment that extends over a period of no less than one year and no more than three years and includes no fewer than 2,000 hours of performance of services outlined in Iowa Code section 542.5(12). Experience may be gained in more than one employment situation, including an internship.

3.12(2) An applicant seeking qualification as an attest CPA will have, at a minimum, two years of experience, as described in 193A—subrule 6.2(1).

3.12(3) All experience will be verified by a licensee with direct supervisory control over the applicant or by a licensee who can attest that the experience gained by the applicant meets the requirements of Iowa Code section 542.5(12) if the applicant is not supervised by a licensee.

3.12(4) Teaching experience will be in the employment of an institution of higher education and will include teaching a minimum of 24 semester hours of accounting courses for which the course participants

receive credit on an official transcript. Teaching of noncredit continuing education courses will not qualify under this rule.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.13(542) Ethics course and examination. A successful candidate will need to pass an examination covering the code of ethical conduct prior to issuance of the certificate.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.14(542) Obtaining the certificate.

3.14(1) A candidate who successfully passes the examination, completes the ethics course and examination and meets the obligations of rule 193A—3.1(542) needs to apply for the certificate on the board’s website. An applicant for a certificate may be denied the certificate for reasons outlined in subrule 3.4(3) regardless of when the incident occurred.

3.14(2) If the candidate does not file an application for a certificate within three years of passing the examination, the candidate needs to comply with the basic continuing education obligations outlined in rule 193A—10.5(542) prior to filing an application. The continuing education hours need to include a minimum of eight hours of continuing education every three years devoted to financial statement presentation, such as courses covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

193A—3.15(542) Use of title.

3.15(1) Only a person who holds an active, unexpired certificate and who complies with the requirements of 193A—Chapters 5 and 10 or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

3.15(2) Rules regarding the use of the title “CPA” in a firm name are found in the AICPA Code of Professional Conduct as adopted by reference in 193A—Chapter 13.

[ARC 7679C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapter 542 and section 10A.506.

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CHAPTER 4
LICENSURE OF LPAs

[Prior to 7/13/88, see Accountancy, Board of^[10]]

193A—4.1(542) Qualifications for a license as a licensed public accountant.

4.1(1) A person who meets the qualifications and applies subject to Iowa Code section 542.8 may be granted a license as a licensed public accountant.

4.1(2) An application may be denied if the applicant is in violation of any of the requirements of Iowa Code chapter 542, prior enforcement proceedings under 193A—Chapter 17, or Iowa Code section 272C.15.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.2(542) Examination application.

4.2(1) An individual desiring to take the examination to qualify for a license as a licensed public accountant should apply to the board's test administrator.

4.2(2) To be eligible to take the examination, the applicant needs to meet the conditions of Iowa Code section 542.8(1) "b" at the time of filing the application.

4.2(3) A candidate whose application is denied under subrule 4.1(2) may be denied admittance to the examination by the board.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.3(542) Major in accounting. In determining whether the conditions in Iowa Code section 542.8(1) "b"(2) as to a major in accounting have been met, the board will follow the provisions associated with a concentration in accounting outlined in rule 193A—3.3(542).

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.4(542) Transcripts needed. In order for an applicant's claim to college or university credits to be confirmed, the applicant needs to have an official transcript of credit issued by a recognized institution sent by the institution to the board's test administrator at the time of application.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.5 Reserved.

193A—4.6(542) Content and grading of the examination.

4.6(1) The board may use the examination prepared by the Accreditation Council for Accountancy and Taxation, without questions regarding auditing or attest functions.

4.6(2) The board may use the grading services provided by the Accreditation Council for Accountancy and Taxation.

4.6(3) Absent a showing of good cause, the board will accept the passing grade established by the Accreditation Council for Accountancy and Taxation.

4.6(4) Alternatively, an applicant may satisfy the examination obligations of this rule by passing the Financial Accounting and Reporting and Regulation sections of the CPA examination provided by the AICPA.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.7(542) Conditional requirements. Effective with the implementation of the computer-based examination, a candidate may take the required test subjects individually and in any order. Except as provided in rule 193A—3.7(542), credit for any subjects passed will be valid for 18 months from the actual date the candidate sat for the subject, without the candidate having to attain a minimum score on any failed subject(s) and without regard to whether the candidate sat for any other subjects. The candidate needs to pass both subjects of the examination within a rolling 18-month period that begins on the date that the first subject is passed. If both subjects are not passed within the 18-month period, credit for any subject taken outside the 18-month period will expire.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.8(542) Examination procedures. The examination procedures to be followed by a candidate for the certified public accountants' examination as outlined in rule 193A—3.8(542) apply to a licensed public accountant examination candidate.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.9(542) Refunding of examination fees. Examination fees will not be refunded except as provided by the rules concerning the refunding of examination fees to an examination candidate for a certified public accountant certificate outlined in rule 193A—3.10(542).

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.10(542) Credit for an examination taken in another state. A candidate who has partially passed an examination in another state will be given credit for the part or parts passed, provided the candidate meets the conditioning requirements of the board and further provided the examination given by the licensing authority in the other state was an examination that complies with rule 193A—4.7(542).

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.11(542) Experience for license.

4.11(1) One year of experience will consist of full- or part-time employment that extends over a period of no less than one year and no more than three years and includes no fewer than 2,000 hours of performance of services outlined in Iowa Code section 542.8(8). Experience may be gained in more than one employment situation, including an internship.

4.11(2) All experience will be verified by a licensee with direct supervisory control over the applicant or by a licensee who can attest that the experience gained by the applicant meets the conditions of subrule 4.12(1) if the applicant is not supervised by a licensee.

4.11(3) Teaching experience needs to be in the employment of an institution of higher education and needs to include teaching a minimum of 24 semester hours of accounting courses for which the course participants will receive credit on an official transcript. Teaching of noncredit continuing education courses will not qualify under this rule.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.12(542) Ethics course and examination. A successful candidate will need to pass an examination covering the code of ethical conduct prior to issuance of the license.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.13(542) Statements on standards for accounting and review services (SSARS) education. An LPA license applicant needs to complete a minimum of eight hours of continuing education devoted to statements on standards for accounting and review services (SSARS) prior to issuance of the license.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.14(542) Obtaining the license. A candidate who successfully passes the examination and completes conditions outlined in rules 193A—4.12(542), 193A—4.13(542) and 193A—4.14(542) may apply for licensure on the board's website. An applicant is obligated to list on the application all states in which the applicant has applied for or holds a certificate, license or permit and will also list any past denial, revocation, suspension, refusal to renew, or voluntary surrender to avoid disciplinary action of a certificate, license or permit. An applicant will notify the board in writing within 30 days after the occurrence of any issuance, denial, revocation, suspension, refusal to renew, or voluntary surrender to avoid disciplinary action of a certificate, license or permit by another state. An applicant for licensure may be denied the license for reasons outlined in subrule 4.1(2) regardless of when the incident occurred.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.15(542) Licensure by reciprocity.

4.15(1) Iowa Code section 542.8 examination obligations will be waived for an applicant who has passed a comparable examination administered by another state if the examination was prepared and

graded by the Board of Examiners of the American Institute of Certified Public Accountants or the Accreditation Council for Accountancy and Taxation.

4.15(2) A person desiring a license as a licensed public accountant in this state on the basis of a licensed public accountant license issued by another state needs to apply on the board's website. The burden is on the applicant to obtain information satisfactory to the board that the applicant's license in such other state is in full force and effect and that the conditions for obtaining such license were substantially equivalent to those of this state to obtain a license as a licensed public accountant.

4.15(3) An applicant needs to list on the application all states in which the applicant has applied for or holds a certificate, license or permit and needs to also list any past denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a certificate, license, or permit. An applicant needs to notify the board in writing within 30 days after the occurrence of any issuance, denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a certificate, license or permit by another state.

4.15(4) An applicant needs to affirm that all information provided on the form is accurate. Providing false information will be considered prima facie evidence of a violation of Iowa Code chapter 542. A nonrefundable application fee will be charged to each applicant.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

193A—4.16(542) Use of title. Only a person holding a license as a licensed public accountant may use or assume the title "licensed public accountant" or the abbreviation "LPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a licensed public accountant.

[ARC 7680C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 542.8.

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CHAPTER 5
LICENSURE STATUS AND RENEWAL OF CERTIFICATES AND LICENSES

[Prior to 7/13/88, see Accountancy, Board of^[10]]

[Prior to 5/1/02, see 193A—Chapter 6]

193A—5.1(542) Licensure status and practice privilege.

5.1(1) Licenses issued by the board pursuant to Iowa Code section 542.6, 542.8, or 542.19, or any other applicable law or rule, may be in active, inactive, or lapsed status, as follows:

a. An initial license is issued in active status with an expiration date. Maintaining active status is conditioned on periodic renewal as provided in rule 193A—5.3(542). Completion of sufficient continuing education as provided in 193A—Chapter 10 is a prerequisite to renewal in active status.

b. A license may be renewed in inactive status as provided in rule 193A—5.7(272C,542) if the licensee does not satisfy the continuing education obligations for renewal in active status. A renewal license issued in inactive status lapses if not timely renewed pursuant to rule 193A—5.3(542). An inactive license may be reinstated to active status at any time pursuant to subrule 5.7(7).

c. An active or inactive license that is not timely renewed lapses. A lapsed license may be reinstated to active or inactive status at any time pursuant to subrule 5.4(3).

5.1(2) Practicing public accounting in Iowa or for a client with a home office in Iowa while holding an inactive or lapsed license is a ground for discipline under Iowa Code section 542.10 and may also or alternatively provide grounds for the regulatory actions described in Iowa Code section 542.14.

5.1(3) Out-of-state individuals holding an inactive or lapsed Iowa CPA certificate and out-of-state individuals to whom an Iowa CPA certificate has never been issued under Iowa Code chapter 542 or prior law may exercise a practice privilege under Iowa Code section 542.20 if they hold an active CPA certificate in the jurisdiction in which they maintain their principal place of business and otherwise satisfy all of the conditions described in Iowa Code section 542.20 and 193A—Chapter 20.

5.1(4) Exercising a practice privilege in Iowa or for a client with a home office in Iowa while holding an inactive or lapsed Iowa CPA certificate places a special burden on the individual to ensure that the public is informed about the individual's licensure status in Iowa and in the jurisdiction of active licensure, as provided in 193A—paragraphs 20.8(2)“*b*” and 20.8(3)“*b*.” As a practical matter, an individual's failure to clarify licensure status in Iowa and in the jurisdiction of the individual's principal place of business may confuse the public. However, the public may consult CPAverify, a comprehensive national data bank, to verify an individual's licensure in another jurisdiction. CPAverify may be accessed at www.cpaverify.org. A client contacting the board or consulting the board's website will be informed of the individual's licensure status in Iowa.

[ARC 7681C, IAB 3/6/24, effective 4/10/24]

193A—5.2(542) Notices.

5.2(1) The board typically sends, by electronic means, a notice to licensees in the May preceding license expiration, but neither the failure of the board to send nor a licensee's failure to receive a renewal notice excuses the obligation to timely renew a license.

5.2(2) A licensee needs to notify the board within 30 days of any change of address or firm affiliation.
[ARC 7681C, IAB 3/6/24, effective 4/10/24]

193A—5.3(542) Renewal procedures.

5.3(1) Licenses expire on June 30 of each year. Licensees will submit electronic online renewal application by the deadline in the renewal year. An application is deemed filed on the date of electronic renewal. An annual renewal fee will be charged.

5.3(2) Applicants for renewal are obligated to disclose on the application all background and character information requested by the board including, but not limited to:

a. All states or foreign jurisdictions in which the applicant has applied for or holds a CPA certificate or license, an LPA license, or a substantially equivalent designation from a foreign country;

b. Any past denial, revocation, suspension, or refusal to renew a CPA certificate, license or permit to practice or LPA license; voluntary surrender of a CPA certificate, license or permit or LPA license

to resolve or avoid disciplinary action; or similar actions concerning a substantially equivalent foreign designation;

- c.* Any other form of discipline or other penalty imposed against a CPA certificate, license or permit, LPA license, or a substantially equivalent foreign designation, or a practice privilege;
- d.* The conviction of any crime; and
- e.* The revocation of a professional license of any kind in this or any other jurisdiction.

5.3(3) A licensee who performs compilation services for the public other than through a certified public accounting or licensed public accounting firm needs to submit a certification of completion of a peer review conducted in accordance with 193A—Chapter 11 no less often than once every three years.

5.3(4) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application needs to be:

- a.* Received by the board in electronic form on or before the date the license is set to expire or lapse;
- b.* Certified as accurate through the online renewal process;
- c.* Fully completed, including continuing education, if applicable; and
- d.* Accompanied with the proper fee. Attempted financial transactions that result in payment of anything less than the proper fee will result in application rejection.

5.3(5) The administrative processing of an application to renew an existing license does not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

5.3(6) If grounds exist to deny a timely and sufficient application to renew, the board will send written notification to the applicant by certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the licensee failed to meet the continuing education obligations. If the basis for denial is pending disciplinary action or disciplinary investigation, which is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.39(1).

5.3(7) When a licensee appears to be in violation of mandatory continuing education under 193A—Chapter 10, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.39(546,272C), offer a licensee the opportunity to renew in inactive status or to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty, depending on the severity of the violation; establish deadlines for compliance; and may impose additional educational obligations on the licensee. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed license and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.39(1). A licensee who falsely reports continuing education to the board may be subject to additional sanctions including, when appropriate, suspension or revocation.

5.3(8) A certificate or license holder who continues to practice public accounting as a CPA or an LPA in Iowa after the certificate or license has expired may be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a licensee's application for reinstatement.

[ARC 7681C, IAB 3/6/24, effective 4/10/24]

193A—5.4(542) Failure to renew.

5.4(1) A license or certificate holder who fails to renew the certificate or license by the expiration date, but does so within 30 days following its expiration date, will be assessed a penalty as provided in rule 193A—12.1(542).

5.4(2) If the holder fails to renew the certificate or license within the 30-day grace period, the certificate or license will lapse. The licensee is not authorized to practice during the period of time that the certificate or license is lapsed, including the 30-day grace period.

5.4(3) The board may reinstate a lapsed certificate or license upon the applicant's submission of an application to reinstate and completion of all of the following:

- a. Paying a penalty as provided in rule 193A—12.1(542);
- b. Paying the current renewal fee;
- c. Providing evidence of completed continuing education outlined in rule 193A—10.5(542), if the licensee wishes to reinstate to active status; and
- d. Providing a written statement outlining the professional activities of the applicant during the period in which the applicant's license was lapsed describing all services performed that constitute the practice of accounting including, but not limited to, those professional practice activities described in subrule 5.9(2). The applicant will also be obligated to state whether the applicant exercised a practice privilege in the period during which the license was lapsed and, if so, the jurisdiction of the applicant's principal place of business and status of out-of-state licensure.

5.4(4) A licensee holding a lapsed CPA certificate is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title "CPA" in Iowa or for a client with a home office in Iowa. A licensee holding a lapsed LPA license is not authorized to perform compilation services or to otherwise practice public accounting in Iowa using the title "LPA." A licensee holding a lapsed CPA certificate or LPA license may not use the title "CPA" or "LPA" in any context unless the licensee discloses that the certificate or license has lapsed. Additionally, a person holding a lapsed Iowa CPA certificate and who is actively licensed as a CPA in another jurisdiction in which the person maintains the principal place of business may be eligible to exercise a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

5.4(5) Practicing public accounting on a lapsed license is a ground for discipline. The board may find probable cause to file charges if the individual continues to offer services defined as the practice of public accounting while using the title "CPA" or "LPA" during the period of lapsed licensure. In addition to the disciplinary sanctions described in rule 193A—16.3(272C,542), individuals found to have practiced public accounting on a lapsed license will be obligated to notify clients upon such terms as the board orders.

[ARC 7681C, IAB 3/6/24, effective 4/10/24]

193A—5.5(272C,542) Certificates and licenses—property of the board. Every certificate or license granted by the board will, while it remains in the possession of the holder, be preserved by the holder but always remain the property of the board. In the event that the certificate or license is revoked or suspended, or is not renewed in the manner prescribed by Iowa Code chapter 542 or 272C, the licensee will, on demand, deliver the certificate or license by the holder to the board. However, a person is entitled to retain possession of a lapsed certificate or license that has not been revoked, suspended or voluntarily surrendered in a disciplinary action as long as the person complies with all provisions of Iowa Code sections 542.10 and 542.13. A lapsed certificate or license may be reinstated to active or inactive status at any time pursuant to subrule 5.4(3).

[ARC 7681C, IAB 3/6/24, effective 4/10/24]

193A—5.6(542) Licensee's continuing duty to report. An active or inactive licensee has a duty to notify the board in writing of the licensee's conviction of a crime within 30 days of the date of conviction. "Conviction" is defined in Iowa Code section 542.5(2). Licensees also have a duty to notify the board in writing within 30 days of the date of any issuance, denial, revocation, or suspension of a certificate, license or permit by another state.

[ARC 7681C, IAB 3/6/24, effective 4/10/24]

193A—5.7(272C,542) Inactive status.

5.7(1) General purpose. This rule establishes a procedure under which a person issued a certificate as a certified public accountant or a license as a licensed public accountant may apply to the board for licensure in inactive status. Inactive licensure under this rule is available to a certificate or license holder who is not engaged in Iowa or for a client with a home office in Iowa in any practice of public accounting.

A person eligible for inactive status may, as an alternative, allow the person's certificate or license to lapse.

5.7(2) Eligibility. A person holding a lapsed or active certificate or license that has not been revoked or suspended may apply to renew in inactive status through the online application process if the person is not engaged in the state of Iowa or for clients with a home office in Iowa in any practice regulated by the board, including:

- a. Supervising or performing any attest services, such as audits, reviews or agreed-upon procedures (which may only be performed by a CPA within a CPA firm that holds a permit to practice);
- b. Supervising or performing compilation services or otherwise issuing compilation reports (which may only be performed by a CPA or LPA); or
- c. Performing any accounting, tax, consulting, or financial or managerial advisory services for any client, business, employer, government body, or other entity while holding oneself out as a CPA or an LPA or otherwise using titles regulated by Iowa Code section 542.13.

5.7(3) Affirmation. The application form will contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa listed in subrule 5.7(2) without first complying with all rules governing reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to subrule 5.7(7).

5.7(4) Renewal. A person licensed in inactive status may renew the person's certificate or license on the schedule described in rule 193A—5.1(542). Such person is exempt from the continuing education provisions under 193A—Chapter 10 and will be charged a reduced renewal fee as provided in rule 193A—12.1(542). An inactive certificate or license lapses if not timely renewed.

5.7(5) Permitted practices. A person may, while registered as inactive, perform for a client, business, employer, government body, or other entity those accounting, tax, consulting, or financial or managerial advisory services that may lawfully be performed by a person to whom a certificate or license has never been issued as long as the person does not in connection with such services use the title "CPA" or "LPA," or any other title regulated under Iowa law for use only by CPAs or LPAs in Iowa Code section 542.13 (with or without additional designations such as "inactive"). Regulated titles may only be used by active CPAs or LPAs who are subject to continuing education under 193A—Chapter 10 to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education. Additionally, individuals who are actively licensed as CPAs in another jurisdiction in which they maintain their principal place of business may be eligible to exercise a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

5.7(6) Unauthorized practices. A person who, while licensed in inactive status, engages in any of the practices described in subrule 5.7(2) or violates any provision of rule 193A—14.2(17A,272C,542) is subject to disciplinary action. A person in inactive status is not authorized to verify the experience of an applicant for a CPA certificate under Iowa Code section 542.5(12) or an applicant for an LPA license under Iowa Code section 542.8(8).

5.7(7) Reinstatement to active status. A person licensed in inactive status needs to, prior to engaging in any of the practices in Iowa listed in subrule 5.7(2) or for a client with a home office in Iowa, apply to the board to reinstate to active status. Such person will be obligated to pay the applicable renewal fee for active status, but is given credit for renewal fees previously paid for inactive status if the person applies for reinstatement at a date other than the person's regular renewal date. Such person will be obligated to demonstrate compliance with all applicable continuing education and peer review obligations. A person who has engaged in the practice of public accounting as an active licensee of another jurisdiction while licensed as inactive in Iowa will be deemed to have satisfied the continuing education obligations for reinstatement if the person demonstrates that the person has satisfied substantially equivalent continuing education in the other jurisdiction.

5.7(8) Retired status. A person holding an inactive license who does not reasonably expect to return to the workforce in the practice of public accounting due to bona fide retirement or disability may use the

title “CPA, retired” or “LPA, retired,” as applicable, in the context of non-income-producing personal activities. These designations may only be used during a period of bona fide retirement or disability.
[ARC 7681C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapters 272C and 542 and section 10A.506.

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CHAPTER 6
ATTEST AND COMPILATION SERVICES

193A—6.1(542) Who may perform attest services.

6.1(1) Only a CPA may perform audit, review, or other attest services as defined in Iowa Code section 542.3(1).

6.1(2) Only an actively licensed attest-certified Iowa CPA or an out-of-state licensee exercising a practice privilege under Iowa Code section 542.20 may perform attest services in Iowa or for a client with a home office in Iowa. CPAs are cautioned, however, that a government body or a client may obligate that an individual be licensed in Iowa as a condition of performing attest services in Iowa or for a client with a home office in Iowa, whether or not the individual may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accountant is a precondition, for example, to perform certain audit services described in Iowa Code chapter 11.

6.1(3) CPAs performing attest services, whether the CPAs are certified in Iowa or exercising a practice privilege, may only do so in a CPA firm that holds a permit to practice pursuant to Iowa Code section 542.7 or in an out-of-state CPA firm exercising a practice privilege in compliance with Iowa Code section 542.20(5) and 542.20(6) and associated rules and the peer review and ownership provisions of Iowa Code section 542.7.

6.1(4) CPAs who are responsible for supervising attest services for a CPA firm or who sign or authorize someone to sign the accountant's report on behalf of a CPA firm are obligated to satisfy the experience or competency obligations established by nationally recognized professional standards that are applicable to the attest services performed.

[ARC 7682C, IAB 3/6/24, effective 4/10/24]

193A—6.2(542) Necessary attest experience.

6.2(1) A CPA who is responsible for supervising attest services or who signs or authorizes someone to sign the accountant's report on behalf of a firm is obligated to have two years of full-time or part-time equivalent experience that extends over a period of no less than two years and includes no fewer than 4,000 hours, including at least 2,000 hours providing attest services under the supervision of one or more CPAs responsible for supervising attest services on behalf of a CPA firm that holds a permit to practice in Iowa or an equivalent form of CPA firm licensure in another jurisdiction.

6.2(2) Experience needs to include all of the following:

a. Experience in applying a variety of attest procedures and techniques to the usual and customary financial transactions recorded in accounting records.

b. Experience in the preparation of attest working papers covering the examination of the accounts usually found in accounting records.

c. Experience in the planning of the program of attest work, including the selection of the procedures to be followed.

d. Experience in the preparation of written explanations and comments on the findings of the examinations and on the content of the accounting records.

e. Experience in the preparation and analysis of reports and financial statements together with explanations and notes thereon.

6.2(3) Attest experience is verified by the applicant and by a CPA who supervised the applicant or, if a supervising CPA is unavailable, by a CPA or CPA firm with sufficient factual documentation to verify the applicant's attest qualification.

6.2(4) Any applicant or CPA who has been requested to submit to the board evidence of an applicant's attest experience and has refused to do so will, upon request by the board, explain in writing or in person the basis for the refusal. The board may obligate any applicant or CPA who furnished the evidence of an applicant's experience to substantiate the information provided. An applicant may be obligated to appear before the board to supplement or verify evidence of experience. The board may inspect documentation relating to an applicant's claimed experience.

[ARC 7682C, IAB 3/6/24, effective 4/10/24]

193A—6.3(542) Attest qualification.

6.3(1) Attest qualification is necessary before a CPA may perform attest services in Iowa or for a client with a home office in Iowa. “Attest qualification” or “attest qualified” means that the CPA has satisfied the experience obligations of rule 193A—6.2(542).

6.3(2) All CPAs who held an individual permit to practice in Iowa at any point prior to July 1, 2002, are deemed to be attest qualified. Under Iowa law prior to July 1, 2002, CPAs were only issued an individual permit to practice if they verified their qualification to perform attest services. Individual permits to practice were discontinued under Iowa law effective July 1, 2002.

6.3(3) CPAs who did not hold a permit to practice prior to July 1, 2002, may attain or establish attest qualification as follows:

a. Applicants may apply for attest qualification when initially applying for a certificate as an Iowa CPA under Iowa Code section 542.6 or when applying for reciprocal Iowa certification under Iowa Code section 542.19 or any other applicable law or rule.

b. Iowa CPA certificate holders may apply for attest qualification at any time at which they are qualified to do so.

c. Out-of-state CPAs performing attest services while exercising a practice privilege under Iowa Code section 542.20 do not have to individually apply to the board for attest qualification. However, if:

(1) CPAs perform attest services in an Iowa CPA firm, the Iowa CPA firm will affirm when applying for an initial or renewal firm permit to practice that the CPAs who supervise attest services for the firm or who sign or authorize someone to sign the accountant’s report on behalf of the firm, as such attest services are or will in the following year be performed in Iowa or for a client with a home office in Iowa, have been qualified to perform attest services in Iowa or another jurisdiction.

(2) CPAs perform attest services through an out-of-state CPA firm exercising a practice privilege, the out-of-state CPA firm will affirm upon request from the board that the CPAs who supervise attest services for the firm or who sign or authorize someone to sign the accountant’s report on behalf of the firm, as such attest services are or will in the following year be performed in Iowa or for a client with a home office in Iowa, have been qualified to perform attest services in Iowa or another jurisdiction.

[ARC 7682C, IAB 3/6/24, effective 4/10/24]

193A—6.4(542) Compilation services.

6.4(1) Only a CPA licensed by the board under Iowa Code section 542.6 or 542.19 or any other applicable law or rule; an LPA licensed by the board under Iowa Code section 542.8 or any other applicable law or rule; or a person exercising a practice privilege under Iowa Code section 542.20 may issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa.

6.4(2) An individual described in subrule 6.4(1) may perform compilation services through a CPA firm that holds a permit to practice under Iowa Code section 542.7, an LPA firm that holds a permit to practice under Iowa Code section 542.8, a CPA firm exercising a practice privilege under Iowa Code section 542.20, or, if both the individual and business comply with Iowa Code section 542.13(13), through any other form of business.

6.4(3) All individuals described in subrule 6.4(1) who are responsible for supervising compilation services or who will sign or authorize someone to sign the accountant’s compilation report on financial statements, as such compilation services will be performed in Iowa or for a client with a home office in Iowa, are obligated to comply with the nationally recognized professional standards that are applicable to compilation services, including SSARS.

6.4(4) All individuals described in subrule 6.4(1) will satisfy peer review obligations individually or through the peer review of a CPA or LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.

[ARC 7682C, IAB 3/6/24, effective 4/10/24]

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CHAPTER 7
CERTIFIED PUBLIC ACCOUNTING FIRMS
[Prior to 5/1/02, see 193A—Chapter 8]

193A—7.1(542) When licensure is needed.

7.1(1) Except as provided in 193A—Chapter 21, a sole proprietorship, corporation, partnership, limited liability company, or any other form of organization is obligated to apply for a permit to practice as a firm of certified public accountants pursuant to Iowa Code section 542.7.

7.1(2) A firm that is not subject to subrule 7.1(1) may practice public accounting in Iowa in accordance with Iowa Code section 542.7(1)“b.”

7.1(3) Unless individual Iowa licensure is needed by a government body or a client, the public accounting services provided by a CPA firm holding an Iowa permit to practice may be performed in Iowa or for a client with a home office in Iowa by Iowa CPAs or wholly by persons exercising a practice privilege under Iowa Code section 542.20.

7.1(4) A CPA firm issued a permit to practice by the board is accountable to the board and subject to discipline by the board for the acts of its owners or other agents, pursuant to 193A—subrule 14.2(4), whether or not such persons are individually licensed by the board.

[ARC 7683C, IAB 3/6/24, effective 4/10/24]

193A—7.2(542) Application process.

7.2(1) All applications are submitted through the board’s online application process. The board will only process fully completed applications accompanied by the proper fee. Each application fee is nonrefundable.

7.2(2) An initial or renewal application for a firm permit to practice may be denied:

- a. Pursuant to Iowa Code section 542.7(3)“f”;
- b. Based on the firm’s failure to comply with Iowa Code section 542.7 or a failure to sustain the simple majority of ownership obligations of Iowa Code section 542.7(3); or
- c. Based on a regulatory or disciplinary action or, to the extent applicable and subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, a criminal conviction described in subrules 7.3(14) and 7.3(15) against any of the firm’s licensed or unlicensed owners.

[ARC 7683C, IAB 3/6/24, effective 4/10/24]

193A—7.3(542) Application contents. Applicants for a firm permit to practice will provide information requested by the board, including:

7.3(1) The lawful name of the firm.

7.3(2) The legal form and jurisdiction of the firm’s organization.

7.3(3) Contact information for the principal place of business of the firm and each Iowa office.

7.3(4) All jurisdictions in which the firm is licensed or has applied for licensure.

7.3(5) The names, licensure, and contact information for all persons responsible for supervising attest and compilation service or responsible for the proper licensure of the firm.

7.3(6) The highest level of public accounting services offered by the firm, such as compilation or attest.

7.3(7) Evidence of satisfactory completion of the last firm peer review, when applicable.

7.3(8) Sufficient information from which the board can determine that a simple majority of owners hold a CPA certificate under Iowa Code section 542.6 or 542.19 or hold a CPA certificate in another state and are eligible to exercise a practice privilege under Iowa Code section 542.20. The board reserves the right to request at any time a full list of owners, or a targeted sublist, such as a list of those persons who perform services from an Iowa office or those who perform attest or compilation services in Iowa or for a client with a home office in Iowa.

7.3(9) The affirmation described in 193A—paragraph 6.3(3)“c.”

7.3(10) Affirmation that all CPAs who are responsible for supervising attest services for the CPA firm or who sign or authorize someone to sign the accountant's report on behalf of the CPA firm satisfy the experience or competency standards established by nationally recognized professional standards.

7.3(11) Affirmation that all CPAs or LPAs who are responsible for supervising compilation services or who sign or authorize someone to sign the accountant's compilation report on behalf of the firm comply with nationally recognized professional standards that are applicable to the compilation services performed in Iowa or for a client with a home office in Iowa.

7.3(12) Affirmation that all nonlicensee owners are active participants in the firm or affiliated entity.

7.3(13) Affirmation that the firm and its licensed or unlicensed owners will comply with all applicable Iowa laws and rules, including rules of professional conduct, when practicing in Iowa or for a client with a home office in Iowa.

7.3(14) Details of any past denial, cancellation, revocation, suspension, refusal to renew, or voluntary surrender of a professional license of any kind, authority to practice, or practice privilege by the board or another state agency in any jurisdiction, a federal agency, or the PCAOB, regarding the firm and the firm's current owners (e.g., partners, shareholders, or members).

7.3(15) Details of any past felony conviction or the conviction of any crime, any element of which is dishonesty or fraud, as provided in Iowa Code section 542.5(2), under the laws of any state or the United States, regarding the firm and the firm's current owners (e.g., partners, shareholders, or members).

[ARC 7683C, IAB 3/6/24, effective 4/10/24]

193A—7.4(542) Renewal procedures.

7.4(1) The permit holder will submit an electronic online renewal by the June 30 deadline each year. Applications are deemed filed on the date of electronic renewal.

7.4(2) The permit holder will list on the renewal application all states in which the applicant has applied for or holds a permit as a certified public accounting firm and list any past denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a permit to practice or practice privilege. Renewal applications include such additional information as the board needs, including all of the information described in rule 193A—7.3(542).

7.4(3) Within the meaning of Iowa Code chapters 17A, 272C and 542, a timely and sufficient renewal application will be:

- a. Received by the board in electronic form on or before June 30;
- b. Certified as accurate through the online renewal process;
- c. Fully completed and accompanied with the proper fee. The fee will be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.

[ARC 7683C, IAB 3/6/24, effective 4/10/24]

193A—7.5(542) Failure to renew permit.

7.5(1) A firm that fails to renew the permit by the expiration date, but does so within 30 days following the expiration date, will be assessed a penalty as provided in rule 193A—12.1(542).

7.5(2) If the firm fails to renew the permit within the 30-day grace period outlined in rule 193A—7.6(542), the permit will lapse and the firm will need to reinstate in accordance with rule 193A—7.7(542). The firm is not authorized to practice during the period of time that the permit is lapsed, including the 30-day grace period.

7.5(3) The board may reinstate the permit upon payment of the proper renewal fee and a penalty as provided in rule 193A—12.1(542). A written statement outlining the firm's professional activities during the period of lapsed licensure, including a list of Iowa clients and the services performed, is also needed.

7.5(4) The board may find probable cause to file charges for unlicensed practice if the firm engaged in any activity that obligates licensure pursuant to subrule 7.1(1) during the period of lapsed licensure. In addition to the disciplinary sanctions described in rule 193A—16.3(272C,542), firms found to have

practiced public accounting in violation of subrule 7.1(1) on a lapsed license will notify clients upon such terms as the board orders.

[ARC 7683C, IAB 3/6/24, effective 4/10/24]

193A—7.6(542) Notice to the board. A holder of or applicant for a permit shall notify the board in writing within 30 days of an occurrence described in Iowa Code section 542.7(6).

[ARC 7683C, IAB 3/6/24, effective 4/10/24]

193A—7.7(542) Noncompliance. The board may grant a reasonable period of time, usually 90 days, for a firm to take such corrective action pursuant to Iowa Code section 542.7(7).

[ARC 7683C, IAB 3/6/24, effective 4/10/24]

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CHAPTER 8
LICENSED PUBLIC ACCOUNTING FIRMS
[Prior to 7/13/88, see Accountancy, Board of^[10]]

193A—8.1(542) Initial permit to practice.

8.1(1) A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization may apply for a permit to practice under Iowa Code section 542.8.

8.1(2) The application may be completed and submitted through the online application process and provide sufficient information pursuant to Iowa Code section 542.8(12) or certificates issued by the board under Iowa Code section 542.6 or 542.19 or are eligible to practice under practice privilege pursuant to Iowa Code section 542.20, or otherwise hold a license or certificate to practice public accounting in another state. At least one owner has to be licensed under Iowa Code section 542.8.

8.1(3) The application will list the physical location and contact information for all offices within this state and the licensee in charge of each such office.

8.1(4) Fraud or deceit, by commission or omission, in obtaining a firm permit to practice is a ground for discipline, including permanent revocation of the firm's permit to practice, the individual certificate of an Iowa LPA or CPA, or an individual's practice privilege, as applicable to the entity or persons responsible.

8.1(5) An initial or renewal application for a firm permit to practice may be denied pursuant to Iowa Code section 542.8(12) "e."
[ARC 7684C, IAB 3/6/24, effective 4/10/24]

193A—8.2(542) Renewal procedures. The permit holder will submit an online renewal with the board by the June 30 deadline each year. Applications are deemed filed on the date of renewal.
[ARC 7684C, IAB 3/6/24, effective 4/10/24]

193A—8.3(542) Failure to renew permit.

8.3(1) A firm that fails to renew the permit by the expiration date, but does so within 30 days following the expiration date, will be assessed a penalty of 25 percent of the annual renewal fee.

8.3(2) If the firm fails to renew the permit within the 30-day grace period outlined in subrule 8.3(1), the permit will lapse and the firm may then apply for reinstatement in accordance with subrule 8.3(3). The firm is not authorized to practice as an LPA firm during the period of time that the permit is lapsed, including the 30-day grace period.

8.3(3) The board may reinstate the permit upon payment of the proper renewal fee and a penalty as provided in rule 193A—12.1(542). A written statement outlining the firm's professional activities during the period of lapsed licensure is needed in this context.

8.3(4) The board may find probable cause to file charges for unlicensed practice if the firm continues to offer services defined as the practice of accounting while using the title "LPAs" or "LPA firm" during the period of lapsed licensure.
[ARC 7684C, IAB 3/6/24, effective 4/10/24]

193A—8.4(542) Notice to the board. A holder of or an applicant for a permit will notify the board in writing within 30 days in compliance with Iowa Code section 542.8(15).
[ARC 7684C, IAB 3/6/24, effective 4/10/24]

193A—8.5(542) Noncompliance. A firm which, after receiving or renewing a permit, is not in compliance with Iowa Code section 542.8 as a result of a change in firm ownership or personnel will take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time, usually 90 days, for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board will result in the suspension or revocation of the firm permit.
[ARC 7684C, IAB 3/6/24, effective 4/10/24]

193A—8.6(542) Peer review obligations. Firm peer review is necessary pursuant to Iowa Code section 542.7(8).

[ARC 7684C, IAB 3/6/24, effective 4/10/24]

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CHAPTER 9
RECIPROCITY AND SUBSTANTIAL EQUIVALENCY

193A—9.1(542) Iowa CPA certificate necessary. A person who holds a certificate or license to practice as a CPA in another state or a substantially equivalent designation from a foreign jurisdiction may apply to the board for an Iowa CPA certificate and has to do so if the person plans to establish the person's principal place of business as a CPA in Iowa.

[ARC 7685C, IAB 3/6/24, effective 4/10/24]

193A—9.2(542) Application forms. Application forms may only be completed and submitted through the online application process. An applicant will attest that all information provided on the form is true and accurate. An application may be denied based on a false statement of material fact. A nonrefundable fee will be charged to each applicant as provided in 193A—Chapter 12.

[ARC 7685C, IAB 3/6/24, effective 4/10/24]

193A—9.3(542) Background and character.

9.3(1) An applicant for a CPA certificate under this chapter will disclose on the application all background and character information requested by the board including, but not limited to:

- a.* All states or foreign jurisdictions in which the applicant has applied for or holds a CPA certificate or license, or a substantially equivalent designation from a foreign country;
- b.* Any past denial, revocation, suspension, or refusal to renew a CPA certificate, license or permit to practice, or voluntary surrender of a CPA certificate, license or permit to resolve or avoid disciplinary action, or similar actions concerning a substantially equivalent foreign designation;
- c.* Any other form of discipline imposed against the holder of a CPA certificate, license or permit, or a substantially equivalent foreign designation;
- d.* The conviction of any felony or any crime described in Iowa Code section 542.5(2);
- e.* The revocation of a professional license of any kind in this or any other jurisdiction; and
- f.* Such additional information as the board may request to determine if grounds exist to deny certification under 193A—subrule 3.1(2).

9.3(2) The board may deny an application based on prior discipline imposed against the holder of a CPA certificate, license or permit, or a substantially equivalent foreign designation, or on any of the grounds listed in 193A—subrule 3.1(2).

[ARC 7685C, IAB 3/6/24, effective 4/10/24]

193A—9.4(542) Verification of state licensure. An applicant holding a CPA certificate or license from another state or states will submit verification that the applicant's CPA certificate or license is valid and in good standing in the state in which the applicant's principal place of business is located. An applicant applying for a CPA certificate under the substantial equivalency provisions of Iowa Code section 542.19(1) "a" and paragraph 9.5(1) "a" may attach a letter of good standing to the application. Such letter of good standing will be prepared by the state in which the applicant's principal place of business is located and be dated within six months of the date of the application. To expedite the application process, the board will accept verification from another state's board by facsimile or email. The board reserves the right to request an original verification document directly from another state board.

[ARC 7685C, IAB 3/6/24, effective 4/10/24]

193A—9.5(542) Qualifications for a CPA certificate.

9.5(1) A person who holds in good standing a valid CPA certificate or license from another state is deemed qualified for an Iowa CPA certificate if the person satisfies one of the following three conditions:

- a. Substantially equivalent state.* The licensing standards on education, examination and experience of the state that issued the applicant's CPA certificate or license were, at the time of licensure, comparable or superior to the education, examination and experience obligations of Iowa Code chapter 542 in effect at the time the application is filed in Iowa. The board may accept the determination of

substantial equivalency made by the National Association of State Boards of Accountancy or may make an independent determination of substantial equivalency.

b. Individual substantial equivalency. The applicant's individual qualifications on education, examination and experience are comparable or superior to the education, examination and experience obligations of Iowa Code chapter 542 in effect at the time the application is filed in Iowa.

c. "Four-in-ten rule." The applicant satisfies all of the following:

(1) The applicant passed the examination necessary for issuance of the applicant's certificate or license with grades that would have been passing grades at the time in this state.

(2) The applicant has had at least four years of experience within the ten years immediately preceding the application that occurred after the applicant passed the examination upon which the CPA certificate or license was based and that in the board's opinion is substantially equivalent to the obligations set forth in Iowa Code section 542.5(12).

(3) If the applicant's CPA certificate or license was issued more than four years prior to the filing of the application in this state, the applicant has fulfilled the continuing professional education mandates as described in Iowa Code section 542.6(3) and 193A—Chapter 10.

9.5(2) A person who holds in good standing a certificate, license or designation from a foreign authority that is substantially equivalent to an Iowa CPA certificate is deemed qualified for an Iowa CPA certificate if the person satisfies all of the provisions of Iowa Code section 542.19(3). The burden is on the applicant to demonstrate that such certificate, license or foreign designation is in full force and effect and that the prerequisites for that certificate, license or foreign designation are comparable or superior to those needed for a CPA certificate in this state. Original verification from the foreign authority that issued the certificate, license or designation is needed to demonstrate that such certificate, license or designation is valid and in good standing. If the applicant cannot establish comparable or superior qualifications, the applicant will need to pass the Uniform Certified Public Accountant Examination designed to test the applicant's knowledge of practice in this state and country. If the applicant is a Canadian Chartered Accountant, Australian Chartered Accountant, Ireland Chartered Accountant, Mexico Contador Público Certificado (CPC), New Zealand Chartered Accountant, Scottish Chartered Accountant, or South African Chartered Accountant, the applicant may be obligated to take the International Qualification Examination (IQEX) in lieu of the uniform certified public accountant examination.

9.5(3) An applicant seeking an Iowa CPA certificate based on the provisions of paragraph 9.5(1) "b," paragraph 9.5(1) "c," or subrule 9.5(2) will submit such supporting information on education, examination or experience as the board deems reasonable to determine whether the applicant qualifies for licensure in Iowa.

[ARC 7685C, IAB 3/6/24, effective 4/10/24]

193A—9.6(542) Continuing obligations. A person issued a CPA certificate under this chapter is subject to all laws and rules governing persons holding CPA certificates issued in this state including, without limitation, those concerning continuing education, peer review, and notification of crimes and professional discipline. However, a person issued a CPA certificate under this chapter who maintains the principal place of business in a different state and who maintains in good standing a valid CPA certificate or license in that state is deemed to have satisfied the continuing education and peer review obligations described in 193A—Chapters 10 and 11 if the person satisfies similar obligations in the state in which the principal place of business is located.

[ARC 7685C, IAB 3/6/24, effective 4/10/24]

193A—9.7(542) Expedited application processing. A person applying for a CPA certificate under the substantial equivalency provisions of Iowa Code section 542.19(1) "a" often desires expedited application processing to facilitate cross-border practice. Applications by such persons are especially suitable for rapid processing given the substantially equivalent standards previously enforced in another state. Unless such application reveals grounds to deny the application under subrule 9.3(2), the board is otherwise aware of such grounds, or the application is unaccompanied by the proper fee, the board's administrator will approve an application that qualifies under Iowa Code section 542.19(1) "a" as

rapidly as feasible and deem the effective date of approval to practice in Iowa to be the date the board received the completed application with timely letter of good standing in a substantially equivalent state.
[ARC 7685C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 542.19.

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CHAPTER 10
CONTINUING EDUCATION
[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—10.1(542) Scope. The right to use the title “Certified Public Accountant” and “Licensed Public Accountant” is regulated in the public interest and imposes a duty on accounting professionals to maintain public confidence and current knowledge, skills, and abilities in all areas of services. CPAs and LPAs have to accept and fulfill their ethical responsibilities to the public and the profession regardless of their fields of employment.

10.1(1) The development of professional competence involves a continued commitment to learning and professional improvement. A CPA and an LPA performing professional services need to have a broad range of knowledge, skills and abilities. A program that promotes professional competence in the practice of accountancy is defined as one that refers to the process, methods, or principles of accounting or is directly related to the CPA’s and LPA’s employment and is above the level of the CPA’s and LPA’s current knowledge.

10.1(2) Acceptable subjects for continuing professional education include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including nontechnical professional skills, may be approved by the board if they maintain or improve CPAs’ and LPAs’ competence in their current employment.

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

193A—10.2(542) Definitions. The following definitions apply to the rules of this chapter.

“*Continuing professional education (CPE)*” means education that is acquired by a licensee in order to maintain, improve, or expand skills and knowledge present at initial licensure or to develop new and relevant skills and knowledge.

“*Firm meeting*” means a formally arranged gathering/assembly of staff or management groups or both to inform them of administrative matters.

“*Formal program*” means a structured learning activity based on clearly defined learning objectives and outcomes that articulate achievable knowledge, skills and abilities.

“*In-house or on-site training*” means a formally organized professional educational program sponsored by the employer.

“*Live instruction*” means an educational program delivered in a classroom setting or through videoconferencing whereby the instructor and student carry out essential tasks while together. Examples include distance learning and webcasts.

“*Nontechnical professional skills*” means formal programs of learning that contribute to the professional competence of a certificate holder or license holder in fields of study that indirectly relate to the holder’s field of business. “Nontechnical professional skills” includes, but is not limited to, the following programs or courses:

1. Communication;
2. Interpersonal management;
3. Leadership and personal development;
4. Client and public relations;
5. Practice development;
6. Marketing;
7. Motivational and behavioral; and
8. Speed reading and memory building.

“*Qualified instructor*” means an individual whose training and experience adequately prepares the individual to carry out specified training assignments.

“*Self-study*” means a computer-generated program or written materials or exercises intended for self-study that do not include simultaneous interaction with an instructor but do include tests transmitted to the provider for review and grading.

“*Technical professional skills*” means formal programs of learning that contribute to the professional competence of a certificate holder or license holder in fields of study that directly relate to the holder’s

field of business. “Technical professional skills” includes, but is not limited to, the following programs or courses:

1. Auditing standards or procedures;
2. Compilation and review of financial statements;
3. Financial statement preparation and disclosures;
4. Attestation standards and procedures;
5. Projection and forecast standards or procedures;
6. Accounting and auditing;
7. Management advisory services;
8. Personal financial planning;
9. Taxation;
10. Management information systems;
11. Budgeting and cost analysis;
12. Asset management;
13. Professional ethics;
14. Specialized areas of industry;
15. Human resource management;
16. Economics;
17. Business law;
18. Mathematics, statistics and quantitative applications in business;
19. Business management and organization;
20. General computer skills, computer software training, information technology planning and management;
21. Operations management, inventory, and production; and
22. Negotiation or dispute resolution.

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

193A—10.3(542) Applicability. Completion of continuing professional education is a condition precedent to the renewal of the certificate or license.

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

193A—10.4(542) Cost of continuing professional education. All costs of completing continuing professional education are the responsibility of the certificate holder or license holder wishing to maintain registration in this state.

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

193A—10.5(542) Basic continuing professional education.

10.5(1) Except as provided in subrules 10.5(2) through 10.5(7), an applicant for renewal will have completed 120 hours of qualifying continuing professional education during the three-year period ending on the December 31 or June 30 preceding the July 1 renewal date of the certificate or license. The following conditions apply:

a. On each renewal, a CPA or LPA self-selects December 31 or June 30 as the date by which continuing education will be completed in order to be eligible to renew the certificate or license.

b. A CPA or LPA applying to renew a certificate or license may declare a continuing education deadline of December 31 in one renewal cycle and a continuing education deadline of June 30 in a subsequent renewal cycle, and vice versa.

c. Licensees need to maintain continuing education records in a manner that corresponds with the self-selected continuing education deadline of December 31 or June 30.

d. When declaring a June 30 continuing education deadline, licensees should be cautious to ensure that the continuing education is fully completed on or prior to the date the renewal application is submitted to the board.

e. Licensees who renew with penalty during the 30-day grace period following June 30 need to declare either December 31 or June 30 as the continuing education deadline. The deadline cannot be extended beyond June 30.

10.5(2) At the first annual renewal date of July 1 that is less than 12 months from the date of filing of the initial application for the certificate or license, the certificate holder or license holder is not required to report continuing professional education.

10.5(3) At the annual renewal date of July 1 that is 12 months or more than 12 months, but less than 24 months, from the date of filing of the initial application for the certificate or license, the certificate holder or license holder will report 40 hours of continuing professional education earned in the one-year period ending December 31 or June 30 prior to the July 1 renewal date.

10.5(4) At the annual renewal date of July 1 that is 24 months or more than 24 months, but less than 36 months, from the date of filing of the initial application for the certificate or license, the certificate holder or license holder will report 80 hours of continuing professional education earned in the two-year period ending December 31 or June 30 prior to the July 1 renewal date.

10.5(5) A licensee is deemed to have completed continuing education under this rule if, for the period that the licensee is a resident of another state or district having a continuing professional education obligation, the licensee met the resident state's mandatory continuing professional education.

10.5(6) The board may make exceptions for reasons of individual hardship including health, certified by a medical doctor, military service, foreign residency, retirement, or other good cause. No exceptions may be made solely because of age. Applicants entitled to a full or partial exception under the provisions of Iowa Code section 272C.2(4) for active military service or government service outside of the United States may request an exception by submitting acceptable documentation as applicable to the exception requested. Applicants seeking an exception on other grounds of undue hardship can submit an application for waiver as provided in 193—Chapter 5.

10.5(7) Licensees who apply to reinstate a lapsed or inactive certificate or license to active status pursuant to 193A—subrule 5.6(3) or 5.9(7) need to satisfy 120 hours of continuing professional education earned in the preceding three-year period prior to the date of the application, including all mandatory education described in rule 193A—10.7(542). Once the certificate or license is reinstated, the continuing education obligations apply at each subsequent renewal. The 120-hour obligation described in this subrule is modified as needed to incorporate the phase-in schedule for initial licensees described in subrules 10.5(2) through 10.5(4).

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

193A—10.6(542) Measurement standards. The following standards will be used to measure the hours of credit to be given for qualifying continuing professional education programs completed by individual applicants:

10.6(1) Credit is measured with one 50-minute period equaling one contact hour of credit. Half-hour credits may be allowed (equal to not less than 25 minutes) after the first hour of credit has been earned.

10.6(2) Only class hours or the equivalent, and not student hours devoted to preparation, will be counted.

10.6(3) Credit expressed as continuing education units (CEUs) will be counted as ten contact hours for each continuing professional education unit. (0.1 CEU = 1 CPE)

10.6(4) Service as lecturer or discussion leader of continuing professional education programs will be counted to the extent that this service contributes to the applicant's professional competence.

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

193A—10.7(542) Mandatory education.

10.7(1) Every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on behalf of a firm will complete, as a condition of certificate or license renewal, a minimum of eight hours of continuing professional education devoted to financial statement presentation, such as courses covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates. The financial statement presentation continuing education has to be completed within

the three-year period ending on the December 31 or June 30 preceding the application for certificate or license renewal. For credit to be claimed for a course covering multiple topics, a minimum of one hour as outlined in subrule 10.6(1) has to be devoted to financial statement presentation. For example, if a seminar or presentation is conducted for a total of four hours and only one hour is devoted to financial statement presentation, then only one hour may be claimed toward satisfaction of this subrule.

10.7(2) Every CPA certificate holder or LPA license holder needs to complete a minimum of four hours of continuing education devoted to ethics and rules of professional conduct during the three-year period ending December 31 or June 30, prior to the July 1 annual renewal date. For a course to qualify to satisfy this subrule, the course description will clearly outline the subject matter covered as professional or business ethics. If credit is to be claimed for a course covering multiple topics, a minimum of one hour as outlined in rule 193A—10.6(542), measurement standards, specifically in subrule 10.6(1), needs to be devoted to business or professional ethics. For example, if a seminar or presentation is conducted for a total of four hours and only one hour is devoted to business or professional ethics, then only one hour may be claimed toward satisfaction of this subrule. Ethics courses, which are defined as courses dealing with regulatory and behavioral ethics, are limited to courses on the following:

- a. Professional standards;
- b. Licenses and renewals;
- c. SEC oversight;
- d. Competence;
- e. Acts discreditable;
- f. Advertising and other forms of solicitation;
- g. Independence;
- h. Integrity and objectivity;
- i. Confidential client information;
- j. Contingent fees;
- k. Commissions;
- l. Conflicts of interest;
- m. Full disclosure;
- n. Malpractice;
- o. Record retention;
- p. Professional conduct;
- q. Ethical practice in business;
- r. Personal ethics;
- s. Ethical decision making; and
- t. Corporate ethics and risk management as these topics relate to malpractice and relate solely to the practice of certified public accounting.

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

193A—10.8(542) Programs that qualify and CPE limitations.

10.8(1) The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is that it be a formal program of learning that contributes directly to the professional competence of an individual certified or licensed in this state. It will be left to each individual certificate holder or license holder to determine the technical or nontechnical professional skills courses of study to be pursued. Thus, the auditor may study accounting and auditing, the tax practitioner may study taxes, and the management advisory services practitioner may study subjects related to such practice. Job-related continuing professional education qualifies as acceptable provided the courses selected from nontechnical professional skills contribute to the professional competence of the certificate holder or license holder.

10.8(2) Program standards have to include the following:

- a. Learning activities based on clearly defined, relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants.

b. Learning activities developed in a manner consistent with the prerequisite education, experience, and advanced preparation of the participants.

c. Activities, materials, and delivery systems that are current, technically accurate, and effectively designed. Providers, sponsors, or contractors that are competent in the subject matter. Competence may be demonstrated through practical experience or education.

d. Learning programs that are reviewed by qualified persons other than those who develop the program to ensure that the program is technically accurate and current and addresses the stated learning objectives. This standard is waived for single presentations such as lectures that are given once.

10.8(3) Continuing professional education programs will qualify only if:

a. An outline of the program is prepared in advance and preserved.

b. The program is at least one hour (50-minute period) in length.

c. The program is conducted by a qualified instructor, discussion leader or lecturer. A qualified instructor, discussion leader or lecturer is anyone whose background, training, education or experience makes it appropriate for that person to lead a discussion on the subject matter of the particular program.

d. A record of attendance or certification of completion or transcript is maintained.

10.8(4) The following programs are deemed to qualify provided all other criteria of this rule are met:

a. Professional development programs of recognized national and state accounting organizations.

b. Technical sessions at meetings of recognized national and state accounting organizations and their chapters.

c. Formally organized in-house or on-site educational programs provided by the certificate holder's or license holder's employer.

d. Distance learning programs or group study webcast programs.

e. University or college courses meet the continuing professional education obligations of those attending. Each semester hour is equal to 15 contact hours of credit. Each quarter hour is equal to 10 contact hours of credit.

f. Technical or nontechnical sessions offered by employers in business and industry, as well as firms of certified public accountants.

10.8(5) Formal correspondence and formal self-study programs contributing directly to the professional competence of an individual that obligate the licensee to register and provide evidence of satisfactory completion will be considered for credit. The amount of credit to be allowed for correspondence and formal self-study programs (including tested study programs) will be recommended by the program sponsor and based upon appropriate "field tests" and will not exceed 50 percent of the renewal obligation. A licensee claiming credit for correspondence or formal self-study courses will obtain evidence of satisfactory completion of the course from the program sponsor. Credit will be allowed in the renewal period in which the course is completed.

10.8(6) Credit may be allowed for self-study programs on the basis of one hour of credit for each 50 minutes spent on the self-study program if the developer of such programs is approved by either the national continuing professional education registry or by the NASBA continuing education registry and the program sponsor has not designated the amount of credit to be claimed for completing the course of study. The licensee has to estimate the equivalent number of hours and justify the amount of hours claimed. The maximum credit will not exceed 50 percent of the renewal obligation. Credit will be allowed in the renewal period in which the course is completed.

10.8(7) The credit allowed an instructor, discussion leader, or speaker will be on the basis of two hours for subject preparation for each hour of teaching. Credit for teaching college or university coursework may be claimed for courses taught above the elementary accounting or principles of accounting level. Repetitious presentations will not be considered. The maximum credit for such preparation and teaching will not exceed 50 percent of the renewal period obligation.

10.8(8) Credit may be awarded for published articles and books. The amount of credit so awarded will be determined by the board. Credit may be allowed for published articles and books provided they contribute to the professional competence of the licensee. Credit for preparation of such publications may be given on a self-declaration basis up to 25 percent of the renewal period obligation. In exceptional

circumstances, a licensee may request additional credit by submitting the article(s) or book(s) to the board with an explanation of the circumstances that the licensee believes justify additional credit.

10.8(9) Credit may be allowed for the successful completion of professional examinations as detailed below. Credit is calculated at the rate of five times the length of each examination, which is presumed to include all preparation time, claimed in the calendar year of the examination, and limited to 50 percent of the total renewal obligation.

- a. Certified Management Accountant/CMA.
- b. Certified Information Systems Auditor/CISA.
- c. Certified Information Technology Professional/CITP.
- d. Certified Financial Planner/CFP.
- e. Enrolled Agent/EA.
- f. Certified Governmental Financial Manager/CGFM.
- g. Certified Government Auditing Professional/CGAP.
- h. Certified Internal Auditor/CIA.
- i. Accredited Business Valuation/ABV.
- j. Certified Financial Forensics/CFF.
- k. Certified Valuation Analyst/CVA.
- l. Certified Insolvency & Restructuring Advisor/CIRA.
- m. Forensic Certified Public Accountant/FCPA.
- n. Certified Fraud Examiner/CFE.
- o. Certified Business Analyst/CBA.
- p. Certified Trust and Financial Advisor/CTFA.
- q. Chartered Financial Analyst/CFA.
- r. Registered Representative, Series 6 and 7 and other examinations.
- s. Registered Investment Advisor/RIA.
- t. Certified Forensic Accountant/CrFA.
- u. Personal Financial Specialist/PFS.
- v. Chartered Life Underwriter/CLU.
- w. Fellow of the Society of Actuaries/FSA.
- x. Chartered Property & Casualty Underwriter/CPCU.
- y. Fellow Life Management Institute/FLMI.
- z. Other similar examinations approved by the board.

10.8(10) Firm meetings for staff or management groups for the purpose of administrative and firm matters do not meet the standards set forth in subrule 10.8(1).

10.8(11) Dinner, luncheon and breakfast meetings of recognized organizations may qualify if they meet the appropriate provisions and are limited to 25 percent of the total renewal criteria if the individual meeting is no more than two hours long.

10.8(12) Continuing professional education taken in nontechnical skills area as defined in rule 193A—10.2(542) is limited to 50 percent of the total renewal obligation.

10.8(13) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of and credit to be allowed for individual courses.

10.8(14) The right is specifically reserved to the board to approve or deny credit for continuing professional education claimed under these rules.

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

193A—10.9(542) Controls and reporting.

10.9(1) An applicant for renewal may be requested to provide, in such manner, including but not limited to the online renewal process, and at such time as set forth by the board, verification and documentation setting forth the continuing professional education in which the licensee has participated. The board may allow for attestation that the licensee has completed continuing education in lieu of providing a listing. If the applicant for renewal is requested to provide a listing of the continuing professional education completed, the documentation will include:

- a. School, firm or organization conducting the course and contact information.
- b. Location of course.
- c. Title of course or description of content.
- d. Principal instructor.
- e. Dates attended.
- f. Hours claimed.
- g. Certificate of completion.
- h. Name of participant.
- i. Course field of study.
- j. Type of instruction or delivery method.
- k. Amount of CPE recommended.
- l. Verification by CPE program sponsor representative.

Canceled checks and registration forms are not proof of attendance.

10.9(2) The board may request sponsors of courses to furnish an attendance record, a certification of completion or any other information the board deems essential for administration of these continuing professional education rules.

10.9(3) The board will verify, on a test basis, information submitted by licensees. If an application for renewal is not approved, the applicant will be so notified and may be granted a period of time by the board in which to correct the deficiencies noted.

10.9(4) Primary responsibilities for documenting the continuing education compliance is with the licensee, and such documentation has to be retained for a period of three years subsequent to submission of the report claiming the credit. (More information can be found in 193A—subrule 14.3(1) and Iowa Code section 542.10(1) “a,” which provides for permanent revocation based on fraud or deceit in procuring a license.) Satisfaction of the obligations, including retention of attendance records, certification of completion records, and written outlines, may be accomplished as follows:

a. For courses taken for scholastic credit in accredited universities and colleges (state, community, or private) or high school districts, evidence of satisfactory completion of the course will be sufficient; for noncredit courses taken, a statement of the hours of attendance, signed by the instructor, will be obtained by the licensee.

b. For correspondence and formal independent self-study courses, written evidence or a certificate of completion from the sponsor or course provider will be obtained by the licensee.

c. In all other instances, the licensee will maintain a record of the information as listed in subrule 10.8(3).

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

193A—10.10(542) Grounds for discipline. A licensee or an applicant is subject to discipline, including permanent revocation, if the licensee or applicant provides false information to the board in connection with an application to renew or reinstate a certificate or license. A licensee or an applicant is also subject to discipline if the licensee or applicant is unable to document the continuing professional education hours reported to the board in connection with an audit or other request for documentation. False information of this nature will subject the licensee or applicant to discipline whether the false information was supplied intentionally or with reckless disregard for the truth or accuracy of the number of hours claimed. Licensees and applicants are accordingly cautioned to supply the board with accurate continuing professional education information.

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

193A—10.11(272C,542) Alternative continuing education cycles authorized.

10.11(1) Purpose. For a variety of reasons, some CPAs and LPAs may wish to complete their continuing education on a three-year cycle ending on a date other than December 31. By way of illustration, some licensees may prefer to take courses on particular substantive topics that are not always offered at the same time each year. Some licensees may wish to schedule continuing education to comply with the differing obligations of multiple jurisdictions. This rule is intended to authorize a

more flexible time frame within which continuing education may be satisfied. This rule does not alter any other requirement of this chapter.

10.11(2) *Declaration may vary by renewal cycle.* A CPA or LPA applying to renew a certificate or license may declare a continuing education deadline of December 31 in one renewal cycle and a continuing education deadline of June 30 in a subsequent renewal cycle, and vice versa. Licensees are expected to maintain continuing education records in a manner that complies with the self-selected declaration in any particular renewal cycle.

[ARC 7686C, IAB 3/6/24, effective 4/10/24]

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CHAPTER 11
PEER REVIEW

[Prior to 5/1/02, see 193A—Chapter 17]

193A—11.1(542) Peer review obligations. As a condition of renewal for a CPA or an LPA who issues compilation reports other than through a CPA or an LPA firm that holds a permit to practice, and as a condition of permit renewal for LPA firms that issue compilation reports or CPA firms that provide attest services or issue compilation reports, the applicant shall submit certification of completion of a peer review issued pursuant to this chapter. Such review needs to be completed at the highest level of service provided by the firm or licensee. The performance of preparation services under SSARS 21 does not alone subject a firm or individual to peer review, although if a firm or individual is otherwise subject to peer review, the reviewer may include preparation services in the scope of practices reviewed.

[ARC 7687C, IAB 3/6/24, effective 4/10/24]

193A—11.2(542) Three-year cycle. During the three-year period ending December 31 preceding the application for renewal of a certificate, license, or permit to practice, the individual licensee or firm shall have completed a peer review in accordance with this chapter. A peer review shall be completed no less often than once every three years.

[ARC 7687C, IAB 3/6/24, effective 4/10/24]

193A—11.3(542) System of internal quality control. If the firm has not performed any attest or compilation services prior to the application for renewal, the firm will have in place a system of internal quality control prior to the commencement of an engagement including attest or compilation services and come into compliance with the peer review obligations within 18 months of completion of an engagement including attest or compilation services.

[ARC 7687C, IAB 3/6/24, effective 4/10/24]

193A—11.4(542) Peer review programs that qualify. A firm's completion of a peer review program endorsed or supported by the AICPA, the National Society of Accountants or other substantially similar review programs in Iowa or other states approved by the board satisfies this chapter.

[ARC 7687C, IAB 3/6/24, effective 4/10/24]

193A—11.5(542) Waiver of peer review. At the time of renewal, a licensee or firm may request a waiver from this chapter, as provided in Iowa Code sections 542.7(9) and 542.8(18).

[ARC 7687C, IAB 3/6/24, effective 4/10/24]

193A—11.6(542) Submission of peer review reports. Unless the subject of a peer review timely objects in writing to the administering entity of the peer review program, the administering entity will make available to the board, within 30 days of the issuance of the peer review acceptance letter, the final peer review report or such peer review records as are designated by the peer review program in which the administering entity participates. The subject of a peer review may voluntarily submit the final peer review report directly to the board.

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CHAPTER 12

FEES

[Prior to 7/13/88, see Accountancy, Board of[10]]

[Prior to 5/1/02, see 193A—Chapter 14]

193A—12.1(542) Fees. The following is a schedule of the fees for examinations, certificates, licenses, permits and renewals adopted by the board:

Initial CPA examination application:	
Paid directly to CPA examination services	not to exceed \$1,500
Reexamination:	
Paid directly to CPA examination services	not to exceed \$1,500
Original issuance of CPA certificate or LPA license by examination (fee includes wall certificate)	\$100
Original issuance of CPA certificate by reciprocity or substantial equivalency	\$100
CPA wall certificate or LPA license issued by reciprocity or substantial equivalency	\$50
Replacement of lost or destroyed wall CPA certificate or LPA license	\$50
Original issuance of attest qualification	\$100
Annual renewal of CPA certificate or LPA license—active status	\$100
Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—active status	\$25
Annual renewal of CPA certificate or LPA license—inactive status	\$50
Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—inactive status	\$10
Original issuance of firm permit to practice	\$100
Annual renewal of firm permit to practice	\$100
Reinstatement of lapsed CPA certificate or LPA license	\$100 + renewal fee + \$25 per month of expired registration
Reinstatement of lapsed firm permit to practice	\$100 + renewal fee + \$25 per month of expired registration
Interstate Transfer Form	\$25
License predetermination fee	\$25

[ARC 7688C, IAB 3/6/24, effective 4/10/24]

193A—12.2(542) Reinstatement.

12.2(1) *Reinstatement of a lapsed CPA certificate or LPA license.* The fee for the reinstatement of a lapsed CPA certificate or LPA license is \$100 plus the renewal fee plus \$25 per month of expired registration up to a maximum of \$1,000.

12.2(2) *Reinstatement of lapsed firm permit to practice.* The fee for the reinstatement of a lapsed CPA or LPA firm permit to practice for applications is \$100 plus the renewal fee plus \$25 per month of expired registration up to a maximum of \$1,000.

12.2(3) *Applicants for reinstatement.* All applicants for reinstatement will be assessed the \$100 reinstatement fee. The \$25 per month penalty fee described in subrules 12.2(1) and 12.2(2) will not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or practices for which an active CPA certificate, LPA license, or firm permit to practice as a CPA or LPA firm is necessary in Iowa. Falsely claiming an exemption from the monthly penalty fee is a ground for

discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice.

[ARC 7688C, IAB 3/6/24, effective 4/10/24]

193A—12.3(542) Prorating of certain fees. Fees for the issuance of an original CPA certificate or LPA license, pursuant to rule 193A—5.3(542), or the issuance of an initial permit to practice to a CPA or LPA firm, pursuant to rule 193A—7.1(542), will not be prorated.

[ARC 7688C, IAB 3/6/24, effective 4/10/24]

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CHAPTER 13
RULES OF PROFESSIONAL ETHICS AND CONDUCT
[Prior to 5/1/02, see 193A—Chapter 11]

193A—13.1(542) Applicability.

13.1(1) The AICPA Code of Professional Conduct is based upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting and on the implication of professional competence inherent in the authorized use of a board-regulated title relating to the practice of public accountancy imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which the rules of professional ethics and conduct are intended to enforce where necessary, include the obligation to maintain independence of thought and action and a continued commitment to learning and professional improvement, to observe applicable generally accepted accounting principles and generally accepted auditing standards, to promote the public interest through sound and informative financial reporting, to hold the affairs of clients in confidence, and to maintain high standards of personal conduct in all professional activities in whatever capacity performed.

13.1(2) In addition to the rules specifically enumerated herein, and only to the extent applicable to certificate holders' and licensees' respective scope of practice, all certificate holders and licensees are obligated to comply with the AICPA Code of Professional Conduct. In the event of a conflict or inconsistency between the AICPA Code of Professional Conduct and rules specifically enumerated herein, the rules specifically enumerated herein prevail.

13.1(3) The rules of professional ethics and conduct apply to all professional services performed by all CPAs and LPAs, whether or not they are engaged in the practice of public accountancy, except where the wording of a rule clearly indicates that the applicability is specifically limited to the practice of public accountancy.

13.1(4) A CPA or an LPA engaged in the practice of public accountancy outside the United States will not be subject to discipline by the board for departing, with respect to such foreign practice, from any of the board's rules of professional ethics and conduct, so long as the CPA's or LPA's conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which the CPA or LPA is practicing. However, even in such a case, if a CPA's or an LPA's name is associated with financial statements in such manner as to imply that the CPA or LPA is acting as an independent public accountant and under circumstances that would entitle the reader of the financial statement to assume that United States practices are followed, the CPA or LPA will comply with applicable generally accepted engagement standards and applicable generally accepted accounting principles.

13.1(5) A CPA or an LPA may be held responsible for compliance with the rules of professional ethics and conduct by all persons associated with the accountant in the practice of public accounting who are either under the accountant's supervision or are licensees, partners or shareholders in the accountant's practice.

13.1(6) CPAs and CPA firms exercising a practice privilege in Iowa or for a client with a home office in Iowa are subject to the professional standards set forth in this chapter.

13.1(7) These rules complement the grounds for discipline set out in 193A—Chapter 14.
[ARC 7689C, IAB 3/6/24, effective 4/10/24]

193A—13.2(542) Rules applicable to all CPAs and LPAs.

13.2(1) *Cooperation with board inquiry.* A CPA or an LPA will, when requested, respond to communications from the board within 30 days.

13.2(2) *Reporting convictions, judgments, and disciplinary actions.* In addition to any other reporting obligations in Iowa Code chapter 542 or these rules, a CPA or an LPA needs to notify the board within 30 days of:

a. Imposition upon the CPA or LPA of discipline including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, or suspension, revocation or modification of a license, certificate, permit or practice rights by:

- (1) The SEC, PCAOB, or IRS (by the Director of Practice); or
- (2) Another state board of accountancy for cause other than failure to pay a professional fee by the due date or failure to complete continuing education obligations by another state board of accountancy; or
- (3) Any other federal or state agency regarding the CPA's or LPA's conduct while rendering professional services; or
- (4) Any foreign authority or credentialing body that regulates the practice of accountancy;
 - b. Occurrence of any matter reportable by the CPA or LPA to the PCAOB pursuant to the Sarbanes-Oxley Act, Section 102(b)(2)(f) as amended to December 29, 2022, and PCAOB rules and forms adopted pursuant thereto;
 - c. Any judgment, award or settlement of a civil action or arbitration proceeding in which the CPA or LPA was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms will notify the board regarding civil judgments, settlements or arbitration awards directly involving the firm's practice of public accounting in this state; or
 - d. Criminal charges, deferred prosecution or conviction or plea of no contest to which the CPA or LPA is a defendant if the crime is:
 - (1) Any felony under the laws of the United States or any state of the United States or any foreign jurisdiction; or
 - (2) Any crime, including a misdemeanor, if an essential element of the offense is dishonesty, deceit or fraud, as more fully described in Iowa Code section 542.5(2).

13.2(3) *Firm's duty to report.* Each firm will designate a CPA or an LPA as responsible for firm licensure or office registration and responsible for reporting any matter reportable under this rule.

13.2(4) *Solicitation or disclosure of CPA examination questions and answers.* A CPA or an LPA who solicits or knowingly discloses a Uniform Certified Public Accountant Examination question(s) or answer(s) without the written authorization of the AICPA has committed an act discreditable to the profession.

13.2(5) *Falsely reporting continuing professional education (CPE).* A CPA or an LPA has committed an act discreditable to the profession when the CPA or LPA falsely reports CPE credits to the board.

[ARC 7689C, IAB 3/6/24, effective 4/10/24]

193A—13.3(542) Rules applicable to CPAs and LPAs who use the titles in offering or rendering products or services to clients.

13.3(1) *Use of title.*

a. *Certified public accountant.* Only a person who holds an active, unexpired certificate and who complies with 193A—Chapter 5, Licensure Status and Renewal of Certificates and Licenses, and 193A—Chapter 10, Continuing Education, or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title “certified public accountant” or the abbreviation “CPA” or any other title, designation, word(s), letter(s), abbreviation(s), sign, card, or device indicating that such person is a certified public accountant.

b. *Licensed public accountant.* Only a person holding a license as a licensed public accountant may use or assume the title “licensed public accountant” or the abbreviation “LPA” or any other title, designation, word(s), letter(s), abbreviation(s), sign, card, or device indicating that such person is a licensed public accountant.

13.3(2) *Forms of practice.*

a. *Certified public accountant firms.* A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization has to apply for a permit to practice under Iowa Code section 542.7 and these rules as a firm of certified public accountants in order to use the title “CPAs” or “CPA firm,” as more fully described in 193A—Chapter 7.

b. *Licensed public accounting firms.* A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization has to apply for a permit to practice under Iowa

Code section 542.8 and these rules as a firm of licensed public accountants in order to use the title “LPAs” or “LPA firm,” as more fully described in 193A—Chapter 8.

13.3(3) Acting through others. A CPA or an LPA is obligated to not allow others to carry out on the CPA’s or LPA’s behalf, either with or without compensation, acts which, if carried out by the CPA or LPA, would violate the rules of professional ethics and conduct.

[ARC 7689C, IAB 3/6/24, effective 4/10/24]

193A—13.4(542) Audit, review and other attest services.

13.4(1) Practice privilege. All audit, review, and other attest services performed in Iowa or for a client with a home office in Iowa has to be performed through a CPA firm that holds an active Iowa firm permit to practice or through an out-of-state CPA firm exercising a practice privilege in compliance with Iowa Code section 542.20(5) and 542.20(6) and associated rules and the peer review and ownership provisions of Iowa Code section 542.7. Unless Iowa certification is specifically mandated by a governmental body or client, the individual CPAs performing such attest services may either hold an active Iowa CPA certificate or exercise a practice privilege as more fully described in Iowa Code section 542.20. LPAs and LPA firms are not authorized to perform attest services.

13.4(2) Reserved.

[ARC 7689C, IAB 3/6/24, effective 4/10/24]

193A—13.5(542) Compilation.

13.5(1) Who can perform. Only a CPA licensed under Iowa Code section 542.6 or 542.19, or any other applicable law or rule; an LPA licensed under Iowa Code section 542.8, or any other applicable law or rule; or a CPA exercising a practice privilege under Iowa Code section 542.20 may issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa. (More information can be found in rule 193A—6.4(542).)

13.5(2) Peer review. All individuals described in 193A—subrule 6.4(1) will satisfy peer review obligations, individually or through a peer review of a CPA or an LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.

[ARC 7689C, IAB 3/6/24, effective 4/10/24]

193A—13.6(542) Rules applicable to tax practice. CPAs, LPAs, and persons who are not CPAs or LPAs may perform tax services in Iowa. The rules of professional ethics and conduct in this chapter apply to any CPA or LPA who is licensed in Iowa and to any CPA exercising a practice privilege in Iowa whenever such person informs the client or prospective client that the person is a CPA or an LPA. Clients may be so informed in a number of ways, including oral or written representations, the display of a CPA certificate or LPA license, or use of the CPA or LPA title in advertising, telephone or Internet directories, letterhead, business cards or email.

[ARC 7689C, IAB 3/6/24, effective 4/10/24]

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CHAPTER 14
DISCIPLINARY AUTHORITY AND GROUNDS FOR DISCIPLINE

193A—14.1(17A,272C,542) Disciplinary authority. The board exercises disciplinary authority for the protection and well-being of those persons who rely on licensed individuals and firms for the performance of public accounting services within this state or for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of licensees, determine whether disciplinary proceedings are warranted, initiate and prosecute disciplinary proceedings, establish standards of professional conduct, and impose discipline, as authorized under Iowa law.

[ARC 7690C, IAB 3/6/24, effective 4/10/24]

193A—14.2(17A,272C,542) Disciplinary policy.

14.2(1) The board's disciplinary policy rests upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence inherent in the authorized use of a licensee's regulated title relating to the practice of public accountancy, imposes on persons and firms engaged in such practice certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence of thought and action; to strive continuously to improve one's professional skills; to observe, where applicable, generally accepted accounting principles, generally accepted auditing standards, and similar principles and standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

14.2(2) The public interest dictates that persons professing special competence in accountancy have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles not be permitted.

14.2(3) A CPA or LPA firm is subject to discipline for its own violations of Iowa Code chapter 542 and administrative rules and the violations of the firm's CPAs, LPAs, nonlicensee owners, persons acting or purporting to act under a practice privilege, and others performing professional services on the firm's behalf. Whether a CPA or LPA firm will be charged based on the acts of such individuals will depend on the circumstances. Among the factors the board will consider are whether the firm took reasonable steps to prevent the violation, whether the violation was or could have been discovered by the firm upon reasonable inquiry, what steps the firm took upon discovering the violation, whether the acts or omissions involved licensees of the board or were committed by persons who are not individually licensed by the board, the nature of the services at issue, and whether the violations are isolated matters or more systemic to the firm's performance.

[ARC 7690C, IAB 3/6/24, effective 4/10/24]

193A—14.3(17A,272C,542) Grounds for discipline. The board may initiate disciplinary action against a CPA, an LPA, or a firm of CPAs or LPAs that holds an active, inactive or lapsed certificate, license or permit to practice on any of the following grounds:

14.3(1) *Fraud or deceit in procuring a license.* Fraud or deceit in procuring or attempting to procure an initial, reciprocal, renewal, or reinstated certificate, license, or permit to practice includes any intentional perversion of the truth when submitting an application to the board, or when submitting information in support of another's application to the board, including:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed.

b. Attempting to file or filing with the board any false or forged record or document, such as a college transcript, diploma or degree, examination report, verification of licensure, continuing education certificate, or verification of peer review.

c. Failing or refusing to provide complete information in response to a question on an application.

d. Reporting information, such as satisfaction of continuing education, peer review, or attest qualification, in a false manner through overt deceit or with reckless disregard for the truth or accuracy of the information asserted.

e. Otherwise participating in any form of fraud or misrepresentation by act or omission.

14.3(2) Professional incompetence. Professional incompetence includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the practice of public accounting.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimum standards of acceptable and prevailing practice of public accounting in this state.

e. A willful, repeated, or material deviation from generally accepted engagement standards, generally accepted accounting standards, generally accepted auditing standards, or any other nationally recognized standard applicable to the public accounting services at issue.

f. Any other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest.

14.3(3) Deceptive practices. Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of public accounting.

b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public that is false, deceptive, misleading or promoted through fraud or misrepresentation.

c. Acceptance of any fee by fraud or misrepresentation.

d. Falsification of business or client records.

e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule or 193A—Chapter 18.

f. Knowingly presenting as one's own a certificate or certificate number, license or license number, permit or permit number, or signature, when the above belongs to another or a fictitious licensee; or otherwise falsely impersonating a person holding a CPA certificate, an LPA license, or a permit to practice as a firm of CPAs or LPAs.

g. Representing oneself as a CPA, LPA, CPA firm, or LPA firm when the certificate, license, or permit to practice has been suspended, revoked, surrendered, or placed on inactive status, or has lapsed, except as allowed under Iowa Code section 542.20.

h. Fraud in representations as to skill or ability.

14.3(4) Unethical, harmful or detrimental conduct. Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct that are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

a. Verbal or physical abuse, or improper sexual contact, if such behavior occurs within the practice of public accounting or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of public accounting would place the public at risk.

b. A violation of a rule of professional conduct relating to improper conflicts of interest, or lack of integrity, objectivity or independence, as provided in the AICPA Code of Professional Conduct.

c. A violation of a provision of Iowa Code section 542.13, or aiding or abetting any unlawful activity for which a civil penalty can be imposed under Iowa Code sections 542.13 and 542.14.

14.3(5) Lack of proper qualifications. Lack of proper qualifications includes, but is not limited to:

- a. Continuing to practice as a CPA or LPA without satisfying the continuing education necessary for certificate or license renewal.
- b. Continuing to perform attest services or compilation services without timely completion of peer review.
- c. Performing attest services as an individual without proper certification or attest qualification, or without acting through a CPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or exercising a practice privilege pursuant to Iowa Code section 542.20.
- d. Performing attest services as a firm without holding a permit to practice pursuant to Iowa Code section 542.7 or exercising a practice privilege pursuant to Iowa Code section 542.20, or without ensuring that the individuals responsible for supervising attest services or signing or authorizing someone to sign the accountant's report are attest-qualified, hold the necessary certification or are eligible to exercise a practice privilege, or otherwise performing attest services in a manner inconsistent with Iowa Code chapter 542 or the rules of the board.
- e. Habitual intoxication or addiction to the use of drugs, or impairment that adversely affects the CPA's or LPA's ability to practice in a safe and competent manner.
- f. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications that are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b," or that impairs a practitioner's ability to safely and skillfully practice the profession.

14.3(6) *Negligence in the practice of public accounting.* Negligence in the practice of public accounting includes the following acts, practices, or omissions, whether or not injury results:

- a. Failure or refusal without good cause to exercise reasonable diligence in the practice of public accounting.
- b. Failure to exercise due care including negligent delegation of duties in the practice of public accounting.
- c. Neglect of contractual or other duties to a client.

14.3(7) *Professional misconduct.* Professional misconduct includes, but is not limited to, the following:

- a. Violation of a generally accepted engagement standard, generally accepted accounting standard, generally accepted auditing standard, or any other nationally recognized standard applicable to the public accounting services at issue, as provided in rule 193A—13.4(542), or any other violation of a provision of the AICPA Code of Professional Conduct.
- b. Violation of a regulation or law of this state, another state, the United States, or the PCAOB in the practice of public accounting.
- c. Engaging in any conduct that subverts or attempts to subvert a board investigation of a licensed or unlicensed firm, individual, or other entity, or failure to fully cooperate with a disciplinary investigation of a licensee or with an investigation of firms, individuals or other entities that are not licensed by the board, including, without limitation, failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 days.
- d. Revocation, suspension, or other disciplinary action taken against a licensee or person or firm exercising a practice privilege by a licensing authority of this state or another state, territory, or country. A stay by an appellate court does not negate the obligation to report such incidents to the board; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action will be vacated.
- e. Suspension or revocation of the right to practice before any state or federal agency, or the PCAOB.
- f. Violating Iowa Code section 542.17.
- g. Violating Iowa Code section 542.18.
- h. Violating or aiding and abetting another's violation of Iowa Code section 542.13 or 542.20.
- i. Violating the terms of an initial agreement with the Iowa professionals review committee or violation of the terms of an impaired practitioner recovery contract with the Iowa professionals review committee.

- j.* Violating a practice privilege afforded to an Iowa licensee in another state.
- k.* Engaging in the practice of public accounting on a lapsed or inactive certificate, license or permit when the acts or practices obligate active Iowa licensure and, in the case of a firm, allowing such acts or practices by firm CPAs or LPAs.

14.3(8) *Willful or repeated violations.* The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 542 or any administrative rule adopted by the board in the administration or enforcement of such chapters.

14.3(9) *Failure to report.*

- a.* Failure by a CPA firm to timely report as provided in rule 193A—7.7(542).
- b.* Failure of an LPA firm to timely report as provided in rule 193A—8.5(542).
- c.* Failure to timely report judgments and settlements and reportable violations by others as provided in 193A—Chapter 18.
- d.* Failure to report in writing to the board any issuance, denial, revocation, or suspension of a license by another state, or the voluntary surrender of a license to resolve a pending disciplinary investigation or action, within 30 calendar days of the licensing authority's final action.
- e.* Failure to report the conviction of any felony, or a crime described in Iowa Code section 542.5(2), within 30 calendar days of the conviction.
- f.* Failure to report to the board a change in the licensee's physical or mailing address within 30 calendar days of the change.
- g.* Failure to report as provided in 193A—subrule 13.4(3) or as otherwise required in the AICPA Code of Professional Conduct.

14.3(10) *Failure to comply with board order.* Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision imposing discipline.

14.3(11) *Conviction of a crime.* Conviction of any crime described in Iowa Code section 542.5(2) and as limited by Iowa Code section 272C.10(5) is grounds for denial, revocation, or suspension of a license. "Conviction" includes any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred, withheld, not entered, or suspended, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction is vacated.

14.3(12) *Conduct discreditable to the accounting profession.* Conduct discreditable to the accounting profession includes any act or practice that diminishes the public's confidence in the profession, impairs the credibility of the profession, or otherwise compromises the public's trust. While it is not possible to list all conduct that is discreditable to the accounting profession, the following list provides an illustrative range of acts or practices that are implicated:

- a.* Dishonesty in business or financial affairs, or a pattern of fiscal irresponsibility.
- b.* Placement on the sex offender registry.
- c.* Securities fraud or violation of the Iowa consumer fraud Act.
- d.* Willful or repeated failure to timely file tax returns or other tax documents.
- e.* False testimony in a court or administrative proceeding, or affidavit, or otherwise under oath.
- f.* Providing false or misleading information to a financial institution or governmental body or official.
- g.* Stating or implying an ability to improperly influence a government agency or official, or attempting to do so through deception, bribery or other unlawful means.
- h.* Violation of a breach of fiduciary duty when acting in the capacity of a trustee, conservator, or other fiduciary, or as the professional advisor to a fiduciary.
- i.* Any violation of Iowa Code chapter 542 or administrative rules that involves dishonesty, bad faith, or unethical behavior.

[ARC 7690C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and section 546.10.

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CHAPTER 15
DISCIPLINARY INVESTIGATIONS

193A—15.1(17A,272C,542) Initiation of disciplinary investigations. The board may initiate a licensee disciplinary investigation upon the board's receipt of information suggesting that a licensee may have violated a law or rule enforced by the board which, if true, would constitute grounds for licensee discipline. The board may also review the publicly available work product of licensees on a general or random basis to determine whether reasonable grounds exist to initiate disciplinary proceedings or to conduct a more specific investigation.

[ARC 7691C, IAB 3/6/24, effective 4/10/24]

193A—15.2(17A,272C,542) Conflict of interest. If the subject of a complaint is a member of the board, or if a member of the board has a conflict of interest in any disciplinary matter before the board, that member will abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

[ARC 7691C, IAB 3/6/24, effective 4/10/24]

193A—15.3(272C,542) Complaints. Written complaints may be submitted by any means and by anyone.

15.3(1) Contents of a written complaint. Written complaints may be submitted through the online complaint process. Written complaints, whether submitted on a board complaint form or in other written medium, will contain the following information:

- a. The full name, address, and telephone number of the complainant (person complaining).
- b. The full name, address, and telephone number of the respondent (licensee against whom the complaint is filed).
- c. A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions that the complainant believes demonstrate that the respondent has violated or is violating laws or rules enforced by the board.
- d. If known, citations to the laws or rules allegedly violated by the respondent.
- e. Evidentiary supporting documentation.
- f. Steps, if any, taken by the complainant to resolve the dispute with the respondent prior to filing a complaint.

15.3(2) Immunity. As provided by Iowa Code section 272C.8, a person is not civilly liable as a result of filing a report or complaint with the board unless such act is done with malice, nor may an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

15.3(3) Role of complainant. The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding that may be initiated by the board.

15.3(4) Role of the board. The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

15.3(5) Initial complaint review. All written complaints received by the board are initially reviewed by the board's administrator to determine whether the complaint allegations fall within the board's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for licensee disciplinary action. Complaints that are clearly outside the board's jurisdiction, which clearly do not allege facts upon which disciplinary action would be based, or which are frivolous, will be referred by the board administrator to the board for closure at the next scheduled board meeting.

[ARC 7691C, IAB 3/6/24, effective 4/10/24]

193A—15.4(272C,542) Case numbers. Complaint files are tracked by a case numbering system. Once a case file number is assigned to a complaint, all persons communicating with the board regarding that complaint are encouraged to include the case file number to facilitate accurate records and prompt response.

[ARC 7691C, IAB 3/6/24, effective 4/10/24]

193A—15.5(272C,542) Confidentiality of complaint and investigative information.

15.5(1) General provisions. All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code section 272C.6(4). Such information will not be released to any person except as provided in that section and this rule.

15.5(2) Confidentiality of PCAOB information and records.

a. The PCAOB was created by the Sarbanes-Oxley Act of 2002 (the Act) as a nonprofit corporation under the laws of the District of Columbia. The duties of the PCAOB include the registration of public accounting firms that prepare audit reports for public companies; the promulgation of rules (as approved by the SEC) for auditing, quality control, ethics, independence and other standards relating to the preparation of audit reports; the inspection of registered public accounting firms; the investigation of alleged standards violations; and the imposition of appropriate sanctions following disciplinary proceedings.

b. Pursuant to Section 105(b)(5)(A) of the Act and PCAOB rules, PCAOB investigatory information and records are confidential and privileged and are exempt from disclosure under the federal Freedom of Information Act. PCAOB, in its discretion, may share such information and records, along with the nonpublic sections of inspection reports, with state regulatory authorities as necessary to accomplish the purposes of the Act or to protect investors. As provided in Section 105(b)(5)(B) of the Act, state regulatory authorities also maintain such information and records as confidential and privileged, and the board will maintain that information as confidential.

15.5(3) Disclosure to the subject of the investigation.

a. Legal authority. Pursuant to Iowa Code section 10A.506, the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. General rule. As a matter of general policy, the board will not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. Exceptions to general rule. The board may exercise its discretion to release information to a licensee that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee and prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review or investigative report or expert opinions, as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including investigations initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may release information from a peer review or consultant's report when the soliciting of the licensee's position will aid in making the probable cause determination and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.

[ARC 7691C, IAB 3/6/24, effective 4/10/24]

193A—15.6(17A,272C,542) Subpoena authority. Pursuant to Iowa Code sections 17A.13(1), 272C.6(3) and 542.11(1), the board is authorized in connection with a disciplinary investigation to issue

subpoenas to compel witnesses to testify or persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision of whether to initiate a disciplinary proceeding. Board procedures concerning investigative subpoenas are set forth in 193—Chapter 6.

[ARC 7691C, IAB 3/6/24, effective 4/10/24]

193A—15.7(17A,272C,542) Informal discussion. If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

15.7(1) An informal discussion is intended to provide a licensee an opportunity to share the licensee's side of a complaint in an informal setting before the board determines whether probable cause exists to initiate a disciplinary proceeding. A licensee may attend an informal discussion but is not compelled to do so. Because disciplinary investigations are confidential, a licensee is not permitted to bring persons other than legal counsel to an informal discussion. Where an allegation is made against a firm, the firm may be represented by a managing partner, member or other firm representative.

15.7(2) Unless disqualification is waived by the licensee, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because board members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question and answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, a licensee who desires to attend an informal discussion waives the right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. A licensee would not be waiving the right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

15.7(3) Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

15.7(4) The board may propose a consent order at the time of the informal discussion. If the licensee agrees to a consent order, a statement of charges is filed simultaneously with the consent order as provided in rule 193—7.4(17A,272C).

[ARC 7691C, IAB 3/6/24, effective 4/10/24]

193A—15.8(17A,272C,542) Closing complaint files.

15.8(1) *Grounds for closing.* The board may close a complaint file, with or without prior investigation. Given the broad scope of matters about which members of the public may have complaints, it is not possible to catalog all possible reasons why the board may close a complaint file.

15.8(2) *Closing orders.* The board's administrator may enter an order stating the basis for the board's decision to close a complaint file. If entered, the order will not contain the identity of the complainant or the respondent and will not disclose confidential complaint or investigative information.

If entered, a closing order will be indexed by case number and is a public record pursuant to Iowa Code section 17A.3(1) "d." A copy of the order may be mailed to the complainant, if any, and to the respondent. The board's decision whether or not to pursue an investigation, to institute disciplinary proceedings, or to close a file is not subject to judicial review.

15.8(3) *Cautionary letters.* The board may issue a confidential letter of caution to a licensee when a complaint file is closed that informally cautions or educates the licensee about matters that could form the basis for disciplinary action in the future if corrective action is not taken by the licensee. Informal cautionary letters do not constitute disciplinary action, but the board may take such letters into consideration in the future if a licensee continues a practice about which the licensee has been cautioned.

15.8(4) *Reopening closed complaint files.* The board may reopen a closed complaint file if additional information arises after closure that provides a basis to reassess the merits of the initial complaint.
[ARC 7691C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapters 17A, 272C and 542.

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CHAPTER 16
DISCIPLINARY PROCEEDINGS

193A—16.1(17A,272C,542) Initiation of disciplinary proceedings. Disciplinary proceedings may be initiated only by the affirmative vote of a majority of a quorum of the board at a public meeting. Board members who are disqualified will be excluded in determining whether a quorum exists. If, for example, two members of the board are disqualified, four members of the board constitutes a quorum of the remaining six board members for purposes of voting on the case in which the two members are disqualified. When three or more members of the board are disqualified or otherwise unavailable for any reason, the administrator may request the special appointment of one or more substitute board members pursuant to Iowa Code section 17A.11(5).

[ARC 7692C, IAB 3/6/24, effective 4/10/24]

193A—16.2(17A,272C,542) Disciplinary contested case procedures. Unless in conflict with a provision of Iowa Code chapter 542 or board rules in this chapter, all of the procedures set forth in 193—Chapter 7 apply to disciplinary contested cases initiated by the board.

[ARC 7692C, IAB 3/6/24, effective 4/10/24]

193A—16.3(272C,542) Disciplinary sanctions.

16.3(1) Type of sanctions. The board has the authority to impose the following disciplinary sanctions:

a. Revoke a license issued by the board. In the event of a revocation, the licensee is not allowed to remain a member, partner or shareholder of a business entity if the law dictates that all members, partners or shareholders of such an entity be actively involved.

b. Suspend a license issued by the board. A CPA or LPA who is under suspension will refrain, during the period of the suspension, from all facets of the ordinary practice of public accounting.

c. Revoke or suspend the privilege to engage in one or more areas of the practice of public accounting.

d. Impose a period of probation. As a condition to a period of probation, the board may impose terms and conditions deemed appropriate by the board, which may include, but are not limited to, the following:

(1) The board may order the licensee to undergo a quality review or desk review under the board's supervision. The licensee will select, subject to approval by the board, a CPA, an LPA, or a firm of CPAs or LPAs. The review cost will be paid by the licensee. The board will be furnished a copy of the report issued by the reviewing party and may order remedial actions or education as a result of the report findings.

(2) The board may order the licensee to enter into an agreement with a CPA, an LPA, or a firm of CPAs or LPAs to obtain a preissuance review of any audits, compilations, or reviews issued by the licensee or other public accounting services performed during the probationary period. The agreement will be preapproved by the board. The board may order the licensee to report regularly concerning the preissuance reviews conducted pursuant to the agreement. Any cost incurred in obtaining preissuance review will be paid by the licensee.

(3) The board may order the licensee to undergo a substance abuse evaluation and such care and treatment appropriate under the circumstances.

e. Specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The board may also specify whether that continuing education be in addition to the continuing education routinely necessary for license renewal. The board may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a certificate, permit, license, or registration. The board may also specify that current reference materials be obtained and maintained.

f. Obligate the licensee to undergo reexamination, using one or more parts of the CPA or LPA examination given to candidates for the CPA certificate or the LPA license.

g. Impose civil penalties pursuant to Iowa Code section 542.14(2).

- h.* Issue a reprimand.
- i.* Order the licensee to alter a professional practice or refrain from engaging in a particular act or practice in the future, notify clients of unlicensed or unprofessional conduct, or take such other remedial measures that are appropriate under the public interest and circumstances of the infraction.
- j.* Order such alternative discipline as is allowed by law.

16.3(2) *Imposing discipline.* Discipline may be imposed against a licensee only by the affirmative vote of a majority of the members of the board who are not disqualified.

16.3(3) *Voluntary surrender.* The board may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The board will not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such a voluntary surrender is considered disciplinary action and will be published in the same manner as is applicable to any other form of disciplinary order.

16.3(4) *Client notification.* Whenever a license is revoked, suspended, under probation, or voluntarily surrendered under this chapter, the licensee will:

a. Within 30 days of receipt of the board's final order, notify in writing all clients of the fact that the license has been revoked, suspended or voluntarily surrendered or that the licensee is under probation and the subject of compliance terms imposed by the board; for example, the licensee may agree to discontinue governmental audits while the licensee's license is under probation. Such notice will advise the client to obtain alternative professional services, unless probationary compliance terms at issue would not impact the public accounting services provided for that client;

b. Within 30 days of receipt of the board's final order, file with the board copies of the notices sent pursuant to paragraph 16.3(4) "a." Compliance with this paragraph is a condition precedent for an application for reinstatement.

[ARC 7692C, IAB 3/6/24, effective 4/10/24]

193A—16.4(272C,542) Notification of decisions. The board will notify NASBA of disciplinary action taken against an Iowa licensee.

[ARC 7692C, IAB 3/6/24, effective 4/10/24]

193A—16.5(272C,542) Reinstatement.

16.5(1) The term "reinstatement" as used in this rule and in rule 193—7.38(17A,272C) includes the reinstatement of a suspended license, the modification or removal of a probationary limitation on a licensee's practice, the issuance of a license following the denial of an application to renew a license, and the issuance of a new license following the revocation or voluntary surrender of a license.

16.5(2) Any person whose license has been revoked, suspended or placed under probation by the board, or who has voluntarily surrendered a license to conclude a disciplinary investigation or proceeding, or whose application to renew a license has been denied may apply to the board to modify or terminate the suspension, issue or reissue the license, or modify or remove the probationary limitations of practice in accordance with Iowa Code section 542.12, rule 193—7.38(17A,272C), the provisions of this rule, and the terms of the order of revocation, suspension or probation, denial of license renewal, or acceptance of voluntary license surrender.

16.5(3) If the applicable order did not establish terms upon which the licensee may apply for reinstatement, an initial application for reinstatement may be made after at least one year has elapsed from the date of the order that revoked, suspended or placed under probation the license, denied license renewal, or accepted a voluntary surrender.

16.5(4) All proceedings for reinstatement are initiated by the respondent and subject to the procedures set forth in rule 193—7.38(17A,272C). In addition, the board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on the application if the applicant requests an informal appearance in the application and agrees not to seek to disqualify on the ground of personal investigation the board members or staff before whom the applicant appears.

16.5(5) An order granting an application for reinstatement may impose such terms and conditions as the board deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193A—16.3(272C,542).

16.5(6) The board will not grant an application for reinstatement when the initial order that revoked, suspended or placed under probation the license; denied license renewal; or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the board's satisfaction that:

- a.* All the terms of the sentencing or other criminal order have been fully satisfied;
- b.* The applicant has been released from confinement and any applicable probation or parole; and
- c.* Restitution has been made or is reasonably in the process of being made to any victims of the crime.

[ARC 7692C, IAB 3/6/24, effective 4/10/24]

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CHAPTER 17
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

193A—17.1(542) Civil penalties against nonlicensees. The board may order compliance with Iowa Code chapter 542 and board rules, revoke a practice privilege, and impose civil penalties by order against a firm, other entity, or individual that is not licensed by the board pursuant to Iowa Code chapter 542 based on the unlawful practices specified in Iowa Code sections 542.13 and 542.20. In addition to the procedures set forth in Iowa Code section 542.14, this chapter applies.

[ARC 7693C, IAB 3/6/24, effective 4/10/24]

193A—17.2(17A,542) Investigations. The board is authorized by Iowa Code section 17A.13(1) and Iowa Code section 542.11 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Such investigations will conform to the procedures outlined in 193A—Chapter 15. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

[ARC 7693C, IAB 3/6/24, effective 4/10/24]

193A—17.3(17A,542) Notice of intent to impose civil penalties. The notice of the board's intent to issue an order to enforce compliance with Iowa Code chapter 542 and board rules and to impose a civil penalty will be served upon the nonlicensee by certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

1. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
2. Reference to the particular sections of the statutes and rules involved.
3. A short, plain statement of the alleged unlawful practices.
4. The dollar amount of the proposed civil penalty, the nature of the intended order to enforce compliance with Iowa Code chapter 542 and board rules, and whether a practice privilege will be revoked.
5. Notice of the nonlicensee's right to a hearing and the time frame in which hearing can be requested.
6. The address to send a written request for hearing.

[ARC 7693C, IAB 3/6/24, effective 4/10/24]

193A—17.4(17A,542) Request for hearing.

17.4(1) Nonlicensees have 30 days to request a hearing. The 30-day time frame begins on the date the notice is mailed if served through certified mail to the last-known address, or 30 days from the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 1.305. A request for hearing has to be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

17.4(2) If a request for hearing is not timely made, the board chairperson or the chairperson's designee may issue an order imposing the civil penalty, revoking the practice privilege, and requiring compliance with Iowa Code chapter 542 and board rules, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

17.4(3) If a request for hearing is timely made, the board will issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

17.4(4) A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty, revoking the practice privilege, and requiring compliance with Iowa Code chapter 542 and board rules at any stage of the proceeding upon mutual consent of the board.

17.4(5) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Hearings are open to the public.

[ARC 7693C, IAB 3/6/24, effective 4/10/24]

193A—17.5(542) “Safe harbor” language. Persons who do not hold a CPA certificate or LPA license, firms that do not hold a CPA or LPA firm permit to practice, or individuals or firms that are ineligible to exercise a practice privilege cannot use in any statement relating to the financial affairs of a person or entity language that is conventionally used by CPAs or LPAs in reports on financial statements. Pursuant to Iowa Code section 542.13(8), such persons or firms may use the following “safe harbor” language:

“I (we) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited, reviewed or compiled the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.”

[ARC 7693C, IAB 3/6/24, effective 4/10/24]

193A—17.6(542) Enforcement options. The board may also pursue other enforcement as provided in Iowa Code sections 542.14(8), 542.14(9) and 542.15.

[ARC 7693C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapters 17A and 542.

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CHAPTER 18
LICENSEES' DUTY TO REPORT
[Prior to 5/1/02, see 193A—Chapter 15]

193A—18.1(272C,542) Reporting acts or omissions committed by licensees.

18.1(1) An individual or firm licensed by the board has a duty to report under Iowa Code section 272C.9(2). The failure to perform an engagement for a client in accordance with professional standards may demonstrate a lack of qualifications by a licensee or firm. These professional standards are set forth in 193A—Chapter 13.

18.1(2) When a licensee observes an act or omission referenced in subrule 18.1(1), the licensee is obligated to report the violation in writing to the board office, setting forth the name of the licensee alleged to have committed the violation and the rule(s) violated, together with a copy of all material that evidences the violation.

[ARC 7694C, IAB 3/6/24, effective 4/10/24]

193A—18.2(272C,542) Reporting judgments and settlements alleging malpractice.

18.2(1) Licensees have a duty to report under Iowa Code section 272C.9(3). For the purposes of this rule, malpractice actions brought against a firm licensed by the board will be deemed to have been brought against both the firm and the firm's owners (e.g., partners, shareholders, or members) who performed the services that led to the malpractice action.

18.2(2) When a licensee is a party to an adverse judgment resulting from a professional malpractice action or is a party to a settlement of a claim resulting from an allegation of malpractice, the licensee has an obligation to file a report in writing forwarded to the board office, setting forth the name and address of the client, the date the claim was originally made, a brief description of the circumstances precipitating the claim and a copy of the judgment or settlement agreement resulting from the claim.

[ARC 7694C, IAB 3/6/24, effective 4/10/24]

193A—18.3(272C,542) Timely reporting. The reports under this chapter are to be forwarded to the board within 30 days from the initial receipt of the information giving rise to the reporting obligation.

[ARC 7694C, IAB 3/6/24, effective 4/10/24]

193A—18.4(272C,542) Failure to make reports. The board may initiate a disciplinary proceeding against any licensee who fails to make a timely report under this chapter.

[ARC 7694C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapters 272C and 542.

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[Filed ARC 7694C (Notice ARC 7401C, IAB 1/10/24), IAB 3/6/24, effective 4/10/24]

CHAPTER 20
PRACTICE PRIVILEGE FOR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTANTS

193A—20.1(542) Overview and timing. Out-of-state certified public accountants who maintain their principal place of business in a jurisdiction other than Iowa may practice public accounting in Iowa or for clients with a home office in Iowa without Iowa licensure if all of the conditions of Iowa Code section 542.20 and this chapter are satisfied.

[ARC 7695C, IAB 3/6/24, effective 4/10/24]

193A—20.2(542) Out-of-state licensure status. The practice privilege described in Iowa Code section 542.20 applies to individuals who are licensed to practice as certified public accountants in the jurisdiction in which their principal place of business is located for those periods of time in which all of the following conditions are satisfied:

20.2(1) The out-of-state license is valid, in good standing, and active. The practice privilege ceases if the out-of-state license expires in the jurisdiction of the individual's principal place of business.

20.2(2) The individual meets the criteria for substantial equivalency reciprocity, as provided in Iowa Code section 542.19(1) "a," "b," or "c" and rule 193A—9.5(542).

20.2(3) The license authorizes in the individual's principal place of business all of the public accounting services the individual performs or offers to perform in Iowa or for clients with a home office in Iowa.

[ARC 7695C, IAB 3/6/24, effective 4/10/24]

193A—20.3(542) When Iowa licensure may be necessary.

20.3(1) The auditor of state, the department of agriculture and land stewardship, another governmental official or body, or a client may mandate that an individual be licensed in Iowa as a condition of performing public accounting services in Iowa or for a client with a home office in Iowa, whether or not the individual may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accountant is necessary, for example, to perform certain audit services described in Iowa Code chapter 11.

20.3(2) Iowa licensure is necessary if an individual has an office in Iowa at which the individual uses the title "CPA," unless the individual satisfies the conditions for a practice privilege and one of the following is true:

a. The Iowa office is the office of an Iowa CPA or LPA firm that holds a permit to practice under Iowa Code section 542.7 or 542.8, and the individual provides public accounting services through that firm.

b. The Iowa office is the office of a business entity that is not obligated to hold a firm permit to practice under Iowa Code section 542.7 or 542.8, and the individual provides public accounting services through that business entity.

20.3(3) Iowa licensure is necessary if an individual moves the individual's principal place of business to Iowa and is otherwise obligated to be licensed under Iowa Code chapter 542. The board's streamlined application process for reciprocal licensure is described in Iowa Code section 542.19 and 193A—Chapter 9.

[ARC 7695C, IAB 3/6/24, effective 4/10/24]

193A—20.4(542) Individuals ineligible for a practice privilege.

20.4(1) The practice privilege described in Iowa Code section 542.20 is not applicable if:

a. The individual has been convicted of a felony under the laws of any jurisdiction.

b. The individual has been convicted of any crime under the laws of any jurisdiction if an element of the crime involves dishonesty or fraud, such as forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or similar offense, as more fully described in Iowa Code section 542.5(2).

c. The individual's license to practice public accounting has been suspended, revoked, or otherwise disciplined by a licensing authority in this or another state, territory, or country, for any cause

other than failure to pay appropriate fees. “Disciplined” includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding in Iowa or another jurisdiction.

d. The individual’s right to practice public accounting before any state or federal agency, or the PCAOB, has been suspended or revoked.

e. The individual has applied for licensure as a certified public accountant in Iowa or another jurisdiction and the application has been denied.

f. Civil penalties have been imposed against the individual pursuant to Iowa Code section 542.14.

g. The individual’s authority to exercise a practice privilege has been revoked in Iowa or another jurisdiction.

20.4(2) Individuals precluded from exercising a practice privilege under this rule may apply for licensure in Iowa if otherwise qualified. The board will determine when an application is submitted whether the criminal or disciplinary history or other regulatory action provides a ground to deny licensure.

[ARC 7695C, IAB 3/6/24, effective 4/10/24]

193A—20.5(542) Attest and compilation services. Individuals providing compilation services in Iowa or for a client with a home office in Iowa need to comply with the peer review provisions of Iowa Code section 542.6(6) or provide such services through a CPA or LPA firm, or a substantially equivalent firm that holds a valid license in the firm’s principal place of business and that complies with the peer review and ownership provisions of Iowa Code section 542.7 or 542.8.

[ARC 7695C, IAB 3/6/24, effective 4/10/24]

193A—20.6(542) Rights and duties.

20.6(1) Individuals who satisfy the conditions for a practice privilege may practice public accounting in Iowa or for a client with a home office in Iowa in person or by telephone, mail, or electronic means without licensure under Iowa Code chapter 542 or notice to the board.

20.6(2) Individuals lawfully practicing public accounting under a practice privilege may use the title “CPA” as long as they do not have an office in Iowa, except as provided in subrule 20.3(2).

20.6(3) Individuals practicing public accounting in Iowa or for a client with a home office in Iowa while exercising a practice privilege are subject to all of the following provisions:

a. Practice privilege practitioners are not allowed to make any representation tending to falsely indicate that the individuals are licensed under Iowa Code chapter 542. Such individuals may truthfully identify themselves as licensed in any jurisdiction in which they hold a valid, active, unexpired license to practice as a certified public accountant. For example, a practice privilege practitioner could not use the title “Iowa CPA” or otherwise state or imply licensure in Iowa, but, if true, the individual could use a title such as “CPA, licensed in Texas” or “Florida CPA.” Such individuals could also truthfully state that they are CPAs practicing under a practice privilege.

b. Practice privilege practitioners will provide, upon a client’s or prospective client’s request, accurate information on the state or states of licensure, principal place of business, contact information, and manner in which licensure status can be verified.

c. Practice privilege practitioners will comply with all professional standards, laws, and rules that apply to licensees performing the same professional services.

20.6(4) As a condition of exercising the practice privilege provided in Iowa Code section 542.20, the individual:

a. Consents to the personal and subject matter jurisdiction and regulatory authority of the board including, but not limited to, the board’s jurisdiction to revoke the practice privilege or otherwise take action under Iowa Code section 542.14 for any violation of Iowa Code chapter 542 or board rules;

b. Appoints the regulatory body of the state that issued the license in the individual’s principal place of business as the agent upon whom process may be served in any action or proceeding by the board against the individual;

c. Agrees to supply the board, upon the board’s request and without subpoena, such information or records licensees are similarly obligated to provide the board under Iowa Code chapter 542, including but not limited to the information described in Iowa Code section 542.20(7) “c”; and

d. Agrees to promptly cease offering or providing public accounting services in Iowa or for a client with a home office in Iowa if the license in the individual's principal place of business expires or is otherwise no longer in good standing, or if any of the conditions for exercising the practice privilege are no longer satisfied, or if the board revokes the practice privilege.

[ARC 7695C, IAB 3/6/24, effective 4/10/24]

193A—20.7(542) Penalties.

20.7(1) Individuals purporting to practice public accounting under a practice privilege who are ineligible to exercise a practice privilege or who fail to satisfy the conditions for exercising a practice privilege are subject to all of the penalties that apply to unlicensed persons, including the criminal, administrative, and civil penalties described in Iowa Code sections 542.14 and 542.15.

20.7(2) If an individual acting or purporting to act under a practice privilege engages in any act or practice that does or may in the future violate Iowa Code chapter 542 or board rules, the board may take any or all of the following actions, as applicable:

a. Apply to the district court for an injunction, restraining order, or other order, pursuant to Iowa Code section 542.14(1);

b. Issue an order to require compliance with Iowa Code chapter 542 or board rules and impose a civil penalty pursuant to Iowa Code section 542.14;

c. Deny the subsequent license application of the violator or the violator's firm, pursuant to Iowa Code section 542.20(4) "a" and "b";

d. Refer the complaint or other relevant information to the jurisdiction that issued a license to the alleged violator; and

e. Take disciplinary action against the individual pursuant to Iowa Code section 542.10 if the individual holds an inactive or lapsed Iowa license.

20.7(3) Complaints filed with the board alleging violations by individuals who are not licensed by the board, including those acting or purporting to act under a practice privilege, are not confidential under Iowa Code section 272C.6(4) and will not be treated as confidential unless otherwise provided in Iowa Code chapter 22 or other applicable law.

20.7(4) Persons filing complaints with the board against individuals acting or purporting to act under a practice privilege should provide as much information as possible to assist the board in locating the individual and in determining whether the individual is licensed in any jurisdiction.

[ARC 7695C, IAB 3/6/24, effective 4/10/24]

193A—20.8(542) Relationship between Iowa licensure and the exercise of a practice privilege.

20.8(1) *Active Iowa licensees.* An Iowa licensee holding an active CPA certificate is treated for all purposes as an Iowa licensee and is not subject to the provisions of Iowa Code section 542.20.

20.8(2) *Inactive Iowa licensees.* An Iowa licensee holding an inactive CPA certificate is precluded by Iowa Code section 542.6(3) and rule 193A—5.9(272C,542) from performing attest or compilation services or using the title "CPA" while performing public accounting services in Iowa or for a client with a home office in Iowa. The practice of an inactive CPA is restricted because the continuing education necessary to renew in active status does not apply to those renewing in inactive status. Some individuals holding an inactive Iowa CPA certificate may, however, hold an active CPA certificate in another jurisdiction in which they maintain their principal place of business and satisfy continuing education obligations. Such individuals may have maintained an inactive Iowa CPA certificate solely to facilitate reinstatement to active status when active Iowa licensure is necessary in their practice. The following provisions apply to inactive Iowa licensees who may wish to exercise a practice privilege:

a. In a disciplinary investigation or proceeding in which an inactive Iowa licensee is alleged to have improperly used the title "CPA" or otherwise practiced public accounting on an inactive license, the board will consider whether the inactive licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The individual will take care to avoid public confusion about licensure status as provided in 193A—subrule 5.1(6).

c. Violations of Iowa laws or rules by an individual holding an inactive Iowa CPA certificate will be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10 and, when appropriate under the factual circumstances, may also or alternatively be enforced under the provisions of Iowa Code sections 542.14 and 542.15.

20.8(3) Lapsed Iowa licensees. An Iowa licensee holding a lapsed Iowa CPA certificate is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title “CPA” in Iowa or for a client with a home office in Iowa. A lapsed licensee is subject to discipline for practicing on a lapsed license or representing oneself as a “CPA” in any context unless the licensee truthfully discloses that the certificate has lapsed. Some individuals holding lapsed Iowa CPA certificates may, however, hold active CPA certificates in another jurisdiction in which the individuals maintain their principal place of business. Such individuals may have intentionally allowed their Iowa CPA certificates to lapse because the individuals no longer need an active Iowa license in their practice. The following provisions apply to lapsed Iowa licensees who may wish to exercise a practice privilege:

a. In a disciplinary investigation or proceeding in which a lapsed Iowa licensee is alleged to have improperly used the title “CPA” or otherwise practiced public accounting on a lapsed license, the board will consider whether the lapsed licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The individual will take care to avoid public confusion about licensure status as provided in 193A—subrule 5.1(6).

c. Violations of Iowa laws or rules by an individual holding a lapsed Iowa CPA certificate will be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10 and, when appropriate under the factual circumstances, may also or alternatively be prosecuted under the provisions of Iowa Code sections 542.14 and 542.15.

20.8(4) Former Iowa licensees. An individual who held an Iowa CPA certificate at one time whose Iowa CPA certificate has been revoked or surrendered in connection with a disciplinary investigation or proceeding is barred from performing attest or compilation services or using the title “CPA” whether or not such individual may otherwise qualify for a practice privilege.

a. The former Iowa licensees described in this subrule are ineligible to exercise the practice privilege described in Iowa Code section 542.20.

b. Violations of Iowa Code chapter 542 or board rules by former Iowa licensees are subject to the criminal, civil and administrative remedies described in Iowa Code sections 542.14 and 542.15, and may also be prosecuted as disciplinary proceedings under Iowa Code section 542.10 if the license remains subject to reinstatement under Iowa Code section 542.12.

[ARC 7695C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 542.20.

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CHAPTER 21

PRACTICE PRIVILEGE FOR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTING FIRMS

193A—21.1(542) Overview and timing. Out-of-state certified public accounting firms that maintain their principal place of business in a jurisdiction other than Iowa may practice public accounting in Iowa or for clients with a home office in Iowa without Iowa licensure if all of the conditions of Iowa Code section 542.20 and this chapter are satisfied.

[ARC 7696C, IAB 3/6/24, effective 4/10/24]

193A—21.2(542) Out-of-state licensure status. The practice privilege described in Iowa Code section 542.20 applies to certified public accounting firms that are licensed to practice as certified public accounting firms in the jurisdiction in which their principal place of business is located for those periods of time in which all of the following conditions are satisfied:

21.2(1) The out-of-state license is valid, in good standing, and active. The practice privilege ceases if the out-of-state license expires in the jurisdiction of the firm's principal place of business.

21.2(2) The out-of-state license is substantially equivalent to a permit to practice issued under Iowa Code section 542.7.

21.2(3) The license authorizes in the firm's principal place of business all of the public accounting services the firm performs or offers to perform in Iowa or for clients with a home office in Iowa.

21.2(4) The public accounting services offered in Iowa or for clients with a home office in Iowa that are obligated under Iowa law to be performed by a CPA are performed by a person holding a certificate issued under Iowa Code section 542.6 or 542.19, or by a person exercising a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

[ARC 7696C, IAB 3/6/24, effective 4/10/24]

193A—21.3(542) When Iowa licensure may be necessary.

21.3(1) The auditor of state, the department of agriculture and land stewardship, another governmental official or body, or a client may mandate that a firm be licensed in Iowa as a condition of performing public accounting services in Iowa or for a client with a home office in Iowa, whether or not the firm may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accounting firm is necessary, for example, to perform certain audit services described in Iowa Code chapter 11.

21.3(2) Iowa licensure is necessary if the firm has one or more offices in Iowa at which the firm uses the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm."

[ARC 7696C, IAB 3/6/24, effective 4/10/24]

193A—21.4(542) CPA firms, revocation of practice privilege.

21.4(1) The board may revoke the practice privilege in accordance with Iowa Code section 542.20.

21.4(2) Firms precluded from exercising a practice privilege under this rule may apply for licensure in Iowa if otherwise qualified. The board will determine when an application is submitted whether the criminal or disciplinary history or other regulatory action against the firm or against any of the firm's owners (e.g., partners, shareholders, or members) provides a ground to deny licensure.

[ARC 7696C, IAB 3/6/24, effective 4/10/24]

193A—21.5(542) Attest and compilation services. Unless otherwise obligated by rule 193A—21.3(542), attest and compilation services may be performed by an out-of-state CPA firm exercising a practice privilege as long as the out-of-state firm is validly licensed in the state of its principal place of business, complies with Iowa Code section 542.20(5) and 542.20(6) and associated rules, and complies with the peer review and ownership provisions of Iowa Code section 542.7.

[ARC 7696C, IAB 3/6/24, effective 4/10/24]

193A—21.6(542) Rights and duties.

21.6(1) CPA firms that satisfy the conditions for a practice privilege may practice public accounting in Iowa or for a client with a home office in Iowa in person, or by telephone, mail, or electronic means without licensure under Iowa Code chapter 542 or notice to the board.

21.6(2) CPA firms lawfully practicing public accounting under a practice privilege may use the title “CPAs,” “CPA firm,” “certified public accountants,” or “certified public accounting firm.”

21.6(3) CPA firms practicing public accounting in Iowa or for a client with a home office in Iowa while exercising a practice privilege are subject to all of the following provisions:

a. Practice privilege firms are not allowed to make any representation tending to falsely indicate that the firm is licensed under Iowa Code chapter 542. Such firms may truthfully identify themselves as licensed in any jurisdiction in which the firm holds a valid, active, unexpired license to practice as a certified public accounting firm. For example, a practice privilege firm could not use the title “Iowa CPAs” or “Iowa CPA firm” or otherwise state or imply licensure in Iowa, but, if true, the firm could use a title such as “CPA firm, licensed in Texas” or “Florida CPAs.” Such firm could also truthfully state that the firm is practicing in Iowa under a practice privilege.

b. Practice privilege firms will provide, upon a client’s or prospective client’s request, accurate information on the state or states of licensure, principal place of business, contact information, and manner in which licensure status can be verified.

c. Practice privilege firms will comply with all professional standards, laws, and rules that apply to licensed firms performing the same professional services.

21.6(4) As a condition of exercising the practice privilege provided in Iowa Code section 542.20, the firm:

a. Consents to the personal and subject matter jurisdiction and regulatory authority of the board including, but not limited to, the board’s jurisdiction to revoke the practice privilege or otherwise take action under Iowa Code section 542.14 for any violation of Iowa Code chapter 542 or board rules;

b. Appoints the regulatory body of the state that issued the license in the firm’s principal place of business as the agent upon whom process may be served in any action or proceeding by the board against the firm;

c. Agrees to supply the board, upon the board’s request and without subpoena, such information or records that licensed firms are similarly obligated to provide the board under Iowa Code chapter 542, including but not limited to the information described in Iowa Code section 542.20(7) “c,” and rule 193A—7.3(542); and

d. Agrees to promptly cease offering or providing public accounting services in Iowa or for a client with a home office in Iowa if the license in the firm’s principal place of business expires or is otherwise no longer in good standing, or if any of the conditions for exercising the practice privilege are no longer satisfied, or if the board revokes the practice privilege.

[ARC 7696C, IAB 3/6/24, effective 4/10/24]

193A—21.7(542) Penalties.

21.7(1) Firms purporting to practice public accounting under a practice privilege that are ineligible to exercise a practice privilege or that fail to satisfy the conditions for exercising a practice privilege are subject to all of the penalties that apply to unlicensed firms, including the criminal, administrative, and civil penalties described in Iowa Code sections 542.14 and 542.15.

21.7(2) If a firm acting or purporting to act under a practice privilege engages in any act or practice that does or may in the future violate Iowa Code chapter 542 or board rules, the board may take any or all of the following actions, as applicable:

a. Apply to the district court for an injunction, restraining order, or other order, pursuant to Iowa Code section 542.14(1);

b. Issue an order mandating compliance with Iowa Code chapter 542 or board rules and impose a civil penalty pursuant to Iowa Code section 542.14;

c. Deny the subsequent license application of the violator or, to the extent responsible for the violation, any of the firm’s owners (e.g., partners, shareholders, or members), pursuant to Iowa Code section 542.20(4) “a” and “b”;

d. Refer the complaint or other relevant information to a jurisdiction that issued a license to the alleged violator; and

e. Take disciplinary action against the firm or, to the extent responsible for the violation, any of the firm's owners (e.g., partners, shareholders, or members), pursuant to Iowa Code section 542.10, if the firm or individual holds an inactive or lapsed Iowa license.

21.7(3) Complaints filed with the board alleging violations by firms that are not licensed by the board, including those acting or purporting to act under a practice privilege, are not confidential under Iowa Code section 272C.6(4) and will not be treated as confidential unless otherwise provided in Iowa Code chapter 22 or other applicable law.

21.7(4) Persons filing complaints with the board against firms acting or purporting to act under a practice privilege should provide as much information as possible to assist the board in locating the firm and the individuals allegedly responsible for the acts or omissions causing the complaint, and in determining whether the firm or any responsible individual is licensed in any jurisdiction.

[ARC 7696C, IAB 3/6/24, effective 4/10/24]

193A—21.8(542) Relationship between Iowa licensure and the exercise of a practice privilege.

21.8(1) *Active Iowa licensees.* An Iowa CPA firm holding an active permit to practice under Iowa Code section 542.7 will be treated for all purposes as an Iowa licensee and is not subject to the provisions of Iowa Code section 542.20.

21.8(2) *Lapsed Iowa licensees.* An Iowa CPA firm holding a lapsed permit to practice under Iowa Code section 542.7 is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title “CPAs,” “CPA firm,” “certified public accountants,” or “certified public accounting firm” unless the firm is eligible to exercise a practice privilege under Iowa Code section 542.20. The following provisions apply to firms holding a lapsed Iowa permit to practice when exercising a practice privilege:

a. In a disciplinary investigation or proceeding alleging unlicensed practice or improper use of title, the board will consider whether the lapsed licensee, at the time of the events at issue, satisfied the conditions for a practice privilege under Iowa Code section 542.20 and complied with all rules applicable to the exercise of a practice privilege.

b. The firm will take reasonable steps to avoid public confusion over licensure status.

c. Violations of Iowa laws or rules by a firm holding a lapsed permit to practice will be prosecuted as disciplinary proceedings against a licensee under Iowa Code section 542.10 and, when appropriate under the factual circumstances, may also or alternatively be prosecuted under the provisions of Iowa Code sections 542.14 and 542.15.

21.8(3) *Former Iowa licensees.* A CPA firm that held an Iowa permit to practice at one time that has been revoked or surrendered in connection with a disciplinary investigation or proceeding is barred from performing any act or practice for which Iowa firm licensure is necessary and is further ineligible to exercise the practice privilege described in Iowa Code section 542.20. Violations of Iowa Code chapter 542 or board rules by such a firm are subject to the criminal, civil and administrative remedies described in Iowa Code sections 542.14 and 542.15, and may also be prosecuted as disciplinary proceedings under Iowa Code section 542.10 if the license remains subject to reinstatement under 193A—subrule 7.6(3).

[ARC 7696C, IAB 3/6/24, effective 4/10/24]

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ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

[Prior to 6/1/88, see Engineering and Land Surveying Examiners, Board of [390]]
[Engineering and Land Surveying Examining Board[193C] created by 1986 Iowa Acts, Ch 1245, §716,
within the Professional Licensing and Regulation Division[193] of the Commerce Department[181] “umbrella”]

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CHAPTER 1 ADMINISTRATION

IAC Supp. 8/14/85

[Rules 1.5 to 1.13 were either rescinded or renumbered and new rules added, see IAB 8/14/85]

[Prior to 6/1/88, see Engineering and Land Surveying Examiners, Board of [390] Ch 1]

[Rules 1.10 to 1.29 were amended and transferred to 193C—Chapter 4, IAC Supplement 11/27/91]

193C—1.1(542B) General statement. The practices of engineering and land surveying affect the life, health, and property of the people in Iowa. The engineering and land surveying examining board's principal mandate is the protection of the public interest.

1.1(1) Administration. Administration of the board has not been separated into panels, divisions, or departments. While the expertise of a board member may be called upon to frame special examinations and evaluate applications for licensing in a specialized engineering branch, the board functions in a unified capacity on all matters that may come before it. The board maintains an office at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, and requests or submissions may be directed to the secretary of the board at that location.

1.1(2) Meetings. Regular meetings of the board are held in Des Moines, Iowa. Information concerning the location and dates for meetings may be obtained from the board's office at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, or by telephoning 515.725.9022.

[ARC 7664C, IAB 3/6/24, effective 4/10/24]

193C—1.2(542B) Definitions. For the purposes of these rules, the following definitions apply:

"Accredited" means a program accredited by the Accreditation Board for Engineering Technology, Inc. (ABET) or the Canadian Engineering Accreditation Board (CEAB) or another accrediting body accepted by the National Council of Examiners for Engineering and Surveying (NCEES).

"Board" means the engineering and land surveying examining board provided by Iowa Code chapter 542B.

"Design coordination" means the same as defined in Iowa Code section 542B.2(2).

"Engineering documents" means the same as defined in Iowa Code section 542B.2(4).

"Engineering survey," as used in the definition of the practice of engineering, includes all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but excludes the survey of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land system.

"Engineer intern" means the same as defined in Iowa Code section 542B.2(3).

"In responsible charge" means the same as defined in Iowa Code section 542B.2(6).

"Land surveying documents" means the same as defined in Iowa Code section 542B.2(7).

"Practice of engineering" means the same as defined in Iowa Code section 542B.2(9) "a" and "b."

1. The practice of engineering includes:

- Environmental engineering activities that may be involved in developing plans, reports, or actions to remediate an environmentally hazardous site;

- Design of fixturing devices for manufacturing machinery that must be performed by a licensed professional engineer or under the responsible charge and direct supervision of a professional engineer unless performed within the industrial exemption by a full-time employee of a corporation that constructs the fixtures.

2. Activities that the board will construe as the practice of engineering for which the board may by order impose a civil penalty upon a person who is not licensed as a professional engineer are set out in Iowa Code section 542B.27.

"Practice of land surveying" means the same as defined in Iowa Code section 542B.2(10) and also includes activities that the board will construe as the practice of land surveying and for which the board may by order impose a civil penalty upon a person who is not licensed as a professional land surveyor as set out in Iowa Code section 542B.27.

"Professional engineer" means the same as defined in Iowa Code section 542B.2(11).

“*Professional land surveyor*” means a person who engages in the practice of land surveying as defined in this rule.

“*Written*,” when used to describe an examination, means a computer-based format.
[ARC 7664C, IAB 3/6/24, effective 4/10/24]

193C—1.3(542B) Declaratory orders. The board’s rules regarding declaratory orders can be found in the uniform rules for the division of professional licensing and regulation at 193—Chapter 10.
[ARC 7664C, IAB 3/6/24, effective 4/10/24]

193C—1.4(542B) Waivers.

1.4(1) The board’s rules regarding waivers can be found in the uniform rules for the division of professional licensing and regulation at 193—Chapter 5.

1.4(2) Interim rulings. The board chairperson, or vice chairperson if the chairperson is not available, may rule on a petition for waiver when it would not be timely to wait for the next regularly scheduled board meeting for a ruling from the board.

a. The executive secretary shall, upon receipt of a petition meeting all applicable criteria established in 193—Chapter 5, present the request to the board chairperson or vice chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

b. The chairperson or vice chairperson shall reserve the right to hold an electronic meeting of the board when:

(1) Board precedent does not clearly resolve the request and the input of the board is deemed required; and

(2) The practical result of waiting until the next regularly scheduled meeting would be a denial of the request due to timing issues.

c. A waiver report will be placed on the agenda of the next regularly scheduled board meeting and recorded in the minutes of the meeting.

d. This subrule on interim rulings does not apply if the waiver was filed in a contested case.
[ARC 7664C, IAB 3/6/24, effective 4/10/24]

193C—1.5(542B) Licensed professional engineers and building construction.

1.5(1) Purpose. This rule is intended to provide guidance to licensed professional engineers, other design professionals, unlicensed persons engaged in various aspects of building construction, building officials, owners, and others on when the services of a licensed professional engineer are required or not in connection with new building construction and alterations to existing structures.

1.5(2) General guidelines. Given the wide range of buildings covered by this rule and the unique issues that may arise with respect to specific buildings, it is not possible to establish definitive criteria that will universally resolve when building construction or alterations will or will not implicate the practice of professional engineering, as defined in Iowa Code sections 542B.2(8) and 542B.27(1). For example, while the construction of a single-family residence would not generally necessitate the services of a licensed professional engineer, unique or unconventional features of a particular site or design may necessitate complex structural calculations or other services that fall within the definition of professional engineering. As a result, this rule should be interpreted as providing only general guidelines on when a licensed professional engineer is necessary.

1.5(3) Applicability. The board will consider the guidelines provided in this rule when enforcing Iowa Code chapter 542B, including when determining whether an unlicensed person has engaged in the practice of professional engineering. This rule is not intended to constrain building officials or other public officials in their enforcement of other laws, rules, regulations or ordinances. A building code official, for example, may require that certain documents be prepared by a licensed professional engineer or that certain construction inspections be performed by a licensed professional engineer whether or not the guidelines in this rule would so require. This rule only addresses the practice of professional engineering and does not address the practice of architecture. Similar guidelines with respect to the practice of architecture may be found at 193B—Chapter 5.

1.5(4) Definitions. The definitions set forth in rule 193B—5.1(544A) apply to this rule.

1.5(5) Guidelines for new construction. The following matrix describes by building type and use when the services of a licensed professional engineer are required in connection with new building construction:

BUILDINGS NEW CONSTRUCTION			
Building Use Type	Description	Engineer Required	Engineer May Not Be Required
Agricultural Use	Facilities for private use only and individually owned and operated facilities including grain elevators and feed mills		X
	Corporate-owned facilities or publicly owned facilities including grain elevators and feed mills	X	
Churches and accessory buildings whether attached or separate	One or two stories in height, up to a maximum of 2,000 square feet in gross floor area		X
	Any number of stories in height, greater than 2,000 square feet in gross floor area	X	
	More than two stories in height	X	
Commercial Use	One story in height, up to a maximum of 10,000 square feet in gross floor area		X
	One story in height, greater than 10,000 square feet in gross floor area	X	
	Two stories in height, up to a maximum of 6,000 square feet in gross floor area		X
	Two stories in height, greater than 6,000 square feet in gross floor area	X	
	More than two stories in height	X	
Detached Residential Use	One, two or three stories in height, containing 12 or fewer family dwelling units		X
	More than 12 family dwelling units	X	
	More than three stories in height	X	
	Outbuildings in connection with detached residential buildings		X
Educational Use		X	
Governmental Use	When the occupancy is of another building use type listed herein, those provisions shall apply	X	
Industrial Use		X	
Institutional Use		X	
Light Industrial Use			X
Places of assembly		X	

BUILDINGS NEW CONSTRUCTION			
Building Use Type	Description	Engineer Required	Engineer May Not Be Required
Warehouse Use	One story in height, up to a maximum of 10,000 square feet in gross floor area		X
	One story in height, greater than 10,000 square feet in gross floor area	X	
	More than one story in height	X	
Factory-Built Buildings	One or two stories in height, up to a maximum of 20,000 square feet in gross floor area		X
	One or two stories in height, greater than 20,000 square feet in gross floor area	X	
	More than two stories in height	X	
	More than 20,000 square feet in gross floor area	X	

1.5(6) Guidelines for alterations to existing buildings. The following matrix describes by alteration type when the services of a licensed professional engineer are required in connection with alterations to existing buildings:

ALTERATIONS TO EXISTING BUILDINGS				
Alteration Type	Description	Engineer Required	Engineer May Not Be Required	
Structural alterations to exempt buildings under Iowa Code section 544A.18	Modifications that change the structural members, means of egress, handicap accessible path, fire resistivity or other life safety concerns		X	
Structural alterations to buildings that are not exempt	Modifications that change the structural members, means of egress, handicap accessible path, fire resistivity or other life safety concerns	X		
Nonstructural alteration	That does not modify means of egress, handicap accessible path, fire resistivity or other life safety concerns		X	
	That maintains the previous type of use		X	
Nonstructural alteration that changes the use of the building from any other use to:	A place of assembly of people or public gathering	X		
	Governmental use	X		
	Educational use	X		
	Hazardous use	X		
	A place of residence exempted	and is one, two or three stories in height and contains not more than 12 family dwelling units		X
	A place of residence not exempted otherwise	and is more than three stories in height and containing more than 12 family dwelling units	X X	

ALTERATIONS TO EXISTING BUILDINGS				
Alteration Type	Description		Engineer Required	Engineer May Not Be Required
Nonstructural alterations that change the use of the building from industrial or warehouse to:	Commercial or office use	and is one story in height and not greater than a maximum of 10,000 square feet in gross floor area		X
		and is one story in height and greater than 10,000 square feet in gross floor area	X	
		and is two stories in height and not greater than a maximum of 6,000 square feet in gross floor area		X
		and is two stories in height and greater than 6,000 square feet in gross floor area	X	
		and is more than two stories in height	X	
		and is greater than 10,000 square feet of gross floor area	X	
Nonstructural alterations to:	Agricultural Use	Including grain elevators and feed mills		X
	Churches and Accessory Building Uses	One or two stories in height, up to a maximum of 2,000 square feet in gross floor area		X
		Any number of stories in height, greater than 2,000 square feet in gross floor area	X	
		More than two stories in height	X	
	Commercial Use	One story in height, up to a maximum of 10,000 square feet in gross floor area		X
		One story in height, greater than 10,000 square feet in gross floor area	X	
		Two stories in height, up to a maximum of 6,000 square feet in gross floor area		X
		Two stories in height, greater than 6,000 square feet in gross floor area	X	
		More than two stories in height	X	
	Detached Residential Buildings	One, two or three stories in height, containing 12 or fewer family dwelling units		X
		More than 12 family dwelling units	X	
		More than three stories in height	X	
		Outbuildings in connection with detached residential buildings		X
	Educational Use		X	
	Governmental Use	When the occupancy is of another building use type listed herein, those provisions shall apply	X	
	Industrial Use		X	
Institutional Use		X		
Light Industrial Use			X	

ALTERATIONS TO EXISTING BUILDINGS				
Alteration Type	Description		Engineer Required	Engineer May Not Be Required
	Places of Assembly		X	
	Warehouse Use	One story in height, up to a maximum of 10,000 square feet in gross floor area		X
		One story in height, greater than 10,000 square feet in gross floor area	X	
		More than one story in height	X	
	Factory-Built Buildings	One or two stories in height, up to a maximum of 20,000 square feet of gross floor area		X
		One or two stories in height, greater than 20,000 square feet in gross floor area	X	
		More than two stories in height	X	
		More than 20,000 square feet in gross floor area	X	

1.5(7) *Architectural exceptions do not apply.* The statutory exemptions in Iowa Code section 544A.18 do not apply to the practice of engineering. The construction of a building that falls within an exception in Iowa Code section 544A.18 may necessitate the services of an engineer if, for example:

a. There are structural elements that do not fall within building code definitions of conventional light frame construction,

b. The use of certain structural materials, members or components requires special inspections by engineers, or

c. HVAC, plumbing or electrical systems exceed certain building code standards. However, the matrix guidelines in this rule are generally compatible with the exceptions in Iowa Code section 544A.18 because the construction of buildings that fall outside the exceptions in Iowa Code section 544A.18 generally does implicate the practice of professional engineering in such disciplines as structural, electrical or mechanical engineering.

[ARC 7664C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 17A.9A, 542B.2, and 542B.3.

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¹ Effective date of subrule 1.3(1) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 11, 1996; delay lifted by this Committee at its meeting held May 14, 1996, effective May 15, 1996.

CHAPTER 2
FEES AND CHARGES
[Prior to 11/14/01, see 193C—1.9(542B)]

193C—2.1(542B) General statement. Fees are fixed in such an amount as will defray the expense of administering board responsibilities. Fees are charged in accordance with the following table:

Type of fee	Amount
Renewal	
Active license renewal	\$100
Inactive license renewal	\$40
Reinstatement of lapsed license (In addition to the reinstatement fee, the applicant for reinstatement must also pay the appropriate prorated reinstated license fee below.)	\$100
Reinstatement of inactive to active license	\$60
New or reinstated license (In addition to the appropriate prorated reinstated license fee, the applicant for reinstatement must also pay the reinstatement fee above.)	\$100 Prorated at six-month intervals
Application for examination	
Principles and Practice of Land Surveying	\$100
Examinations	
Fees for National Council of Examiners for Engineering and Surveying (NCEES) examinations are paid directly to the examination service at the rate established by contract based upon cost of the examination materials and processing expenses.	Variable
Iowa State Specific Land Surveying Examination	\$30
Application for licensure by comity or verification as a professional engineer or professional land surveyor	\$150
Certificates	
Initial professional engineer or professional land surveyor certificate	\$15
Additional or duplicate certificate	\$25
Engineer or land surveyor intern certificate	No charge
Check returned for insufficient funds	\$15
Verification of records for lapsed licensees	\$15 per verification
Late renewal fee (for renewals completed after December 31 and before January 31)	\$25

[ARC 7665C, IAB 3/6/24, effective 4/10/24]

193C—2.2(542B) Nonrefundable fees. Application fees submitted with applications for the Fundamentals of Engineering examination, the Fundamentals of Land Surveying examination, the Principles and Practice of Engineering examination, the Principles and Practice of Land Surveying examination, comity licensure, or renewal of licensure are not refundable for any reason.

[ARC 7665C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 542B.13, 542B.15, 542B.20 and 542B.30.

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CHAPTER 3
APPLICATION AND RENEWAL PROCESS

[Prior to 11/14/01, see 193C—Chapter 1]

193C—3.1(542B) General statement. A person requesting to be licensed as a professional engineer or professional land surveyor shall submit a completed, standardized application form, which may be obtained electronically from the board's Internet web page.

3.1(1) *Application expiration.* On the examination and comity applications due date, the applications are considered current if it has been one year or less since the applications were received by the board office.

3.1(2) *Academic transcripts.*

a. United States institutions. Completion of post-high school education shall be evidenced by the board's receipt of an applicant's transcripts directly from the office of the registrar of each institution conferring a qualifying degree.

b. Institutions outside the United States. Transcripts from institutions located outside the boundaries of the United States of America shall be sent directly from the institution to an evaluation service to be evaluated for authenticity and substantial equivalency with Accreditation Board for Engineering and Technology, Inc. (ABET), or Engineering Accreditation Commission (EAC) accredited engineering programs. To be readily acceptable, such evaluations shall be from the National Council of Examiners for Engineering and Surveying (NCEES). However, the board may accept evaluations from other recognized foreign credential evaluators satisfactory to the board. The expense of the evaluation is the responsibility of the applicant. Each evaluation shall be sent directly to the board from the evaluation service and include a copy of the transcript in the form sent to the evaluation service directly from the educational institution. Each evaluation must address both whether the transcript is authentic and whether the engineering program is equivalent to those accredited by ABET or EAC.

[ARC 7666C, IAB 3/6/24, effective 4/10/24]

193C—3.2(542B) Application components and due dates.

3.2(1) *Fundamentals of Engineering examination.* Applications for the Fundamentals of Engineering examination are submitted directly to the examination service selected by the board to administer the examinations.

3.2(2) *Fundamentals of Land Surveying examination application components and due dates.* The components of this application include: the completed application form, references pursuant to 193C—paragraph 5.1(5) "b" and transcripts. Fundamentals of Land Surveying examination applications must be submitted to the board office. Applications submitted by the first day of each month will be reviewed by the board at the next regularly scheduled board meeting.

3.2(3) *Principles and Practice of Engineering examination application.* Principles and Practice of Engineering examination applications are submitted directly to the examination service selected by the board. Documentation of a qualifying degree will be required prior to approval to sit for the examination.

3.2(4) *Principles and Practice of Land Surveying examination application components and due dates.* Principles and Practice of Land Surveying examination applications are submitted to the board office. Application files with all components submitted to the board office by the first day of each month will be reviewed at the next regularly scheduled board meeting.

a. The examination application file includes the following components:

- (1) The completed online application form.
- (2) The required number of references.
- (3) The project statement.
- (4) The ethics questionnaire.

b. In addition, a complete application file includes verification of examination records and transcripts. Examination applications will not be reviewed by the board until the application file is complete.

3.2(5) Professional engineer license application. Professional engineer license applications are submitted to the board office. Application files with all components submitted to the board office by the first day of each month will be reviewed at the next regularly scheduled board meeting.

a. The professional engineer license application includes the following components:

- (1) The completed online application form.
- (2) The required number of references.
- (3) The project statement.
- (4) The ethics questionnaire.

b. In addition, a complete application file includes verification of examination records and transcripts. Professional engineer license applications will not be reviewed until the application file is complete.

[ARC 7666C, IAB 3/6/24, effective 4/10/24]

193C—3.3(542B) Comity applications.

3.3(1) The components of a comity application include the completed application form, the ethics questionnaire, references, transcripts, and verification of examinations, as appropriate. Comity applicants may submit the NCEES record in lieu of providing references, verifications, transcripts, and employment history. Since the verification of examination records must, in most cases, be sent directly from the jurisdiction where the applicant took the Fundamentals of Engineering and Principles and Practice Engineering examinations, the applicant should contact the other jurisdiction in advance of submitting the application to request this verification and make every effort to have the verification sent to the board at the time that the application is submitted. Likewise, for transcripts the applicant should contact the university in advance of submitting the application to make every effort to have the transcripts transmitted to the board at the time that the application is submitted.

3.3(2) Comity applications will be reviewed as they are completed. Comity applications will not be reviewed until all components have been received.

3.3(3) Comity applicants will be notified in writing via regular mail or email regarding the results of the review of their applications.

3.3(4) Temporary license. The board does not issue temporary licenses, except as provided for in rule 193C—5.3(542B,272C).

[ARC 7666C, IAB 3/6/24, effective 4/10/24]

193C—3.4(542B) Renewal applications.

3.4(1) Expiration dates. Certificates of licensure expire biennially on December 31. Certificates that were initially issued in even-numbered years expire in odd-numbered years and certificates that were initially issued in odd-numbered years expire in even-numbered years. In order to maintain authorization to practice engineering or land surveying in Iowa, licensees must renew their certificates of licensure on or prior to the expiration date. A licensee who fails to renew prior to the date the certificate expires is not authorized to practice in Iowa unless the certificate is reinstated as provided in these rules. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.

3.4(2) Renewal notification. The board typically mails a renewal notification to a licensee's last-known address at least one month prior to the license expiration date. Neither the board's failure to mail a renewal notification nor the licensee's failure to receive a renewal notification affects in any way the licensee's duty to timely renew if the licensee intends to continue practicing in Iowa. Licensees need to contact the board office if they do not receive a renewal notification prior to the expiration date.

3.4(3) Renewal process. Upon receipt of a timely and sufficient renewal application, with the proper fee, the board's executive secretary will issue a new license reflecting the next expiration date, unless grounds exist for denial of the application.

3.4(4) Notification of expiration. The board will notify licensees whose certificates of licensure have expired. The failure of the board to provide this courtesy notification, or the failure of the licensee to receive the courtesy notification, does not extend the date of expiration.

3.4(5) *Sanction for practicing after license expiration.* A licensee who continues to practice in Iowa after the license has expired is subject to disciplinary action. Such unauthorized activity may also provide grounds to deny a licensee's application to reinstate.

3.4(6) *Timely and sufficient renewal application.* Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

- a. Received by the board through the online renewal process;
- b. Fully completed; and
- c. Accompanied by the proper fee. The fee is deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is left off the application or is incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

3.4(7) *Responsibility for accuracy of renewal application.* The licensee is responsible for verifying the accuracy of the information submitted on the renewal application regardless of how the application is submitted or by whom it is submitted.

3.4(8) *Denial of renewal application.* If the board, upon receipt of a timely, complete and sufficient application to renew a certificate of licensure, accompanied by the proper fee, denies the application, the executive secretary will send written notice to the applicant by restricted, certified mail, return receipt requested, identifying the basis for denial. The applicant may contest the board's decision as provided in rule 193—7.40(546,272C).

3.4(9) *Continuing education.* A licensee who does not satisfy the continuing education requirements for licensure renewal will be denied renewal of licensure in accordance with subrule 3.4(8).

3.4(10) *Consent order option.* When a licensee appears to be in violation of mandatory continuing education under 193C—Chapter 7, the board may, in lieu of proceeding to a contested case hearing on the denial of renewal as provided in uniform division rule 193—7.40(546,272C), offer the licensee the opportunity to sign a consent order. While the terms of a consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation, and establish deadlines for compliance, and the consent order may impose additional educational requirements upon the licensee. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed certificate of licensure and, if the terms of the consent order are not complied with, will be subject to disciplinary action. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to uniform division rule 193—7.40(546,272C).

3.4(11) *Inactive status.* Licensees who are not engaged in engineering or land surveying practices that require licensure in Iowa may be granted inactive status. No inactive licensee may practice in Iowa unless otherwise exempted in Iowa Code chapter 542B.

[ARC 7666C, IAB 3/6/24, effective 4/10/24]

193C—3.5(542B) Reinstatement of licensure.

3.5(1) To reinstate a license that has lapsed for one year or more, the applicant for reinstatement must pay the fee under rule 193C—2.1(542B) and satisfy one of the following:

- a. Provide documentation of 45 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 30 professional development hours for each profession); or
- b. Successfully complete the principles and practice examination within one year immediately prior to application for reinstatement; or
- c. For an applicant for reinstatement who is an out-of-state resident, submit a statement from the resident state's licensing board as documented evidence of compliance with the resident state's mandatory continuing education during the period that the licensee's Iowa license was lapsed. An applicant for reinstatement whose resident state has no mandatory continuing education shall comply with the documented evidence as outlined in this subrule and at 193C—subrule 7.8(2).

3.5(2) To reinstate a license that has lapsed for less than one year, the applicant for reinstatement must pay the fee under rule 193C—2.1(542B) and satisfy one of the following:

a. Provide documentation of 30 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 20 professional development hours for each profession). Professional development hours used for reinstatement shall not be reused at the next renewal; or

b. Successfully complete the principles and practice examination within one year immediately prior to application for reinstatement; or

c. For an applicant for reinstatement who is an out-of-state resident, submit a statement from the resident state's licensing board as documented evidence of compliance with the resident state's mandatory continuing education requirement during the period that the licensee's Iowa license was lapsed. The statement shall bear the seal of the licensing board. An applicant for reinstatement whose resident state has no mandatory continuing education requirement shall comply with the documented evidence requirement as outlined in this subrule and at 193C—subrule 7.8(2).

3.5(3) A lapsed license may not be reinstated to inactive status.

3.5(4) To reinstate from inactive status to active status, the applicant for reinstatement must pay the fee under rule 193C—2.1(542B) and provide documentation of 45 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 30 professional development hours for each profession). Professional development hours used for a reinstatement shall not be reused at the next renewal.

[ARC 7666C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 272C.2, 272C.3, 542B.2, 542B.6, 542B.13, 542B.14, 542B.15, 542B.20 and 542B.30.

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CHAPTER 4
ENGINEERING LICENSURE
[Prior to 11/14/01, see 193C—1.4(542B)]

193C—4.1(542B) Licensure by examination. The board will issue initial licensure only when an applicant satisfies the provisions of Iowa Code section 542B.14 as follows:

4.1(1) An applicant is eligible for the Engineer in Training certificate by meeting one of the following educational standards:

a. The applicant graduates from an engineering program of four years or more with an Accreditation Board of Engineering and Technology/Engineering Accreditation Commission (ABET/EAC)- or Canadian Engineering Accreditation Board (CEAB)-accredited curriculum. An engineering technology curriculum does not constitute an engineering program of four years or more.

b. After graduation from a nonaccredited engineering program of four years or more as described above, the applicant will complete one extra year of practical experience satisfactory to the board, verified by a professional engineer (PE) supervisory reference.

c. The applicant graduates with a master's degree in engineering from an institution in the United States of America that offers an accredited bachelor's degree in the same curriculum. The master's degree or a doctor of philosophy degree candidate must fulfill the requirements for the bachelor's degree in the same area of specialization.

d. An applicant with a master's degree or a doctor of philosophy degree in engineering from an institution in the United States of America that does not offer an accredited bachelor's degree in the same curriculum will be required to have an additional year of qualifying experience obtained after receipt of the qualifying degree. Applicants using a master's degree or a doctor of philosophy degree as the qualifying degree may not also use the master's degree or a doctor of philosophy degree for qualifying experience credit or as an exemption for the Fundamentals of Engineering examination (FE exam).

4.1(2) An applicant successfully completes the FE exam.

a. An applicant may take the FE exam any time after the educational requirements as specified above are completed, but the applicant must successfully complete the FE exam prior to taking the Principles and Practice of Engineering examination.

b. College seniors studying an ABET/EAC- or CEAB-accredited curriculum may take the FE exam during the final academic year. Applicants will be permitted to take the examination during the testing period that most closely precedes anticipated graduation.

c. An applicant who graduated from a satisfactory engineering program and has ten years or more of work experience satisfactory to the board is not required to take the FE exam. This experience is in addition to the four or five years of experience necessary for the PE license.

d. An applicant who has earned a Doctor of Philosophy degree from an institution in the United States of America with an accredited Bachelor of Science engineering degree program in the same discipline, or a similar doctoral degree in a discipline approved by the board, is not required to take the FE exam.

e. FE exam candidates will apply directly to the National Council of Examiners for Engineering and Surveying (NCEES) and will self-attest as to the candidate's eligibility to sit for the FE exam. The board will verify acceptable education and experience at the time an applicant applies for an Engineer in Training (EIT) number. The board shall apply the education and experience standards set forth in this rule but may allow reasonable flexibility in timing in the event an applicant sat for and passed the FE exam at a point earlier than provided in this rule. The board will not, however, issue an EIT number unless all experience required for candidates who hold engineering degrees from nonaccredited programs has been satisfied at the time of the EIT application.

4.1(3) An applicant successfully completes the Principles and Practice of Engineering examination (PE exam).

a. An applicant may take the PE exam any time after passing the FE exam.

b. PE exam candidates will apply directly to the NCEES. The applicant will document a qualifying education. The board will verify acceptable experience at the time the applicant applies for a professional engineer license.

4.1(4) An applicant obtains satisfactory practical experience in engineering work as follows:

a. *Oversight.* An applicant has direct supervision or professional tutelage (instruction, guidance, mentoring, review, and critique) from one or more licensed professional engineers. This experience will be verified by one or more licensed professional engineers who are familiar with the applicant's work and can attest that the experience was of the required quality and was accurately described. Verification of the qualifying experience is provided through the reference forms. It is the responsibility of the applicant to provide reference forms to the licensed professional engineers to complete and return directly to the board.

(1) To be readily acceptable, all of the practical experience is under the direct supervision and tutelage of one or more licensed professional engineers.

(2) To be considered, a portion of the qualifying experience is under the direct supervision or tutelage of one or more licensed professional engineers, and the rest of the practical experience is under the direct supervision or tutelage of an unlicensed graduate engineer.

b. *Documentation of experience.* An applicant submits references and a work project description. The board reserves the right to contact the employer and the person providing tutelage on the project for information about the project experience acquired by the applicant.

(1) References. An applicant for the professional engineer license shall submit three references from professional engineers or a combination of professional engineers and graduate engineers on forms provided by the board.

1. The practical experience provided under the direct supervision or professional tutelage of the licensed professional engineers in the course of a mentoring relationship must include technical skills; professional development; the exercise of professional judgment, ethics, and standards in the application of engineering principles and in the review of such matters by others; and the professional obligations of assuming responsible charge of professional engineering works and services.

2. If the applicant has had more than one supervisor, at least two of the references shall be from a supervisor of the applicant. An applicant shall submit supervisor references to verify at least four years of qualifying experience.

3. If an applicant has had professional experience under more than one employer, the applicant shall provide references from individuals with knowledge of the work performed under a minimum of two employers.

4. The board reserves the right to contact references, supervisors, or employers for information about the applicant's professional experience and competence or to request additional references.

5. The board uses references partially as a means of verifying an applicant's record of experience. The applicant must distribute a reference form to individuals who are asked to submit references for the applicant. To each reference form, the applicant shall attach a narrative of the applicant's experience record that is being addressed by the referring individual.

6. The board may require the applicant to submit other evidence of suitable tutelage and supervision.

7. The board may conduct interviews with persons providing tutelage or supervision to the applicant.

(2) Work project description. An application for initial licensure includes a work project statement describing a significant project on which the applicant worked during the previous 12 months. The board will review all work project statements and will approve only those that include all of the following components:

1. Description of the applicant's degree of responsibility for the project.
2. The project's owner and location.
3. The name of the supervisor in charge of the project and, if the supervisor is a professional engineer, the license number of the supervisor.
4. The applicant's signature and date of signature.

(3) Criteria the board uses in evaluating the acceptability of the project as qualifying experience for the applicant includes, but is not limited to, the following:

1. The degree to which the project and the experience described have progressed from assignments typical of initial assignments to those more nearly expected of a licensed professional;
2. The scope and quality of the professional tutelage experienced by the applicant;
3. The technical decisions required of the applicant in the project; and
4. The professional decisions required of the applicant.

c. Quality. An applicant has experience that demonstrates that the applicant has developed technical skill and initiative in the correct application of engineering principles. Such experience should demonstrate the applicant's capacity to review the application of these principles by others and to assume responsibility for engineering work of professional character.

d. Scope. The applicant has experience that includes sufficient breadth and scope to ensure that the applicant has attained reasonably well-rounded professional competence in a basic engineering field, rather than highly specialized skill in a narrow and limited field.

e. Progression. The record of experience indicates successive and continued progress from initial, subprofessional work of simpler character to recent, professional work of greater complexity and a higher degree of responsibility, as well as continued interest and effort on the part of the applicant toward further professional development and advancement. In evaluating this progression, the board will consider both subprofessional and professional activity as reported by the applicant. However, only work experience obtained after the applicant's receipt of the qualifying degree will be considered, except as described in paragraph 4.1(4) "f." Subprofessional work includes the time spent as an engineering technician, engineering assistant, inspector, or similar under the direct supervision of a licensed professional engineer. Professional work includes the time during which the applicant was occupied in engineering work of higher grade and responsibility than that defined above as subprofessional work. Time spent in teaching engineering subjects in a college or university at the level of assistant professor or higher may be listed as professional work.

f. Special work experience. Work experience prior to graduation from college may be accepted toward satisfaction of practical experience only as follows: Cooperative work programs and internships administered by engineering colleges and verified on the transcript, with a verifying reference from the internship supervisor, will be considered as half-time credit, with a maximum allowance of 6 months (12 months of cooperative work experience or internship) applicable toward the satisfaction of qualifying experience requirements. An applicant's advanced education, military experience, or both will be reviewed in order to determine if they are applicable toward the statutory requirements for experience.

g. Advanced education. An applicant who has earned a master of science degree that includes research experience, in addition to writing an associated thesis, from an institution in the United States of America with an accredited bachelor of science engineering degree program in the same discipline and who has fulfilled the requirements for a bachelor of science degree may be granted a maximum of one year's experience credit. An applicant who has earned a doctor of philosophy degree from an institution in the United States of America with an accredited bachelor of science engineering degree program in the same discipline may be granted a maximum of two years of experience credit in addition to the one-half year's credit for the master of science degree. An applicant using an advanced degree as experience credit may not also use the advanced degree as the qualifying degree to become licensed.

h. Teaching experience. Teaching of engineering subjects at the level of assistant professor or higher in an accredited engineering program may be considered as experience, provided the applicant's immediate supervisor is a licensed professional engineer in the jurisdiction in which the college or university is located. If the applicant's immediate supervisor is not a licensed professional engineer, a program of mentoring or peer review by a licensed professional engineer acceptable to the board must be demonstrated. Applicants using teaching or research as experience must have a minimum of four years of acceptable experience in research, industry, or consulting. The board will consider the complexity of the project(s) presented, the degree of responsibility of the applicant within the project, and other factors the board deems relevant. Academic experience must demonstrate increasing levels of responsibility for the conduct and management of projects involving engineering research, development, or application.

The board reserves the right to contact employers for information about the applicant's professional experience and competence.

i. Joint applications. Applicants requesting licensure both as a professional engineer and a land surveyor must submit a history of professional experience in both fields. Such histories will be considered separately on a case-by-case basis. The board does not grant full credit for concurrent experience in both professions.

j. Corporate exemption. The purpose of the provisions on qualifying experience that authorize the board to consider some experience that was not acquired under the direct supervision and tutelage of a licensed professional engineer is to provide a path toward licensure for those applicants who gain experience in settings where licensure is not required under the corporate exemption set forth in Iowa Code section 542B.26 or under similar statutory provisions in other jurisdictions. Such applicants may lawfully gain professional engineering experience under the supervision or tutelage of graduate engineers who are not licensed. To aid such applicants, the following guidelines are provided:

(1) The board will not consider any of the following experience:

1. Experience gained under circumstances where the applicant could not lawfully have practiced professional engineering.

2. Experience attained in compliance with the law but that was not under the supervision or tutelage of a graduate engineer. The fundamental purpose of qualifying experience is professionally guided training to expand and complement engineering education. Self-guided experience does not qualify.

(2) Unlicensed graduate engineers are not authorized to offer professional engineering services to the public or to be in responsible charge of such services, nor are they subject to the examinations required for licensure, the professional and ethical standards applicable to licensees, or the regulatory oversight of a licensing authority. Qualifying experience is intended to address both technical competence and the obligations to the public of a licensed professional engineer.

(3) Because the circumstances of individual applicants in corporate exemption settings are diverse, it is not possible to identify the minimum period of time during which the applicant must receive supervision or tutelage from one or more licensed professional engineers to be eligible for licensure. The board will evaluate both the quantity and quality of such experience. In general, an applicant's exposure to supervision or tutelage by one or more licensed professional engineers should reflect a sustained period of in-depth interaction from which the licensed engineers are in a position to form credible opinions on the applicant's qualifications to be in responsible charge of engineering services offered to the public as a licensed professional engineer.

(4) The burden is on the applicant to demonstrate to the board's satisfaction that the combination of unlicensed and licensed supervision and tutelage satisfies the requirements of qualifying experience described in this rule.

k. Practical experience. An applicant for a professional engineer license shall have a minimum of one year of practical experience in the United States of America or a territory under its jurisdiction.

4.1(5) Education and experience requirements. The board will require the minimum number of years set forth on the following chart before an applicant will be eligible for licensure.

Experience Requirements	
If the education is:	Required years of experience
A four-year bachelor's degree in a nonaccredited engineering program	5
A four-year bachelor's degree in an accredited engineering program OR a qualifying master's degree pursuant to paragraph 4.1(1) "c" OR a qualifying PhD pursuant to paragraph 4.1(1) "d"	4
A four-year bachelor's degree in an accredited engineering program AND a qualifying master's degree pursuant to paragraph 4.1(4) "g"	3
A four-year bachelor's degree in an accredited engineering program AND a qualifying PhD pursuant to paragraph 4.1(4) "g"	2
A four-year bachelor's degree in an accredited engineering program AND a qualifying master's degree AND a qualifying PhD pursuant to paragraph 4.1(4) "g"	1

4.1(6) Required examinations. All examinations are uniform examinations prepared and graded by the NCEES. The board may negotiate an agreement with an examination service to administer the examinations to applicants approved by the board, in which case applicants shall pay examination fees directly to the service.

a. Fundamentals of Engineering examination. The Fundamentals of Engineering examination is a computer-based examination covering general engineering principles and other subjects commonly taught in accredited engineering programs.

b. Principles and Practice of Engineering examination. A separate examination is required for each branch in which licensure is granted. An applicant may obtain a Principles and Practice of Engineering Civil (Structural) branch license by passing either the Structural examination or the Principles and Practice of Engineering Structural examinations.

c. Conduct during the examination. Examinees will comply with the testing rules and regulations of the examination administrator.

[ARC 7667C, IAB 3/6/24, effective 4/10/24]

193C—4.2(542B) Requirements for licensure by comity. A person holding a certificate of licensure to engage in the practice of engineering issued by a proper authority of a jurisdiction or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of Iowa Code section 542B.14 and who has met standards determined by the board to be substantially equivalent to those required of applicants for initial licensure in this state may, upon application, be licensed without further examination. Comity applicants are governed by the same standards as are required of applicants for initial licensure in Iowa.

4.2(1) References. An applicant for licensure by comity shall submit references on forms provided by the board to verify satisfactory engineering experience, as provided in paragraph 4.1(4) "a."

4.2(2) Basis for evaluation of applications. Applications for licensure by comity will be evaluated on the following basis:

a. The applicant's record of education, references, practical experience, and successful completion of approved examinations will be reviewed to determine if it currently satisfies the substantive requirements of Iowa Code section 542B.14. In reviewing the education, references, and practical experience of comity applicants, the board will use the same criteria used by the board to determine the eligibility of a candidate for the Principles and Practice of Engineering examination; or

b. The applicant's licensure in a jurisdiction other than Iowa will be reviewed to determine if it was granted only after satisfaction of requirements substantially equivalent to those that are required of applicants for initial licensure in Iowa under Iowa Code section 542B.14. When determining whether the licensing standards satisfied by a comity applicant are substantially equivalent to those required in Iowa, the board considers each of the four licensing prerequisites in Iowa Code section 542B.14(1) individually. The licensing standards are satisfied by the comity applicant if the standards are equal or superior to those required in Iowa for education, fundamentals examination, experience, and professional examination. Unless expressly stated in this chapter, the board will not consider an applicant's superior satisfaction of one licensing prerequisite, such as a higher level of education than is required in Iowa, as resolving an applicant's lack of compliance with another prerequisite, such as professional examination.

4.2(3) Comity application process.

a. An applicant for licensure by comity from a jurisdiction other than Iowa meets or exceeds the education requirements set forth in Iowa Code section 542B.14 and subrule 4.1(1).

b. An applicant successfully completes the Fundamentals of Engineering examination. An applicant who graduated from a satisfactory engineering program and who has ten years or more of work experience satisfactory to the board is not required to take the Fundamentals of Engineering examination.

c. The applicant successfully completes the Principles and Practice of Engineering examination.

d. The applicant has satisfactory practical experience under paragraph 4.1(3) "a."

e. While the board will consider evidence presented by a comity applicant on non-NCEES examinations successfully completed in a foreign country, the non-NCEES examination will be compared with the appropriate NCEES examination. A non-NCEES professional examination, for instance, must be designed to determine whether a candidate is minimally competent to practice professional engineering in a specific branch of engineering, such as civil, structural, electrical, or mechanical engineering. The examination must be written, objectively graded, verifiable, and developed and validated in accordance with the testing standards of the American Psychological Association or equivalent testing standards. Free-form essays and oral interviews are not equal or superior to NCEES examinations.

4.2(4) Education and experience requirements.

a. For applicants who were originally licensed in a jurisdiction other than Iowa prior to July 1, 1988, the board will employ the following chart to determine if the applicant's licensure was granted after satisfaction of requirements substantially equivalent to those that were required by Iowa Code section 542B.14 at the time of the applicant's original licensure. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience that were required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988		
If the applicant's educational level was:	The applicant has had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant has had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
No post-high school education	8	4
Postsecondary study in mathematics or physical sciences		
One year	7	4
Two years	6	4
Three years	5	4
Four years	3	4

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988		
If the applicant's educational level was:	The applicant has had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant has had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
Four-year BS degree in mathematics or physical sciences plus master's degree in engineering	0	4
Postsecondary study in engineering technology programs and architecture		
One year	7	4
Two years	5.5	4
Three years	4	4
Four-year degree in a nonaccredited engineering technology program or BA in architecture	2.5	4
Four-year degree in an accredited engineering technology program	2	4
Bachelor of architecture, four years or more	2	4
Four-year degree in engineering technology or architecture plus master's degree in engineering	0	4
Postsecondary study in a nonaccredited engineering program		
One year	7	4
Two years	5	4
Three years	3	4
Four-year BS degree	1	4
Four-year degree in a nonaccredited engineering program plus master's degree in engineering	0	4
Postsecondary study in an accredited engineering program		
Two years	6	4
Three years	3	4
Four-year degree in an accredited engineering program	0	4

b. For applicants who were originally licensed in another jurisdiction and who meet the requirements of Iowa Code section 542B.14(1)“a”(1)(c), the board will employ the following chart to determine if the applicant's licensure was granted after satisfaction of requirements substantially equivalent to those that were required by Iowa Code section 542B.14 at the time of the applicant's original licensure. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Engineering examination in addition to the completion of the required educational level. To determine the total years of practical experience that were required prior to taking the Principles and Practice of Engineering examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who meet the requirements of Iowa Code section 542B.14(1)“a”(1)(c)		
If the applicant’s educational level was:	The applicant has had the following additional years of experience prior to taking the Fundamentals of Engineering examination:	The applicant has had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Engineering examination:
College or junior college (mathematics or physical sciences)		
Two years	6	4
Three years	5	4
Four-year BS degree	3	4
Four-year BS degree plus master’s degree in engineering	0	4
All engineering technology programs and architecture		
Two years	6	4
Three years	5	4
Four-year degree, nonaccredited technology or BA in architecture	3	4
Four-year degree, accredited technology	2	4
Four-year degree or more, bachelor of architecture	2	4
Four-year BS degree, technology or architecture plus master’s degree in engineering	0	4
Engineering program, nonaccredited		
Two years	6	4
Three years	3	4
Four-year BS degree	1	4
Four-year BS degree plus master’s degree in engineering	0	4
Engineering program, accredited		
Two years	6	4
Three years	3	4
Four-year BS degree	0	4

c. For all other applicants who were originally licensed in a jurisdiction other than Iowa on or after July 1, 1988, the board will employ the chart found at subrule 4.1(5) to determine if the applicant’s licensure was granted after satisfaction of requirements substantially equivalent to those that are required by Iowa Code section 542B.14.

d. For purposes of this subrule, an applicant’s master’s degree in engineering is to be from an institution in the United States of America with an accredited bachelor’s degree in the same curriculum, and the master’s degree candidate is required to fulfill the requirements for the bachelor’s degree in the same area of specialization.

[ARC 7667C, IAB 3/6/24, effective 4/10/24]

193C—4.3(542B) Requirements for a licensee requesting additional examination. A person holding an active certificate of licensure to engage in the practice of engineering issued by the state of Iowa may, upon written request and payment of the application and examination fees, take additional examinations

in other branches of engineering without submitting a formal application to the board as described for initial or comity licensure.

[ARC 7667C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15, 542B.17 and 542B.20.

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CHAPTER 5
LAND SURVEYING LICENSURE
[Prior to 11/14/01, see 193C—1.4(542B)]

193C—5.1(542B) Requirements for licensure by examination. The specific requirements for initial licensing in Iowa are established in Iowa Code section 542B.14, and it is the board's intention to issue initial licensure only when those requirements are satisfied chronologically as set forth in the statute.

5.1(1) The applicant for initial licensure in Iowa must satisfy the education plus experience requirements stated in Iowa Code section 542B.14 "b"(1). The chart in subrule 5.1(8) details education-based experience requirements. If the applicant's degree is not in surveying, surveying technology, engineering, or engineering technology, the applicant must have taken a minimum of nine credit hours in mathematics, of which at least one course must include trigonometry in its coursework, and may include college algebra, trigonometry, analytic geometry, differential and integral calculus, linear algebra, numerical analysis, probability and statistics, and advanced calculus; and a minimum of nine credit hours in basic sciences, which must cover one or more of the following topics: general chemistry, advanced chemistry, biology, geology, ecology, meteorology, astronomy, forestry, general physics, advanced physics, or land surveying, for the applicant's degree to be a qualifying degree.

a. Internet or online degrees will only be considered as qualifying degrees if the institution issuing the degree is accredited by a recognized accreditation board or the degree is evaluated as substantially equivalent to that of an accredited program by the National Council of Examiners for Engineering and Surveying (NCEES). The board may accept evaluations from other recognized foreign credential evaluators satisfactory to the board. Initiating the evaluation and the expense of the evaluation are the responsibilities of the applicant. Each evaluation shall be sent directly to the board from the evaluation service and shall include a copy of the transcript in the form sent to the evaluation service directly from the educational institution.

b. Internet or online degrees will only be considered as qualifying degrees if the institution issuing the degree is accredited by a recognized accreditation board.

5.1(2) The applicant must successfully complete the Fundamentals of Land Surveying examination. The applicant may take the Fundamentals of Land Surveying examination any time after the education and experience requirements described above are completed.

5.1(3) The applicant must successfully complete the Principles and Practice of Land Surveying examination. An applicant may take the Principles and Practice of Land Surveying examination after passing the Fundamentals of Land Surveying examination.

5.1(4) The applicant satisfies the qualifying experience requirements set forth in this chapter.

5.1(5) The applicant must successfully complete the Iowa-specific land surveying examination administered by the board.

5.1(6) Work project description. A complete application includes a statement of approximately 200 words describing a significant project on which the applicant worked closely during the last 12 months. The statement describes the applicant's degree of responsibility for the project and identifies the project's owner and its location. The statement is signed and dated. The criteria the board uses in evaluating the acceptability of the project as qualifying experience for the applicant includes, but is not limited to, the following:

- a.* The degree to which the project and the experience described has progressed from assignments typical of initial assignments to those more nearly expected of a licensed professional;
- b.* The scope and quality of the professional tutelage experienced by the applicant;
- c.* The technical decisions required of the applicant in the project; and
- d.* The professional decisions required of the applicant.

The board reserves the right to contact the employer and the person providing tutelage on the project for information about the project experience presented to the applicant.

5.1(7) References.

a. An applicant for the Principles and Practice of Land Surveying examination will submit a minimum of three references, on forms provided by the board, in accordance with the following:

- (1) The references will be from licensed professional land surveyors.
- (2) If the applicant has had more than one supervisor, at least two of the references are from a supervisor of the applicant.
- (3) If an applicant has had professional experience under more than one employer, the applicant provides references from individuals with knowledge of the work performed under a minimum of two employers.
- (4) The board reserves the right to contact employers for information about the applicant's professional experience and competence or to request additional references.

b. An applicant for the Fundamentals of Land Surveying examination will provide three references on forms provided by the board.

5.1(8) Education and experience requirements. The board requires the minimum number of years set forth on the following chart before an applicant may take either the Fundamentals of Land Surveying or the Principles and Practice of Land Surveying examination. To determine the total years to become licensed as a land surveyor in Iowa, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS		
If the applicant's educational level was:	The applicant must have the following years of experience prior to taking the Fundamentals of Land Surveying examination and the Principles and Practice examination:	The applicant must have the following additional years of experience before the board will issue a license in land surveying:*
A college program with fewer than nine credit hours of surveying [subrule 5.1(1)]		
Two-year degree	4	4
Four-year degree	2	4
Graduate degree	1	4
A college program with nine or more credit hours of surveying		
Two-year degree	0	4
Four-year degree	0	4
Graduate degree	0	4

*This allows applicants to take the Principles and Practice of Land Surveying examination and Iowa State Specific Land Surveying examination during this time period.

5.1(9) Practical experience requirements. Practical land surveying experience, of which a minimum of one-half shall be field experience, is required prior to licensing. All practical experience must occur after high school graduation and be under the tutelage of a professional land surveyor.

a. Quality. Experience will demonstrate that the applicant has developed technical skill and initiative in the correct application of surveying principles. For the purposes of this chapter, one year of experience shall consist of 1,872 hours of full- or part-time employment, as attested to by the applicant's references. An applicant may use a maximum of 1,872 hours in any one 12-month period to satisfy the experience requirements. Full-time students, as defined by the student's school, may not, simultaneously, be considered full-time employees for the purposes of this chapter.

b. Scope. Experience will be of sufficient breadth and scope to ensure that the applicant has attained reasonably well-rounded professional competence in land surveying. For purposes of this rule, field experience is considered of sufficient breadth and scope if the applicant conducts research for boundary surveys, conducts boundary monument recovery field work, gathers field information necessary for boundary line recovery, analyzes all collected boundary recovery field data, establishes land surveying monuments in the field, prepares land surveying documents, as defined in this chapter, and writes property descriptions.

c. Progression. The record of experience will indicate successive and continued progress from initial work of simpler character to recent work of greater complexity and higher degree of responsibility.

d. Advanced education and military experience. An applicant's advanced education, military experience, or both will be reviewed to determine if they are applicable toward the statutory requirements for experience.

e. Joint applications. Applicants requesting licensure both as professional engineers and professional land surveyors must submit a history of professional experience in both fields. Such histories will be considered separately on a case-by-case basis. The board does not grant full credit for concurrent experience in both professions.

5.1(10) Examinations. The board prepares and grades the Iowa State Specific Land Surveying examination administered to professional land surveyor candidates. All other examinations are uniform examinations prepared and graded by the NCEES. The board may negotiate an agreement with an examination service to administer the examinations to applicants approved by the board, in which case applicants pay examination fees directly to the service.

An applicant who has failed two consecutive examinations of the state-specific portion of the professional land surveying examination is not allowed to retake the state-specific portion for one year.

a. Materials permitted in examination room. For security reasons, applicants shall comply with requirements regarding materials permitted in the examination room as issued by the NCEES and provided to candidates prior to the examination.

b. Release of examination results. Results of any examination are only reported as pass or fail, except that the candidate who fails an examination may be provided with the candidate's converted score and a diagnostic report indicating areas of weakness, as available.

[ARC 7668C, IAB 3/6/24, effective 4/10/24]

193C—5.2(542B) Requirements for licensure by comity. A person holding a certificate of licensure to engage in the practice of land surveying issued by a proper authority of a jurisdiction or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of Iowa Code section 542B.14 and of a standard not lower than that specified in the applicable licensure Act, may, upon application and successful completion of the Iowa State Specific Land Surveying examination, be licensed without further examination. Comity applicants are governed by the same standards as are required of Iowa applicants.

5.2(1) References. An applicant for licensure by comity shall submit one or more professional land surveyor references on forms provided by the board to verify the number of years of satisfactory experience required with the applicant's level of education. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

5.2(2) Comity application process.

a. The applicant will provide proof of active land surveying licensure in another jurisdiction and be in good standing with that jurisdiction's licensing authority.

b. The applicant for licensure by comity from a jurisdiction other than Iowa will satisfy the education and experience requirements as set forth in Iowa Code section 542B.14 and rule 193C—5.1(542B) for licensure by examination.

c. The applicant needs to successfully complete the Fundamentals of Land Surveying examination.

d. The applicant needs to successfully complete the Principles and Practice of Land Surveying examination.

While the board will consider evidence presented by a comity applicant on non-NCEES examinations successfully completed in a foreign country, the non-NCEES examination will be compared with the appropriate NCEES examination. A non-NCEES professional examination, for instance, must be designed to determine whether a candidate is minimally competent to practice professional land surveying. The examination must be written, objectively graded, verifiable, and developed and validated in accordance with the testing standards of the American Psychological Association or equivalent testing standards. Free-form essays and oral interviews are not equal or superior to NCEES examinations for reasons including the subjective nature of such procedures, lack of verifiable grading standards, and heightened risk of inconsistent treatment.

e. The applicant must successfully complete an Iowa State Specific Land Surveying examination administered by the board.

5.2(3) Substantial equivalency. Pursuant to Iowa Code section 546.10(8), the board may grant a comity application for licensure as a professional land surveyor if the board concludes that the applicant has met or exceeded all requirements for licensure applicable to initial applicants in Iowa, other than the sequence in which experience must be attained.

[ARC 7668C, IAB 3/6/24, effective 4/10/24]

193C—5.3(542B,272C) Licensure by verification. In addition to the requirements of rule 193—14.4(272C), professional land surveying candidates applying for an Iowa license by verification must pass the Iowa State Specific Land Surveying examination prior to being issued a license. The board will issue a temporary license that is valid for a period of three months to professional land surveying candidates who have not yet passed the Iowa State Specific Land Surveying examination prior to their application. The professional land surveying candidate may request one renewal of the temporary license for an additional period of three months.

This rule is intended to implement Iowa Code section 272C.12.

[ARC 7668C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15 and 542B.20.

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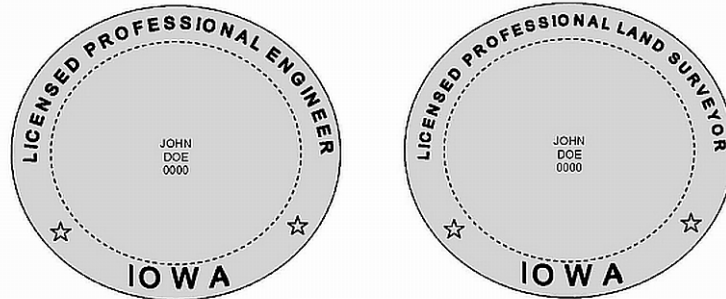
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CHAPTER 6
SEAL AND CERTIFICATE OF RESPONSIBILITY
[Prior to 11/14/01, see 193C—1.30(542B)]

193C—6.1(542B) Seal and certificate of responsibility.

6.1(1) The seal, under Iowa Code section 542B.16, should substantially conform to the samples shown below:



6.1(2) The word “licensed” may be added but is not required on the seal. Neither the word “registrant” nor “registered” may be used on the seal.

6.1(3) The certification block, under Iowa Code section 542B.16(2), on engineering or land surveying documents submitted to a client or any public agency, hereinafter referred to as the official copy (or official copies), appears on the first page or attached cover sheet. A certification block should be provided for the licensee in responsible charge and for each professional consultant contributing to the submission. In lieu of each contributing professional consultant providing a certification block on the front page or attached cover sheet for application of a seal, a table shall be provided that identifies the contributing professionals and where their respective certification blocks can be found within the document. The seal and original signature only need to be applied to a final submission. Each official copy (or official copies) of a submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the submission. Each certification block shall display the seal of the licensee and designate the portion of the submission for which that licensee is responsible, so that responsibility for the entire submission is clearly established by the combination of the stated seal responsibilities. Any nonfinal submission of an engineering or land surveying document to a client or public agency shall be clearly labeled “preliminary” or “draft.”

The engineering certification block shall conform to the wording in the sample shown below:

SEAL	I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa.
	_____ (signature) (date)
	Printed or typed name
	License number _____
	My license renewal date is December 31, _____.
	Pages or sheets covered by this seal: _____ _____ _____

The land surveying certification block shall conform to the wording in the sample shown below. For maps or acquisition plats prepared from public records or previous measurements by others, the following land surveying certification block may be modified by removing the phrase “and the related survey work was performed.”

SEAL	I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Professional Land Surveyor under the laws of the State of Iowa.
	_____ (signature) (date)
	Printed or typed name
	License number _____
	My license renewal date is December 31, _____.
	Pages or sheets covered by this seal: _____ _____ _____

6.1(4) Except for the original signature and handwritten date in contrasting ink color, the information requested in each certification block must be typed or legibly printed in permanent ink on each official copy. The seal implies responsibility for the entire submission unless the area of responsibility is clearly identified in the information accompanying the seal.

6.1(5) It is the responsibility of the licensee to forward copies of all revisions to the submission, which then become a part of the official copy of the submission. Such revisions shall be identified as applicable on a certification block or blocks with professional seals applied so as to clearly establish professional responsibility for the revisions.

6.1(6) The licensee is responsible for the custody and proper use of the seal. Improper use of the seal is grounds for disciplinary action.

6.1(7) Computer-generated seals may be used on final original documents.

6.1(8) Secure electronic signature. An electronic signature as defined in or governed by Iowa Code chapter 554D meets the signature requirements of this rule if it is protected by a security procedure, as defined in Iowa Code section 554D.103(14), such as digital signature technology. It is the licensee's responsibility to ensure, prior to affixing an electronic signature to an engineering or land surveying document, that security procedures are adequate to (1) verify the signature is that of a specific person and (2) detect any changes that may be made or attempted after the signature of the specific person is affixed.

This rule is intended to implement Iowa Code sections 542B.13, 542B.15, 542B.20 and 542B.30.
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CHAPTER 7
PROFESSIONAL DEVELOPMENT

[Prior to 11/14/01, see 193C—Chapter 3]

193C—7.1(542B,272C) General statement. Completion of continuing education for professional development is a condition of licensure renewal for each licensee.
[ARC 7670C, IAB 3/6/24, effective 4/10/24]

193C—7.2(542B,272C) Definitions. As used in these rules, the following definitions apply:

“*College or unit semester or quarter hour*” means the unit of credit given for advanced technical and graduate courses from universities with programs accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, Inc. or other related college course qualified in accordance with this chapter.

“*Continuing education*” means education obtained by a licensee in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.

“*Continuing education unit (CEU)*” means the unit of credit customarily granted for continuing education courses. One continuing education unit is given for ten hours of class in an approved continuing education course.

“*Course or activity*” means any qualifying course or activity with a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee’s field of practice.

“*Independent study*” means any course or activity in which there is no real-time interaction between the training provider and the licensee, such as courses offered on the Internet.

“*Professional development hour*” or “*PDH*” means a contact hour of instruction or presentation and is the common denominator for other units of credit.

[ARC 7670C, IAB 3/6/24, effective 4/10/24]

193C—7.3(542B,272C) Professional development hours.

7.3(1) Allowable activities. Licensees may earn professional development hours by participating in a variety of activities. The following is a list of allowable activities and is not all-inclusive:

- a. Successful completion of college courses;
- b. Successful completion of continuing education courses;
- c. Successful completion of correspondence, televised, videotaped, and other short courses or tutorials;
- d. Successful completion of courses online via the Internet;
- e. Active participation in seminars, in-house courses, workshops, technical committees of professional engineering organizations, and professional conventions;
- f. Teaching or instructing in the activities set forth above if such teaching or instruction is outside of the licensee’s regular employment duties and if the licensee can document that such teaching activity or instruction was newly developed and presented for the first time;
- g. Authoring published papers, articles or books;
- h. Obtaining patents;
- i. Attendance at online video courses;
- j. Participation on an NCEES examination development committee;
- k. Attendance at engineering college graduate research seminars.

All of the allowable activities listed above must adhere to this chapter to be accepted by the board.

7.3(2) PDH conversion. The following chart illustrates the conversion from other units to PDH:

ACTIVITY	PDH
1 College or unit semester hour. Credit for qualifying college or community college courses will be based upon course credit established by the college.	45 PDH per semester hour
1 College or unit quarter hour. Credit for qualifying college or community college courses will be based upon course credit established by the college.	30 PDH per quarter hour
1 Continuing education unit as defined in rule 193C—7.2(542B,272C).	10 PDH
1 Contact hour attendance in a class, course, seminar, or professional or technical presentation made at a meeting, in-house training session, convention or conference. Credit for qualifying seminars and workshops will be based on 1 PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional or technical society meetings will earn PDH units for the actual time of each program, excluding time for breaks and meals.	1 PDH per hour
1 Contact hour teaching a class, course, seminar, or a professional or technical presentation. a. Teaching credit is valid for teaching a course or seminar for the first time only. b. Teaching credit does not apply to full-time faculty. c. Teaching credit is limited to 10 PDH per biennial renewal period.	2 PDH per hour
Each published paper, article, or book. Credit for published material is earned in the biennium of publication.	10 PDH per publication
Active participation in a professional or technical society. Credit for active participation in professional and technical societies is limited to 2 PDH per renewal period per organization and requires that a licensee serve as an officer or actively participate in a committee of the organization. PDH credits are earned for a minimum of one year's service.	2 PDH per organization per renewal period
Each patent. Credit for patents is earned in the biennium the patent is issued.	10 PDH per patent
Participation on an NCEES examination development committee or Iowa State Specific Land Surveying examination development committee, including the writing and grading of examination questions, writing reference materials for examinations, and evaluating past examination question performance. Licensees may claim a maximum of 30 PDH per biennial renewal period for participation in this activity.	2 PDH per hour of committee participation

7.3(3) Determination of credit. The board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit. No preapproval of offerings will be issued. The board may deny any renewal or reinstatement upon a determination of insufficient or unsatisfactory continuing education.

[ARC 7670C, IAB 3/6/24, effective 4/10/24]

193C—7.4(542B,272C) Professional development guidelines. Continuing education activities that satisfy the professional development criteria are those that relate to engineering or land surveying practice or management. It is recognized that an engineer's specialized skills must have as their foundation a fundamental knowledge of chemistry, physics, mathematics, graphics, computations, communication, and humanities and social sciences. However, continuing education in the fundamentals alone will not be sufficient to maintain, improve, or expand engineering skills and knowledge. For that reason, licensees will be limited in their use of fundamental courses in proportion to ABET criteria for accreditation of engineering curricula. Continuing education activities are classified as:

7.4(1) Group 1 activities. Group 1 activities are intended to maintain, improve, or expand skills and knowledge obtained prior to initial licensure. The following chart illustrates the maximum PDH allowable per renewal period for Group 1 activities:

Type of course/activity	Number of PDH allowed per renewal period
Mathematics and basic sciences Math beyond Trigonometry Basic sciences: Chemistry, Physics, Life sciences, Earth sciences	10 PDH
Engineering sciences Mechanics, Thermodynamics, Electrical and electrical circuits, Materials science, *Computer science *Courses in computer science will generally be considered a part of the Engineering Sciences category in the ABET criterion and, therefore, limited to a maximum of 10 PDH per renewal period.	10 PDH
Humanities and social sciences Philosophy, Religion, History, Literature, Fine arts, Sociology, Psychology, Political science, Anthropology, Economics, Foreign languages, Professional ethics, Social responsibility	5 PDH
Engineering-related courses Accounting, Industrial management, Finance, Personnel administration, Engineering economy, English, Speech, *Computer applications *The computer is considered a tool available to engineers and land surveyors. Courses related to computer drafting and general computer applications are generally not applicable to either Group 1 or Group 2 activities. Computer courses that relate to engineering or land surveying design applications, such as structural design/analysis software, are considered acceptable.	10 PDH

7.4(2) Group 2 activities. Group 2 activities are intended to develop new and relevant skills and knowledge. Credit for participation in activities in the group is unlimited, subject to maximum carryover. Typical areas include postgraduate level engineering science or design, new technology, environmental regulation and courses in management of engineering or land surveying activity (regular work duties do not qualify).

7.4(3) Independent study. To be readily acceptable by the board, independent study as defined in rule 193C—7.2(542B,272C) meets all of the following criteria:

- a. A written evaluation process is completed by the independent study provider; and
- b. A certificate of satisfactory completion is issued by the provider; and
- c. An evaluation assessment is issued to the licensee by the provider; and
- d. Documentation supporting such independent studies is maintained by the licensee and provided to the board as required by subrule 7.8(2).

A maximum of ten professional development hours of independent study activity will be allowed per biennium per licensee.

7.4(4) Exclusions. Types of continuing education activities that will be excluded from allowable continuing education are those in which it is not evident that the activity relates directly to the licensee's practice of professional engineering or land surveying or the management of the business concerns of the licensee's practice, or that do not comply with the board's administrative rules. Examples of activities that do not qualify as continuing education include the following:

- a. Regular employment;
- b. Toastmasters club meetings;
- c. Service club meetings or activities;
- d. Personal estate planning;
- e. Banquet speeches unrelated to engineering;
- f. Professional society business meeting portions of technical seminars;
- g. Financial planning/investment seminars;
- h. Foreign travel not related to engineering study abroad;
- i. Personal self-improvement courses;
- j. Real estate licensing courses;
- k. Stress management;
- l. Trade shows;
- m. Peer review;

- n. Accreditation review;
 - o. Independent study or self-study that does not meet the requirements of subrule 7.4(3);
 - p. Basic CAD and fundamental computer application courses;
 - q. Undergraduate engineering seminars.
- [ARC 7670C, IAB 3/6/24, effective 4/10/24]

193C—7.5(542B,272C) Biennial requirement. The biennial requirement may only be satisfied during the biennium prior to licensure renewal except for the carryover permitted.

7.5(1) Completion of 30 professional development hours, including at least 2 professional development hours in the area of professional ethics, satisfies the continuing education necessary for biennial licensure renewal in engineering or land surveying. Completion of 40 professional development hours, including 20 professional development hours in engineering and 20 professional development hours in land surveying and at least 4 professional development hours in the area of professional ethics, satisfies the continuing education necessary for biennial licensure renewal for individuals actively licensed in both engineering and land surveying. Up to 15 professional development hours may be carried forward only into the next biennium. For individuals actively licensed in both engineering and land surveying, up to 10 professional development hours for each profession may be carried forward only into the next biennium.

7.5(2) Inactive licensees are exempt from the continuing education requirements.

7.5(3) A licensee who is active in one profession and inactive in another is obligated to meet the continuing education requirements for licensure in the profession in which active licensure is maintained.

7.5(4) A new licensee is obligated to satisfy one-half of the biennial continuing education requirement at the first renewal following initial licensure. Professional engineers and professional land surveyors licensed by comity are not new licensees and are not eligible for the one-half continuing education requirement.

[ARC 7670C, IAB 3/6/24, effective 4/10/24]

193C—7.6(542B,272C) Exemptions.

7.6(1) The continuing education requirements may be reduced in proportion to the following:

- a. Periods of time that the licensee serves honorably on active duty in the military services;
- b. Periods of time that the licensee is licensed in and a resident of another state or district having continuing education requirements for professional engineering or land surveying and meets all requirements of that state or district for practice therein;
- c. Periods of time that the licensee is a government employee working as a professional engineer or professional land surveyor and assigned to duty outside the United States; or
- d. Documented periods of the licensee's active practice and absence from the United States that are approved by the board.

7.6(2) No exemption will be granted without a written request from the licensee with documentation of the period of absence.

[ARC 7670C, IAB 3/6/24, effective 4/10/24]

193C—7.7(542B,272C) Hardships or extenuating circumstances. Upon a written request to the board, the board may, in individual cases involving hardship or extenuating circumstances, grant waivers of the continuing education requirements for a period of time not to exceed one year.

[ARC 7670C, IAB 3/6/24, effective 4/10/24]

193C—7.8(542B,272C) Reports, records, and compliance review. At the time of application for license renewal, each licensee reports, on a form provided by the board, the number of professional development hours achieved during the preceding biennium.

7.8(1) Recordkeeping. Maintaining records to be used to support professional development hours claimed is the responsibility of the licensee. It is recommended that each licensee keep a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name,

and PDH credits earned. The licensee is obligated to maintain documentation of reported PDHs for two years after the period for which the form was submitted.

7.8(2) Compliance review. The board may select licensees for review of compliance with continuing education on a random basis or upon receiving information regarding noncompliance and will review compliance with continuing education for reinstatement of lapsed or inactive licenses. Each licensed board member is audited for PDH compliance for a biennium that is within each member's respective three-year appointment term. For each PDH claimed, licensees chosen for compliance review will furnish:

- a. Proof of attendance. Attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance;
- b. Verification of the hours claimed; and
- c. Information about the course content.

7.8(3) Compliance review sanctions. Any discrepancy between the number of PDHs reported and the number of PDHs actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any PDH, or the licensee has failed to complete the required PDHs, the licensee has 60 days from board notice to either provide further evidence of having completed the PDHs disallowed or remedy the discrepancy by completing the required number of PDHs (provided that such PDHs are not used again for the next renewal). Extension of time may be granted on an individual basis if requested by the licensee within 30 days of notification by the board. If the licensee fails to comply with the requirements of this subrule, the licensee may be subject to disciplinary action. If the board finds, after proper notice and hearing, that the licensee willfully disregarded these requirements or falsified documentation of required PDHs, the licensee may be subject to disciplinary action as further identified in 193C—paragraphs 9.3(1) “c” and 9.3(3) “e.”

7.8(4) Out-of-state residents. A person licensed to practice engineering or land surveying or both in Iowa shall be deemed to have complied with the continuing education requirement of this state during the periods that the person is a resident of another state or district that has a continuing education requirement for engineers or land surveyors and the individual meets all requirements of that state or district for practice therein. However, if selected for compliance review, such individuals must provide documentation as specified in subrule 7.8(2).

[ARC 7670C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 272C.2, 272C.3, 542B.6, and 542B.18.

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CHAPTER 8
PROFESSIONAL CONDUCT OF LICENSEES

[Prior to 11/14/01, see 193C—Chapter 4]

193C—8.1(542B) General statement. In order to establish and maintain a high standard of integrity, skills and practice in the professions of engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following code of professional conduct is binding upon every person holding a certificate of licensure as a professional engineer or professional land surveyor in this state. The code of professional conduct is an exercise of the police power vested in the board by the Acts of the legislature.

[ARC 7671C, IAB 3/6/24, effective 4/10/24]

193C—8.2(542B) Code of professional conduct. All persons licensed under Iowa Code chapter 542B are charged with having knowledge of the existence of this code of professional conduct and are expected to be familiar with its provisions, to understand them, and to abide by them. Such knowledge includes the understanding that the practices of engineering and land surveying are a privilege, as opposed to a right, and the licensee shall be forthright and candid in statements or written response to the board or its representatives on matters pertaining to professional conduct.

8.2(1) Responsibility to the public. Licensees will conduct their professional practices in a manner that will protect life, health and property and enhance the public welfare. If their professional judgment is overruled under circumstances where safety, health and welfare of the public are endangered, they shall inform their employer or client of the possible consequences, notify such other proper authority as may be appropriate, and withdraw from further services on the project.

Licensees may neither approve nor certify engineering or land surveying documents that may be harmful to the public health and welfare and that are not in conformity with accepted engineering or land surveying standards.

8.2(2) Competency for assignments. Licensees may perform engineering or land surveying assignments only when qualified by education or experience in the specific technical field of professional engineering or professional land surveying involved. Licensees shall engage experts or advise that experts and specialists be engaged whenever the client's or employer's interests are best served by such service.

Licensees may accept an assignment on a project requiring education or experience outside their field of competence, but only to the extent that their services are restricted to those phases of the project in which they are qualified.

8.2(3) Truth in reports and testimony. Licensees, when serving as expert or technical witnesses before any court, commission, or other tribunal, may express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of their testimony. Under these circumstances, the licensee must disclose inadequate knowledge.

Licensees shall be objective and truthful in all professional reports, statements or testimony. All relevant and pertinent information shall be included in such reports, statements or testimony. Licensees shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.

8.2(4) Conflict of interest. Licensees shall:

a. Not issue statements, criticisms or arguments on engineering or land surveying matters connected with public policy that are influenced or paid for by an interested party, or parties, unless they have prefaced their comments by explicitly identifying themselves, by disclosing the identities of the party or parties on whose behalf they are speaking, and by revealing the existence of any pecuniary interest.

b. Avoid all known conflicts of interest with their employers or clients and, when unforeseen conflicts arise, shall promptly inform their employers or clients of any business association, interest, or circumstances that could influence judgment or the quality of services.

c. Not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

d. Act in professional matters for each employer or client as faithful agents or trustees and maintain full confidentiality on all matters in which the welfare of the public is not endangered.

8.2(5) Ethics. Licensees shall conduct their business and professional practices of engineering and land surveying in an ethical manner. In addition to the provisions of this chapter, the board will consider, although not necessarily be bound by, the ethical standards that address public protection issues adopted by a recognized state or national engineering or land surveying organization, such as the National Society of Professional Engineers or the National Society of Professional Surveyors.

8.2(6) Unethical or illegal conduct.

a. *Business practices.* Licensees shall not:

(1) Pay or offer to pay, either directly or indirectly, any commission, percentage, brokerage fee, political contribution, gift, or other consideration to secure work, except to a bona fide employee or bona fide, established commercial or marketing agency retained by them or to secure positions through employment agencies.

(2) Engage in any discriminatory practice prohibited by law and shall, in the conduct of their business, employ personnel upon the basis of merit.

(3) Solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.

(4) Solicit or accept an engineering or land surveying contract from a governmental body when a principal or officer of the licensee's organization serves as an elected, appointed, voting or nonvoting member of the same governmental body that is letting the contract. For purposes of this subparagraph, "governmental body" means a board, council, commission, or similar multimembered body. A licensee would not violate this provision, however, if the principal or officer of the licensee's organization who serves as a member of the governmental body plays no role in the solicitation or acceptance of the contract, and the contract would be legally permissible under applicable Iowa law, including but not limited to Iowa Code sections 68B.3, 279.7A, 331.342, and 362.5.

(5) Associate with, or permit the use of their names or firms in a business venture by, any person or firm that they know, or have reason to believe, is engaging in business or professional practice of a fraudulent or dishonest nature.

(6) Misrepresent pertinent facts concerning employers, employees, associates, firms, joint ventures, or past accomplishments in brochures or other presentations incident to the solicitation of employment.

b. *Individual professional conduct.* Licensees shall not:

(1) Use association with nonengineers, corporations or partnerships as "cloaks" for unethical acts.

(2) Violate any local, state or federal criminal law in the conduct of professional practice.

(3) Violate licensure laws of any state or territory.

(4) Affix their signatures or seals to any plans, plats or documents dealing with subject matter in which those licensees lack competence, nor to any plan, plat or document not prepared under their direct personal direction and control.

(5) Falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments.

c. *Real property inspection reports.* Licensees shall not:

(1) Represent themselves as licensed professional land surveyors or professional engineers on real property inspection reports (e.g., mortgage surveys).

(2) Place their firm names, logos, or title blocks on real property inspection reports (e.g., mortgage surveys).

[ARC 7671C, IAB 3/6/24, effective 4/10/24]

193C—8.3(542B) Reporting of acts or omissions. Licensees shall report acts or omissions by a licensee that constitute negligence or carelessness. For the purposes of these rules, "negligence or carelessness"

means demonstrating unreasonable lack of skill in the performance of engineering or land surveying services by failure of a licensee to maintain a reasonable standard of care in the licensee's practice of engineering or land surveying. In the evaluation of reported acts or omissions, the board determines if the engineer or land surveyor has applied learning, skill and ability in a manner consistent with the standards of the professions ordinarily possessed and practiced in the same profession at the same time. Standards referred to in the immediately preceding sentence shall include any minimum standards adopted by this board and any standards adopted by recognized national or state engineering or land surveying organizations.

[ARC 7671C, IAB 3/6/24, effective 4/10/24]

193C—8.4(542B) Standards of integrity. Licensees shall:

1. Answer all questions of a duly constituted investigative body of the state of Iowa concerning alleged violations by another person or firm.
2. Admit and accept their own errors and not distort or alter the facts to justify their own decisions when proven wrong.
3. Present information to the engineering and land surveying examining board in writing and cooperate with the board in furnishing further information or assistance required by the board, if a licensee knows or has reason to believe that another person or firm may be in violation of Iowa law or rules regarding ethics or conduct of professional engineering or professional land surveying practice.
4. Licensees cannot assist in the application of an individual they know is unqualified for licensure by reason of education, experience or character.

[ARC 7671C, IAB 3/6/24, effective 4/10/24]

193C—8.5(542B) Engineering and land surveying services offered by business entities.

8.5(1) Purpose of rule. The purpose of this rule is to protect the public from misleading or deceptive advertising by business entities that hold themselves out to the public as providing professional engineering or professional land surveying services and to guard against the unlicensed practice of professional engineering or professional land surveying by persons who are not properly licensed to perform such services in the state of Iowa. This rule shall not be construed as restricting truthful advertising by business entities that appropriately place professional engineers or professional land surveyors in responsible charge of the professional services offered to and performed for the public.

8.5(2) Definitions. For purposes of this rule, the following definitions apply:

"Business entity" includes corporations, partnerships, limited liability companies, persons using fictitious or assumed names, or any other form of entity that may conduct business.

"In responsible charge" means the same as defined in Iowa Code section 542B.2(6). Indications of being in responsible charge include:

1. Obtaining or setting the project or service parameters or criteria.
2. Dictating the manner and methods by which professional services are performed.
3. Establishing procedures for quality control and authority over professional services in a manner that ensures that the professional licensee is in control of the work and of all individuals performing the work under the licensee's supervision.
4. Spending sufficient time directly performing the work or directly supervising the work to ensure that the licensee is familiar with all significant details of the work.
5. Maintaining familiarity with the capabilities and methods of the persons performing professional services, and providing adequate training for all persons working under the licensee's direct supervision.
6. Sustaining readily accessible contact with all persons performing professional services by direct physical proximity, or as appropriate in the licensee's professional judgment, by frequent communication, in clear and complete verbal and visual form, of information about the work being performed.
7. Specifically pertaining to land surveying, reviewing all field evidence and making all final decisions concerning the placement of survey monuments and surveyed lines.

“*Professional services*” includes professional engineering and professional land surveying services, as defined in Iowa Code sections 542B.2(5), 542B.2(8) and 542B.27, as applicable to the fact situation at issue.

8.5(3) *General rule.* Business entities offering professional services to the public must be owned, managed, or appropriately staffed by one or more professional engineers or professional land surveyors, as applicable, who are in responsible charge of all professional services offered and performed.

8.5(4) *Appropriate staffing.* The nature and extent of appropriate staffing by licensed professionals is necessarily a fact-based determination dependent on such factors as the nature and volume of professional services offered and performed, the risk of unlicensed practice, the impact of the professional services on the life, health and safety of the public and the public’s property, and the representations made to the public. While the legal nature of the business entity’s relationship (e.g., owner, manager, employee) with a licensed professional engineer or professional land surveyor is not necessarily determinative, licensed professionals must be in responsible charge of all professional services offered and performed.

8.5(5) *Professional engineering or professional land surveying firms.* Business entities holding themselves out to the public as professional engineering or professional land surveying firms cannot satisfy the requirements of this rule solely by retaining, through employment or contract, a licensed professional on an as-needed, occasional or consulting basis. Such an arrangement fosters unlicensed practice by the unlicensed owners or managers who place themselves in charge of determining when a licensed professional is needed. When a business entity conveys to the public that it is organized as a firm of licensed professionals, the public has a right to expect that the firm retains the full-time services of one or more licensed professionals. “Full-time” in this context is not measured by hours, but by a licensee’s sustained, meaningful, and effective, direct supervision of all professional services performed, whether the firm performs services, for example, 20 hours per month or 80 hours per week.

8.5(6) *Restricted services.* Business entities that do not generally hold themselves out to the public as professional engineering or professional land surveying firms, but that do offer some type of professional engineering or professional land surveying service, shall be appropriately staffed by licensed professionals in a manner that:

- a. Corresponds with the representations made to the public.
- b. Places licensed professionals in responsible charge of all professional services performed.
- c. Guards against the unlicensed practice of professional engineering or professional land surveying.

8.5(7) *Permitted practices.*

a. Nothing in this rule is intended to prevent an individual or business entity from truthfully offering services as a project manager, administrator, or coordinator of a multidisciplinary project.

b. Nothing in this rule prevents a joint venture arrangement between an engineering or land surveying firm and a business entity that is not owned, managed, or staffed by professional engineers or professional land surveyors, in which the venturing entities jointly and truthfully offer professional engineering or professional land surveying services on a project-by-project basis. Licensed professional engineers and professional land surveyors who participate in such arrangements shall ensure that the public is accurately informed as to the nature of all professional services to be performed and by whom the services will be performed.

8.5(8) *Remedies against licensees.* Licensed professional engineers or professional land surveyors who aid and abet the unlicensed offering or practice of professional engineering or professional land surveying, or who otherwise knowingly participate in a business entity that does not comply with this rule, are engaging in unethical practices that are harmful or detrimental to the public and are subject to disciplinary action by the board.

8.5(9) *Remedies against business entities and unlicensed individuals.* The board may by order impose civil penalties against any business entity or unlicensed individual that offers or performs professional services in violation of Iowa Code chapter 542B.

[ARC 7671C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 542B.6, 542B.21 and 542B.26 and chapter 272C.

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CHAPTER 9
COMPLAINTS, INVESTIGATIONS AND DISCIPLINARY ACTION

[Prior to 11/14/01, see 193C—Chapter 4]

193C—9.1(542B) Complaints and investigations.

9.1(1) *Complaints.* The board, upon receipt of a complaint or upon its own motion pursuant to other evidence received by the board, reviews and investigates alleged acts or omissions that reasonably constitute cause under applicable law or administrative rule for licensee discipline. Complaints may be submitted to the board office via the board's website by members of the public, including clients, business organizations, nonprofit organizations, governmental bodies, licensees, or other individuals or entities with knowledge of possible violations of laws or rules by licensees.

9.1(2) *Form and content.* A written complaint may be submitted on forms available from the board office and on the board's website. The written complaint shall include the following information:

- a. The full name, address, and telephone number of complainant.
- b. The full name, address, and telephone number of the individual against whom the complaint is filed.
- c. A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions that the complainant believes demonstrate that the respondent has violated or is violating laws or rules enforced by the board.
- d. Citation of the statutes and administrative rules allegedly violated by the respondent.
- e. Evidentiary supporting documentation.
- f. Steps, if any, that have been taken by the complainant to resolve the dispute with the respondent prior to the filing of the complaint.

9.1(3) *Initial complaint screening.* All written complaints received by the board are initially screened by the board's administrator to determine whether the allegations of the complaint fall within the board's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for disciplinary action against a licensee. Complaints that are clearly outside the board's jurisdiction, which clearly do not allege facts upon which disciplinary action would be based, or that are frivolous will be referred by the board administrator to the board for closure at the next scheduled board meeting. All other complaints are referred by the board administrator to the board's disciplinary committee for committee review.

9.1(4) *Investigation of allegations.* In order to determine if probable cause exists for a hearing on the complaint, the board may cause an investigation to be made into the allegations of the complaint. It may refer the complaint to a peer review committee or investigator for investigation, review and report to the board.

9.1(5) *Informal discussion.* If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The licensee may be represented by legal counsel at the informal discussion. It is not necessary for the licensee to attend the informal discussion. By electing to attend, the licensee waives the right to seek disqualification, based upon personal investigation of a board member or staff, from participating in making a contested case decision or acting as a presiding officer in a later contested case proceeding. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges will be filed simultaneously with the consent order.

9.1(6) *Immunity.* Complainants are immune from civil liability under Iowa Code section 272C.8.

9.1(7) *Role of complainant.* The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding that the board may initiate based in whole or in part on information provided by the complainant.

9.1(8) *Role of the board.* The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

[ARC 7672C, IAB 3/6/24, effective 4/10/24]

193C—9.2(542B) Ruling on the initial inquiry.

9.2(1) *Dismissal.* If a determination is made by the board that a complaint is without grounds or merit, the complaint will be dismissed. A letter of explanation concerning the decision of the board will be sent to the respondent and the complainant.

9.2(2) *Requirement of further inquiry.* If determination is made by the board to order further inquiry, the complaint and initial recommendations will be provided to the investigator(s) along with a statement specifying the information deemed necessary.

9.2(3) *Acceptance of the case.* If a determination is made by the board to initiate disciplinary action, the board may enter into an informal settlement or recommend formal disciplinary proceedings. The board's rules regarding informal settlement are found in rule 193—7.4(17A,272C).

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.
[ARC 7672C, IAB 3/6/24, effective 4/10/24]

193C—9.3(10A,17A,272C,542B) Grounds for discipline. The board has authority pursuant to Iowa Code chapters 10A, 542B, 17A and 272C to impose discipline for violations of those chapters and the rules promulgated thereunder and may initiate disciplinary action against a licensee holding an active, inactive or lapsed license on any of the grounds identified in Iowa Code section 542B.21.

9.3(1) Fraud or deceit in procuring or attempting to procure an initial, comity, renewal, or reinstated license includes any intentional perversion of or reckless disregard for the truth when an application, or information in support of another's application, is submitted to the board, including:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed.

b. Attempting to file or filing with the board any false or forged record or document, such as a college transcript, diploma or degree, examination report, verification of licensure, or continuing education certificate.

c. Reporting information, such as satisfaction of continuing education, in a false manner, through overt deceit, or with reckless disregard for the truth or accuracy of the information asserted.

d. Otherwise participating in any form of fraud or misrepresentation by act or omission.

9.3(2) Professional incompetence includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the practice of engineering or land surveying.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care that is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimum standards of acceptable and prevailing practice of engineering or land surveying in this state, including the land surveying standards set forth in Iowa Code chapters 354 and 355 and 193C—Chapters 11 and 12.

e. Engaging in engineering or land surveying practices that are outside the technical competence of the licensee without taking reasonable steps to associate with a competent licensee or other steps to ensure competent practice.

f. Any other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest, including acts or omissions described in rule 193C—8.3(542B).

9.3(3) Deceptive practices include, but are not limited to, the following:

- a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of engineering or land surveying.
- b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public that is false, deceptive, misleading or promoted through fraud or misrepresentation.
- c. Acceptance of any fee by fraud or misrepresentation.
- d. Falsification of business or client records.
- e. Submission of false or misleading reports or information to the board, including information supplied in an audit of continuing education or as a condition of probation or in a reference submitted for an examination or a license applicant or in any reports identified in this rule or rule 193C—8.3(542B).
- f. Knowingly presenting as one's own the license, signature, or seal of another or of a fictitious licensee, or otherwise falsely impersonating a person holding an engineering or land surveying license.
- g. Representing oneself as a professional engineer or professional land surveyor after the license has been suspended, revoked, surrendered, or placed on inactive status or has lapsed.
- h. Fraud in representations as to skill or ability.
- i. Any violation of Iowa Code section 542B.16 or associated rules in 193C—Chapter 6 involving a licensee's seal or certificate.

9.3(4) Behaviors and conduct that are unethical or harmful or detrimental to the public include, but are not limited to, the following actions:

- a. A violation of the code of professional conduct in 193C—Chapter 8.
- b. Verbal or physical abuse, or improper sexual contact, if such behavior occurs within the practice of engineering or land surveying or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior could occur within such practice and, if so, would place the public at risk.
- c. Aiding or abetting a violation of a provision of Iowa Code section 542B.27(1).

9.3(5) Lack of proper qualifications, as provided in Iowa Code section 272C.3(2) "b," includes but is not limited to:

- a. Continuing to practice as an engineer or land surveyor without satisfying the continuing education required for license renewal.
- b. Violation of Iowa Code section 542B.21(4) that adversely affects the licensee's ability to practice in a safe and competent manner.

9.3(6) Professional misconduct, which includes, but is not limited to, revocation, suspension, or other disciplinary action taken against a licensee by a licensing authority of this state or another state, territory, or country. "Disciplinary action" includes a voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding. A stay by an appellate court does not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated. A licensee shall notify the board of such disciplinary action within 30 days of the disciplinary action.

9.3(7) Willful or repeated violations include the willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 542B or any administrative rule adopted by the board in the administration or enforcement of such chapters.

9.3(8) Conviction of felony includes the conviction of a felony under the laws of the United States, of any state or possession of the United States, or of any other country. The board will vacate any discipline based solely on a conviction, if that conviction is overturned or reversed by a court of last resort.

[ARC 7672C, IAB 3/6/24, effective 4/10/24]

193C—9.4(542B) Disciplinary findings and sanctions. The board's decision may include one or more of the following findings or sanctions:

1. Exoneration of respondent.
2. Revocation of license.
3. Suspension of license until further order of the board or for a specified period.
4. Nonrenewal of license.

5. Prohibition, until further order of the board or for a specific period, of engaging in specified procedures, methods or acts.
6. Probation.
7. Requirement of additional education or training.
8. Requirement of reexamination.
9. Issuance of a reprimand.
10. Imposition of civil penalties.
11. Issuance of citation and warning.
12. Desk review.
13. Other sanctions allowed by law as may be appropriate.

[ARC 7672C, IAB 3/6/24, effective 4/10/24]

193C—9.5(272C) Civil penalties. In addition to other disciplinary options, the board may assess civil penalties of up to \$1,000 per violation against licensees who violate any provision of rule 193C—9.3(10A,17A,272C,542B). Factors the board may consider when determining whether and in what amount to assess civil penalties include:

1. Whether other forms of discipline are being imposed for the same violation.
2. Whether the amount imposed will be a substantial economic deterrent to the violation.
3. The circumstances leading to the violation.
4. The severity of the violation and the risk of harm to the public.
5. The economic benefits gained by the licensee as a result of the violation.
6. The interest of the public.
7. Evidence of reform or remedial action.
8. Time elapsed since the violation occurred.
9. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.
10. The clarity of the issue involved.
11. Whether the violation was willful and intentional.
12. Whether the licensee acted in bad faith.
13. The extent to which the licensee cooperated with the board.
14. Whether the licensee practiced professional engineering or professional land surveying with a lapsed, inactive, suspended or revoked license.

This rule is intended to implement Iowa Code section 542B.22.

[ARC 7672C, IAB 3/6/24, effective 4/10/24]

193C—9.6(542B) Publication of decisions. In addition to publication requirements found at 193—subrule 7.30(3), the following notifications shall be issued:

1. Following suspension of a professional land surveyor's license, notification must be issued to the county recorders and county auditors of the county of residence and immediately adjacent counties in Iowa.
2. Following revocation of a professional land surveyor's license, notification must be mailed to all county auditors in Iowa and the county recorders in the county of residence and immediately adjacent counties in Iowa.
3. Following the suspension or revocation of the license of a professional engineer or professional land surveyor, notification is issued to other boards of examiners for engineers and land surveyors under the jurisdiction of the government of the United States. This notification may be made through the National Council of Examiners for Engineering and Surveying or other national organizations recognized by the board. In addition, if the licensee is known to be registered in another nation in North America, the appropriate board(s) are notified of the action.

[ARC 7672C, IAB 3/6/24, effective 4/10/24]

193C—9.7(542B) Disputes between licensees and clients. Reports from the insurance commissioner or other agencies on the results of judgments or settlements of disputes arising from malpractice claims

or other actions between professional engineers or professional land surveyors and their clients may be referred to counsel or peer review committee. The counsel or peer review committee will investigate the report for violation of the statutes or rules governing the practice or conduct of the licensee. The counsel or peer review committee will advise the board of any probable violations or any further action required or recommend dismissal from further consideration.

[ARC 7672C, IAB 3/6/24, effective 4/10/24]

193C—9.8(272C,542) Confidentiality of complaint and investigative information.

9.8(1) General provisions. All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code section 272C.6(4). Such information shall not be released to any person except as provided in that section.

9.8(2) Disclosure to the subject of the investigation.

a. Legal authority. Pursuant to Iowa Code section 10A.506(9), the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. General rule. As a matter of general policy, the board will not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. Exceptions to general rule. The board may exercise its discretion to release information to a licensee that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee and prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review or investigative report or expert opinions as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including those initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may release information from a peer review or consultant's report when soliciting the licensee's position will aid in making the probable cause determination and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.

[ARC 7672C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapter 17A and sections 542B.2, 542B.22, and 272C.6.

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[Filed ARC 7672C (Notice ARC 7412C, IAB 1/10/24), IAB 3/6/24, effective 4/10/24]

CHAPTER 10
PEER REVIEW

[Prior to 11/14/01, see 193C—4.5(542B)]

193C—10.1(542B,272C) Peer review. The board may appoint a peer reviewer, or multiple peer reviewers, for the investigation of a complaint about the acts or omissions of one or more licensees.

10.1(1) Peer review. Peer reviewers are generally licensed engineers or licensed land surveyors or both, as determined by the board, who are selected for their knowledge and experience in the type of engineering or land surveying involved in the complaint.

An individual is ineligible as a peer reviewer in accordance with the standard for disqualification found at 193—subrule 7.14(1). If a peer reviewer is unable to serve after an investigation has begun, the peer reviewer will notify the board office.

10.1(2) Authority. The peer reviewer's investigation may include activities such as interviewing the complainant, the respondent, individuals with knowledge of the alleged violation, and individuals with knowledge of the respondent's practice in the community; gathering documents; conducting site visits; and performing independent analyses as deemed necessary. Although the board does not become involved in a complaint investigation, the board may give specific instructions to the peer reviewer regarding the scope of the investigation. In the course of the investigation, the peer reviewer will refrain from advising the complainant or respondent on actions that the board might take.

10.1(3) Term of service. The peer reviewer serves at the pleasure of the board. The board may dismiss any peer reviewer or add new peer reviewers at any time.

10.1(4) Compensation. The terms of payment as authorized by the peer review agreement may vary based on the nature and complexity of each assignment. The peer reviewer will be additionally entitled to reimbursement of expenses directly related to the peer review process, deposition or hearing preparation, or deposition or hearing testimony, such as mileage, meals, or out-of-pocket charges for securing copies of documents. Expenses will be reimbursed as allowed under the manuals and guidelines published by the Iowa department of administrative services, state accounting enterprise. The peer reviewer cannot hire legal counsel, investigators, secretarial help or any other assistance without written authorization from the board.

[ARC 7673C, IAB 3/6/24, effective 4/10/24]

193C—10.2(542B,272C) Reports. Each peer reviewer will submit a written report to the board within 90 days of the peer review assignment, unless an extension is granted by the board.

10.2(1) Components of the report. The report will include:

- a. A statement of the charge to the peer reviewer;
- b. A description of the actions taken by the peer reviewer in the peer reviewer's investigation, including but not limited to document review, interviews and site visits;
- c. A summary of the peer reviewer's findings, including:
 - (1) The peer reviewer's opinion as to whether a violation has occurred,
 - (2) Citation of the Iowa Code section(s) and Iowa Administrative Code rule(s) violated, and
 - (3) The peer reviewer's opinion of the seriousness of the violation; and
- d. A recommendation.

In the case of a land surveyor peer reviewer report, the report must be plat-specific as to the violations.

10.2(2) Recommended action. The peer reviewer report will recommend one of the following:

- a. Dismissal of the complaint,
- b. Further investigation, or
- c. Disciplinary proceedings.

If the peer reviewer recommends further investigation or disciplinary proceedings, supporting information must be submitted to the board, including citation of the specific Iowa Code section(s) and Iowa Administrative Code rule(s) violated.

10.2(3) Disciplinary recommendations. When recommending disciplinary proceedings, a peer reviewer will not suggest a particular form of discipline, but may provide guidance on the severity

of the violations that prompted the recommendation and may identify professional areas in which the licensee needs additional education, experience or monitoring in order to safely practice.

[ARC 7673C, IAB 3/6/24, effective 4/10/24]

193C—10.3(542B,272C) Confidentiality. The peer reviewer will not discuss or reveal the peer reviewer's findings and conclusions with any party other than the board (through the peer reviewer's report to the board) or board staff.

[ARC 7673C, IAB 3/6/24, effective 4/10/24]

193C—10.4(542B,272C) Testimony. Peer reviewers may be required to testify in the event of formal disciplinary proceedings.

[ARC 7673C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 272C.3.

[Filed 10/24/01, Notice 8/8/01—published 11/14/01, effective 1/1/02]

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CHAPTER 11
MINIMUM STANDARDS FOR PROPERTY SURVEYS
[Prior to 11/14/01, see 193C—Chapter 2]

193C—11.1(542B) Scope. Each professional land surveyor will comply with the minimum standards for property surveys described by statute or administrative rule. The minimum standards in this chapter apply to all property surveys performed in this state except those done for acquisition plats as described in Iowa Code chapter 354.

[ARC 7674C, IAB 3/6/24, effective 4/10/24]

193C—11.2(542B) Definitions. For the purposes of these rules, the following definitions apply:

“*Plat*” means both a plat of survey and a subdivision plat as those terms are defined in Iowa Code section 355.1.

“*Property survey*” means any land survey performed for the purpose of describing, monumenting, retracing and establishing boundary lines, dividing, subdividing, or platting one or more parcels of land.

“*Retrace*” means following along a previously established line to logical termini.

[ARC 7674C, IAB 3/6/24, effective 4/10/24]

193C—11.3(542B) Boundary location. Every property survey shall be made in accordance with the legal description (record title) boundaries as nearly as is practicable. The surveyor will acquire data necessary to retrace record title boundaries, centerlines, and other boundary line locations. The surveyor will analyze the data and determine the position of the boundaries of the parcel being surveyed. The surveyor will make a field survey, locating and connecting monuments necessary for location of the parcel, and coordinate the facts of such survey with the analysis. The surveyor will set monuments marking the corners of such parcel unless monuments already exist at such corners.

[ARC 7674C, IAB 3/6/24, effective 4/10/24]

193C—11.4(542B) Descriptions. Descriptions defining land boundaries written for conveyance or other purposes shall be complete, providing definite and unequivocal identification of lines or boundaries. The description must contain dimensions sufficient to enable the description to be platted and retraced and describe the land surveyed either by government lot or by quarter-quarter section or by quarter section and identify the section, township, range and county; and by metes and bounds commencing with a corner monumented and established in the U.S. Public Land Survey System; or if such land is located in a recorded subdivision or recorded addition thereto, then by the number or other description of the lot, block or subdivision thereof that has been previously tied to a corner monumented and established by the U.S. Public Land Survey System. If the parcel is described by metes and bounds, it may be referenced to known lot or block corners in recorded subdivision or additions.

[ARC 7674C, IAB 3/6/24, effective 4/10/24]

193C—11.5(542B) Plats. A plat shall be drawn for every property survey performed showing information developed by the survey and including the following elements:

11.5(1) The plat is drawn to a convenient scale that is clearly stated and graphically illustrated by a bar scale on every plat sheet.

11.5(2) The plat shows the length and bearing of the boundaries of the parcels surveyed. Where the boundary lines show bearing, lengths or locations that vary from those recorded in deeds, abutting plats or other instruments, the following note is placed along such lines: “recorded as (show recorded bearing, length or location).”

11.5(3) The plat shows and identifies all monuments necessary for the location of the parcel and indicates whether such monuments were found or placed and includes an accurate description of each monument consisting of size, shape, and material type, capped with license number, and color as applicable.

11.5(4) The plat is captioned to identify the person for whom the survey was made and the date of the survey and describes the parcel as provided in rule 193C—11.4(542B) above.

11.5(5) The plat shows that record title boundaries, centerlines, and other boundary lines were retraced to monuments found or placed by the surveyor.

11.5(6) The plat shows that the survey is tied to a physically monumented land line that is identified by two U.S. Public Land Survey System corners or by two physically monumented corners of a recorded subdivision. The plat shows a distance relationship measured by the surveyor between the two corners on the physically monumented land line. The physically monumented land line shall be germane to the survey of the lot, parcel, or tract.

11.5(7) The plat bears the signature of the professional land surveyor, a statement certifying that the work was performed by the surveyor or under the surveyor's direct personal supervision, the date of signature, and the surveyor's Iowa license number and legible seal as provided in rule 193C—6.1(542B).

11.5(8) The surveyor shall record every plat and description, excluding subdivision plats, with the county recorder no later than 30 days after signature on the plat by the surveyor.

[ARC 7674C, IAB 3/6/24, effective 4/10/24]

193C—11.6(542B) Measurements.

11.6(1) Measurements may only be made with instruments and methods capable of attaining the required accuracy for the particular problem involved.

11.6(2) Measurements as placed on the plat shall be in conformance with the capabilities of the instruments used.

11.6(3) The unadjusted closure for all closed traverse surveys shall be not greater than 1 in 5,000 and, for subdivision boundaries, 1 in 10,000.

11.6(4) In a closed traverse, the sum of the measured angles shall agree with the theoretical sum by a difference not greater than 30 seconds times the square root of the number of angles.

11.6(5) The unadjusted error of field measurements shall not be greater than 1 in 5,000.

11.6(6) The relative positional tolerance at the 95 percent confidence level shall be as follows:

a. For subdivision boundaries: $\pm(0.13 \text{ feet} + 1:10,000)$

b. For all other land surveying: $\pm(0.26 \text{ feet} + 1:5,000)$

11.6(7) Bearings or angles on any property survey plat shall be shown to the nearest one minute; distance shall be shown to the nearest one-tenth foot.

[ARC 7674C, IAB 3/6/24, effective 4/10/24]

193C—11.7(542B) Monuments. Monuments shall adhere to Iowa Code section 355.6. More information can be found in rule 193C—11.3(542B).

[ARC 7674C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 355.3 and 542B.2.

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CHAPTER 12
MINIMUM STANDARDS FOR U.S. PUBLIC LAND SURVEY
CORNER CERTIFICATES
[Prior to 11/14/01, see 193C—2.8(355)]

193C—12.1(542B) General statement. Each professional land surveyor will comply with the minimum standards for preparing a U.S. Public Land Survey Corner Certificate as described by statute or administrative rule. The minimum standards in this chapter apply to every corner certificate prepared in this state.

[ARC 7675C, IAB 3/6/24, effective 4/10/24]

193C—12.2(355) U.S. Public Land Survey Corner Certificate.

12.2(1) A corner is considered a part of the U.S. Public Land Survey System if it has the status of a corner of a:

- a. Quarter-quarter section or larger aliquot part of a section.
- b. Fractional quarter-quarter section or larger fractional part of a section.
- c. Government lot.

12.2(2) A U.S. Public Land Survey Corner Certificate shall be prepared by the surveyor as part of any land surveying that includes the use of a U.S. Public Land Survey System corner if one or more of the following conditions exist:

- a. There is no certificate for the corner monument on file with the recorder of the county in which the corner is located.
- b. The surveyor in responsible charge of the land surveying accepts a corner position that differs from that shown in the public records of the county in which the corner is located.
- c. The corner monument is replaced or modified in any way.
- d. The reference ties in an existing public record are incorrect or missing.

12.2(3) A U.S. Public Land Survey Corner Certificate shall comply with the following requirements:

- a. The identity of the corner monument, with reference to the U.S. Public Land Survey System, shall be clearly indicated.
- b. The certificate contains a narrative explaining:
 - (1) The reason for preparing the certificate.
 - (2) The evidence and detailed procedure used in establishing or confirming the corner position whether found or placed.
 - (3) The monumentation found or placed perpetuating the corner position with an accurate description of each monument including but not limited to size, shape, and material type, capped with license number, and color.
 - (4) The extent of the search for an existing monument when the corner is reset as obliterated or lost.
- c. The certificate contains a plan-view drawing depicting:
 - (1) Relevant monuments including the reference monumentation and an accurate description thereof.
 - (2) Physical surroundings including highway and street centerlines, fences, structures and other artificial or natural objects as applicable that would facilitate recovery of the corner.
 - (3) Reference ties in sufficient detail to enable recovery of the corner, including at least three reference ties from the corner to durable physical objects near the corner that are located so that the intersection of any two of the ties will yield a strong corner position recovery. All ties are measured to one-hundredth of a foot.
- d. The certificate bears the signature of the professional land surveyor, a statement certifying that the work was performed by the surveyor or under the surveyor's direct personal supervision, the date of signature, and the surveyor's Iowa license number and legible seal as provided in rule 193C—6.1(542B).

12.2(4) The surveyor shall record the required U.S. Public Land Survey Corner Certificate and forward a copy to the county engineer of the county in which the corner is located within 30 days after completion of the surveying.

[ARC 7675C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 355.3, 355.11 and 542B.2.

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CHAPTER 13
CIVIL PENALTIES FOR UNLICENSED PRACTICE
[Prior to 11/14/01, see 193C—1.10(542B)]

193C—13.1(542B) General statement. The board may impose civil penalties by order against a person who is not licensed as an engineer or land surveyor pursuant to Iowa Code chapter 542B based on the unlawful practices specified in Iowa Code section 542B.27. In addition to the procedures set forth in Iowa Code section 542B.27, this rule shall apply.

13.1(1) The notice of the board's intent to impose a civil penalty required by Iowa Code section 542B.27 shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

- a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b. A reference to the particular sections of the statutes and rules involved.
- c. A short and plain statement of the alleged unlawful practice.
- d. The dollar amount of the proposed civil penalty.
- e. Notice of the nonlicensee's right to a hearing and the time frame in which a hearing must be requested.
- f. The address to which the written request for a hearing will be made.

13.1(2) Nonlicensees must request a hearing within 30 days of the date the notice is mailed if served through restricted certified mail to the last-known address or within 30 days of the date of service if service is accepted or made in accordance with Rule of Civil Procedure 56.1. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service.

13.1(3) If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

13.1(4) If a request for hearing is timely made, the board will issue a notice of hearing and conduct a hearing in the same manner as applicable to a disciplinary case against a licensed engineer or land surveyor.

13.1(5) In addition to the factors set forth in Iowa Code section 542B.27, the board may consider the following when determining the amount of civil penalty to impose, if any:

- a. The time elapsed since the unlawful practice occurred.
- b. Evidence of reform or remedial actions.
- c. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
- d. Whether the violation involved an element of deception.
- e. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
- f. The clarity of the issue involved.
- g. Whether the violation was willful and intentional.
- h. Whether the nonlicensee acted in bad faith.
- i. The extent to which the nonlicensee cooperated with the board.

13.1(6) A nonlicensee may waive the right to a hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

13.1(7) The notice of intent to impose civil penalty and order imposing civil penalty are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, the National Council of Examiners for Engineering and Surveying, and other entities. Hearings shall be open to the public.

This rule is intended to implement Iowa Code section 542B.27.
[ARC 7676C, IAB 3/6/24, effective 4/10/24]

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UTILITIES DIVISION[199]

Former Commerce Commission[250] renamed Utilities Division[199]
under the “umbrella” of Commerce Department[181] by 1986 Iowa Acts, Senate File 2175, section 740.

CHAPTER 1

ORGANIZATION AND OPERATION

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CHAPTER 33
NONUTILITY SERVICES—RECORDKEEPING
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199—33.1(476) Applicability. This chapter applies to all rate-regulated public utilities.
[ARC 7663C, IAB 3/6/24, effective 4/10/24]

199—33.2(476) Definitions. All terms used in this chapter are defined in Iowa Code section 476.72 unless further defined in this chapter.

“*Exception time reporting*” means when an employee works predominantly in either utility or nonutility operations and only reports time worked in the less predominant area.

“*Filing threshold*” means that the summation of an electric or gas utility’s revenues recorded in Federal Energy Regulatory Commission (FERC) accounts 415 and 417 equals 3 percent of a utility’s operating revenues recorded in FERC account 400, or the summation of a water utility’s revenues from nonutility service equals 3 percent of the utility’s operating revenues. The revenues in these accounts will be as recorded in the annual FERC Form 1 for electric and combination utilities, FERC Form 2 for gas utilities, and similar National Association of Regulatory Utility Commissioners (NARUC) accounts for water, sanitary sewage, or storm water drainage service utilities.

“*Fully distributed cost*” means a costing approach that fully allocates all current and embedded costs to determine the revenue contribution of utility and nonutility services.

“*Incidental activities*” means activities that are so closely related to the provision of utility services and limited in scale that it is impracticable to identify separately the costs of such activities.

“*Net book value*” means the original purchase price net of depreciation.

“*Nonproductive work time*” means time for which an employee is paid but which is not specifically attributable either to utility or to nonutility operations.

“*Positive time reporting*” means when productive work time is accounted for and allocated to utility operations or nonutility operations.

“*Study time reporting*” means when periodic studies are done to determine the amount of productive work time being spent on utility versus nonutility operations.

“*Utility operating revenues*” means the dollar amounts recorded in FERC account 400, or similar NARUC account, for water, sanitary sewage, or storm water drainage service utilities.
[ARC 7663C, IAB 3/6/24, effective 4/10/24]

199—33.3(476) Availability of records.

33.3(1) *Separate records.* A rate-regulated public utility receiving revenues for providing nonutility service shall keep and render to the board separate records on the nonutility service.

33.3(2) *Records to be maintained.* The records maintained for each nonutility service and made available for inspection include the following: documents depicting accounts payable and vouchers; purchase orders; time sheets; journal entries; source and supporting documents for all transactions; a description of methods used to allocate revenues, expenses, and investments between utility and nonutility operations, including supporting detail; and copies of all filings required by other state and federal agencies.

[ARC 7663C, IAB 3/6/24, effective 4/10/24]

199—33.4(476) Costing methodology. Costs shall be allocated between utility and nonutility operations using fully distributed cost consistent with this rule. The utility shall do the following:

33.4(1) *Cost causation for utility assets.* Identify for each asset utilized directly or indirectly, in whole or in part, in the provision of nonutility services:

- a. The type of asset;
 - b. The use of the asset;
 - c. The proportional utilization of the asset between utility operations and nonutility operations;
- and
- d. The characteristics of the asset that allow proper allocation.

33.4(2) Cost causation for utility expenses. Identify for each expense account wherein any expense related, directly or indirectly, to the provision of nonutility services is recorded:

- a. The function causing the expense to be incurred;
 - b. The procedure used in performing the function;
 - c. The proportional utilization of the function between utility operations and nonutility operations;
- and
- d. The characteristics of the cost that allow proper allocation.

33.4(3) Time reporting. Use positive time reporting whenever possible; when it is not possible, exception time reporting or study time reporting may be used. Allocate nonproductive work time between utility and nonutility operations in proportion to the allocation of productive work time.

[ARC 7663C, IAB 3/6/24, effective 4/10/24]

199—33.5(476) Cost allocation manuals. Every rate-regulated public utility equaling or exceeding the filing threshold in any calendar year shall file with the board a cost allocation manual on or before September 1 of the following year; however, a letter so stating may be filed if the utility has not changed its cost allocation manual since the last filing. In the event the utility has made only minor changes to its manual to reflect new accounts or new affiliates or has modified language, the utility may file only the pages affected together with a cover letter explaining the pages being filed. A utility excused from filing a cost allocation manual for any of the foregoing reasons must comply with the other requirements of this rule.

33.5(1) Contents of manuals. Each cost allocation manual shall contain the following information:

- a. *Nonutility services.* A list, the location, and a description of all nonutility services.
- b. *Incidental activities.* A summary of incidental activities conducted by the utility.
- c. *Resource identification.* An identification of the assets and expenses involved directly or indirectly, in whole or in part, in the provision of nonutility services as identified in subrules 33.4(1) and 33.4(2).

- d. *Allocation methodology.* A description of the cost allocation methodology, including an overview, explanation, and justification of the details provided in response to paragraphs 33.5(1) “e” through “h” below.

- e. *Allocation rationale.* A statement identifying, for each asset and expense account and subaccount identified in compliance with subrules 33.4(1) and 33.4(2), the basis for allocating costs in the account or subaccount to utility and nonutility operations, including any allocation factor used by the utility for this purpose.

- f. *Accounts and records.* A description of each account and record used by the utility for financial recordkeeping for nonutility services, including all subaccounts.

- g. *Allocation factors.* A paragraph containing, for each allocation factor identified in compliance with paragraph 33.5(1) “e,” an explanation of how the allocation factor is calculated, a description of each study and analysis used in developing the allocation factor, and the frequency with which each allocation factor is recalculated.

- h. *Time reporting methods.* A paragraph indicating the type of time reporting (positive, exception, or study) used for each reporting organization (e.g., executive, residential sales, and external affairs) and providing a description of how the identified type of time reporting is performed in that reporting organization.

- i. *Training.* A description of the training programs used by the utility to implement and maintain its cost allocation process.

- j. *Update process.* A description of the procedures used by the utility to:

- (1) Determine when an update is needed;
- (2) Develop the update; and
- (3) Provide the update to the board.

33.5(2) Annual filing and acceptance of manuals. The following procedure is used for the annual filing and acceptance of manuals.

a. Notice. At the time of the initial filing and whenever a manual is updated, each utility mails or delivers a written notice to consumer advocate, local trade associations, and customers who have notified the utility in writing of their interest in the cost allocation manual. The notice will state that an objection may be filed with the board within 60 days of the filing of the manual with the board. The utility shall promptly provide copies of the manual upon request.

b. Docketing. If the board finds that reasonable grounds exist to investigate the manual, the board will docket the filing for investigation. At the time of docketing, the board will set a procedural schedule that includes a date for an oral presentation and an opportunity to file comments. If the board finds that there is no reason to investigate, the board will issue an order stating the reasons for the board's decision within 90 days of the date of filing.

c. Acceptance of manuals. The board may accept, reject, or modify a utility's manual. However, any board decision is for accounting purposes only and is not binding in any other proceeding.

33.5(3) Updating of manuals. All affected sections and pages of a utility's manual are updated and filed with the board within 60 days of any of the following conditions:

a. A new nonutility business is commenced or acquired, or an existing nonutility business is eliminated or divested;

b. An affiliate relationship changes;

c. Operations affecting nonutility businesses change sufficiently to warrant a new allocation method; or

d. Accounting practices change.

33.5(4) Reporting requirements—accounting tables. Companies filing cost allocation manuals shall include in their annual reports tables showing for each account identified in compliance with subrules 33.4(1) and 33.4(2) the following: (a) the account total; (b) the amount allocated to nonutility services; (c) the amount allocated to utility services; and (d) the value of the allocation factors used to allocate costs to utility and nonutility services. Such tables are to be accompanied by a signed statement by an officer of the utility and an independent auditor certifying that, for the year covered by the report, the utility has complied with its cost allocation manual and that the data reported fairly reflect the actual operations of the utility.

[ARC 7663C, IAB 3/6/24, effective 4/10/24]

199—33.6(476) Standards for costing service transfers within a regulated subsidiary or utility.

33.6(1) Nonutility service provided to regulated subsidiary or utility. The utility or its regulated subsidiary shall pay for a nonutility service provided to it by an affiliate at the price actually charged to nonaffiliates. If no such price is available, the service is to be priced at the lower of fully distributed cost, the price actually charged to affiliates, or the market price for comparable services.

33.6(2) Service provided by the utility to nonutility operations. A utility that provides utility service to a nonutility affiliate is to charge such affiliate the tariffed price or, if a tariffed price is not available, the fully distributed cost of the service.

[ARC 7663C, IAB 3/6/24, effective 4/10/24]

199—33.7(476) Standards for costing asset transfers within a regulated subsidiary or utility.

33.7(1) If an asset that is a direct cost of nonutility operations becomes a cost of utility operations, the asset shall be transferred or allocated to utility operations at the lesser of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets.

33.7(2) If an asset that is a direct cost of utility operations becomes a cost of nonutility operations, the asset shall be transferred or allocated to the nonutility operations at the greater of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets.

[ARC 7663C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 476.72 through 476.83.

[Filed 11/10/93, Notice 8/4/93—published 12/8/93, effective 1/12/94]

[Filed 6/6/03, Notice 12/25/02—published 6/25/03, effective 7/30/03]

[Filed ARC 3646C (Notice ARC 3456C, IAB 11/22/17), IAB 2/14/18, effective 3/21/18]

[Filed ARC 6762C (Notice ARC 6340C, IAB 6/1/22), IAB 12/28/22, effective 2/1/23]

[Filed ARC 7663C (Notice ARC 7111C, IAB 11/15/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 34
NONUTILITY SERVICE

199—34.1(476) Statement of purpose. A public utility that engages in a systematic marketing effort, other than on an incidental or casual basis, to promote the availability of a nonutility service from the public utility shall allow competitors access to certain services.

[ARC 7697C, IAB 3/6/24, effective 4/10/24]

199—34.2(476) Definitions.

“Engaged primarily in providing the same competitive nonutility services in the area” means that a person, on an ongoing basis, sells or leases equipment or products or offers services, accounting for at least 60 percent of the person’s gross business revenue, that are functionally interchangeable with and considered similar by the public to the nonutility service provided by a public utility in the same identifiable geographic area where the public utility provides utility service.

“Systematic marketing effort, other than on an incidental or casual basis” means an effort determined by the board to be recurring, active in nature, and done on a comprehensive basis. Factors to be considered include but are not limited to the types and number of media used; the frequency, extent, and duration of the marketing effort; the amount of marketing expenses incurred; and whether the public utility appeared to intend to significantly increase its market share.

[ARC 7697C, IAB 3/6/24, effective 4/10/24]

199—34.3(476) Charges permitted. A person meeting the definition of “engaged primarily in providing the same competitive nonutility services in the area” in rule 199—34.2(476) may use, to the same extent utilized by the public utility for its nonutility service in connection with nonutility services, the customer lists, billing and collection system, and mailing system of the public utility company engaged in a systematic marketing effort, other than on an incidental or casual basis. The person shall be charged for the cost or expense incurred by the public utility in providing access to its systems and its lists, and the cost or expense will not be greater than the charge, fee, or cost imposed upon or allocated to the provision of nonutility service by the utility for the similar use of the systems.

[ARC 7697C, IAB 3/6/24, effective 4/10/24]

199—34.4(476) Procedures for utilization of billing and collection system.

34.4(1) When a person meeting the definition of “engaged primarily in providing the same competitive nonutility services in the area” in rule 199—34.2(476) uses the billing and collection system of a public utility, the public utility shall promptly remit to that person all funds collected by the public utility on behalf of the person.

34.4(2) Where a customer makes a partial payment and owes both a public utility and a person(s) meeting the definition of “engaged primarily in providing the same competitive nonutility services in the area” in rule 199—34.2(476) for services or goods provided, the payment received is allocated first to the regulated utility bill, plus tax, unless otherwise allocated by the customer. Any balance remaining after payment of the utility bill, plus tax, is allocated between the public utility for any unpaid nonutility services and any other person(s) utilizing the utility’s billing system, according to the ratio of the amount billed by each, unless otherwise allocated by the customer. A public utility shall not disconnect a customer’s utility service for nonpayment of a bill for nonutility services.

A person shall not use a public utility’s billing and collection system to bill and receive payments only from customers who are habitually delinquent or who have failed or refused to make payment to the person.

[ARC 7697C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 476.78, 476.80, and 476.81.

[Filed 1/4/91, Notice 8/8/90—published 1/23/91, effective 2/27/91]

[Filed 6/6/03, Notice 12/25/02—published 6/25/03, effective 7/30/03]

[Filed ARC 3695C (Notice ARC 3457C, IAB 11/22/17), IAB 3/14/18, effective 4/18/18]

[Filed ARC 7697C (Notice ARC 7112C, IAB 11/15/23), IAB 3/6/24, effective 4/10/24]

ARTS DIVISION[222]

[Prior to 9/18/91, see Cultural Affairs[221] Chs 10, 11, 12]
Repealed by 2023 Iowa Acts, chapter 19, section 2124; editorially
removed from IAC 3/6/24 pursuant to Iowa Code section 2B.5A(6)“a”(1)

CITY DEVELOPMENT BOARD[263]

[Chapters 1 and 2, IAC 7/27/77, superseded by Chapters 1 to 4, effective 4/12/78]
[Prior to 1/9/91, City Development Board[220]]

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CHAPTER 1
ORGANIZATION AND ADMINISTRATION

[Prior to 1/9/91, City Development Board[220] Ch 1]

263—1.1(368) Description. The primary function of the city development board is to supervise city development actions, including annexations, consolidations, discontinuances, incorporations and severances for the state of Iowa, pursuant to the provisions of Iowa Code chapter 368. Detailed information about the board's policies and procedures can be found in Iowa Code chapter 368, in rules adopted by the board, and at www.iowaeda.com/land-planning.

[ARC 7699C, IAB 3/6/24, effective 4/10/24]

263—1.2(368) Office of the board. All official communications, including submissions and requests, may be addressed to City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or to cdb@iowaeda.com.

[ARC 7699C, IAB 3/6/24, effective 4/10/24]

263—1.3(368) Membership and quorum requirements. The board annually elects from its members a chairperson and vice-chairperson at the first regular meeting of the calendar year. Three members of the board constitute a quorum, and a quorum must be present in order for the board to take action. The affirmative vote of a majority of board members is necessary for action taken by the board.

[ARC 7699C, IAB 3/6/24, effective 4/10/24]

263—1.4(368) Meetings. The board conducts regular meetings at least every other month at 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or at such other location as the board may designate. The chairperson or the chairperson's designee prepares an agenda for each meeting, listing matters to be addressed. Meetings of the board are subject to the requirements of Iowa Code chapter 21.

[ARC 7699C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 368.9 and 368.10.

[Filed 8/16/73, amended 9/12/73, 11/13/74]

[Filed 10/29/75, Notice 7/14/75—published 11/17/75, effective 12/22/75]

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[Filed emergency 3/2/79—published 3/21/79, effective 3/2/79]

[Filed 12/19/90, Notice 10/17/90—published 1/9/91, effective 2/13/91]

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Editorial change: IAC Supplement 4/21/21]

[Filed ARC 7699C (Notice ARC 7131C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 2
AGENCY PROCEDURE FOR RULEMAKING

263—2.1(17A) Incorporation by reference. The city development board incorporates by this reference all such matters in Iowa Code chapter 17A that relate to procedures for rulemaking.
[ARC 7700C, IAB 3/6/24, effective 4/10/24]

263—2.2(17A) Contact information.

2.2(1) General. Inquiries about board rules and the rulemaking process may be directed to City Development Board, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315.

2.2(2) Comments on proposed rules. Any public comment on a Notice of Intended Action or similar document relating to rules may be directed to City Development Board, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or as directed in the Notice of Intended Action or similar document.
[ARC 7700C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapter 17A.

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Editorial change: IAC Supplement 4/21/21]

[Filed ARC 7700C (Notice ARC 7132C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 3
PETITIONS FOR RULEMAKING

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to petitions for rulemaking, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

[ARC 7701C, IAB 3/6/24, effective 4/10/24]

263—3.1(17A) Petition for rulemaking. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

In lieu of “(AGENCY NAME)” as the caption of the petition form, insert “BEFORE THE CITY DEVELOPMENT BOARD”.

[ARC 7701C, IAB 3/6/24, effective 4/10/24]

263—3.3(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

[ARC 7701C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 17A.7.

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Editorial change: IAC Supplement 4/21/21]

[Filed ARC 7701C (Notice ARC 7133C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 4
DECLARATORY ORDERS

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to declaratory orders, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

[ARC 7702C, IAB 3/6/24, effective 4/10/24]

263—4.1(17A) Petition for declaratory order. In lieu of “(designate agency)”, insert “city development board”. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

In lieu of “(AGENCY NAME)” as the caption on the petition form, insert “BEFORE THE CITY DEVELOPMENT BOARD”.

[ARC 7702C, IAB 3/6/24, effective 4/10/24]

263—4.2(17A) Notice of petition. In lieu of “ ___ days (15 or less)”, insert “15 days”.

[ARC 7702C, IAB 3/6/24, effective 4/10/24]

263—4.3(17A) Intervention.

4.3(1) In lieu of “ ___ days”, insert “15 days”.

[ARC 7702C, IAB 3/6/24, effective 4/10/24]

263—4.5(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

[ARC 7702C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 17A.9.

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Editorial change: IAC Supplement 4/21/21]

[Filed ARC 7702C (Notice ARC 7134C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 5
FAIR INFORMATION PRACTICES

[Prior to 1/9/91, City Development Board[220] Ch 6]

[Prior to 12/11/02, see 263—Ch 6]

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

[ARC 7703C, IAB 3/6/24, effective 4/10/24]

263—5.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of“(official or body issuing these rules)”, insert “city development board”.

[ARC 7703C, IAB 3/6/24, effective 4/10/24]

263—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of“(insert agency head)”, insert “city development board”. In lieu of“(insert agency name and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

5.3(2) Office hours. In lieu of“(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays”.

5.3(7) Fees.

c. Supervisory fee. In lieu of“(specify time period)”, insert “two hours”.

[ARC 7703C, IAB 3/6/24, effective 4/10/24]

263—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of“(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

[ARC 7703C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 22.11.

[Filed emergency 9/2/88—published 9/21/88, effective 9/2/88]

[Filed 12/19/90, Notice 10/17/90—published 1/9/91, effective 2/13/91]

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Editorial change: IAC Supplement 4/21/21]

[Filed ARC 7703C (Notice ARC 7135C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 6
WAIVER RULES

263—6.1(17A) Definitions.

“*Board*” means the same as defined in Iowa Code section 368.1(3).

“*Petitioner*” means a person who petitions an agency for the waiver of a rule.

“*Waiver*” means the same as defined in Iowa Code section 17A.9A(5) as applied to an action by the board.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.2(17A) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.3(17A) Applicability. The board may grant a waiver of a rule as permitted by Iowa Code section 17A.9A(1).

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.4(17A) Criteria for waiver. In response to a petition completed pursuant to rule 263—6.6(17A), the board may issue a waiver if the board makes the applicable findings in Iowa Code section 17A.9A(2).

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

6.5(1) Pending matters. If the petition relates to a pending petition or application for city development action, the petition requesting a waiver shall be filed in the pending proceeding, using the caption of that matter.

6.5(2) Other. If the petition does not relate to a pending matter, the petition may be submitted to the board chairperson.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related city development proceeding.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in Iowa Code section 17A.9A(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the activity affected by the proposed waiver, including a description of each related city development action by the requester within the past five years.

6. Any information known to the requester regarding the board’s treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition, including all parties to the proceeding if the petition relates to a matter pending before the board.

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

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, 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 meeting between the petitioner and the board's chair, or a committee of the board, or a quorum of the board.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.8(17A) Notice. The board will acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, 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. 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 or who may be impacted by the requested waiver and provide a written statement to the board attesting that notice has been provided.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings apply to any petition for a waiver filed within a pending city development action pursuant to subrule 6.5(1). If a petition for waiver is filed with the board pursuant to subrule 6.5(2), the provisions of Iowa Code sections 17A.10 to 17A.18A apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.10(17A) Ruling. Iowa Code section 17A.9A(3) describes certain procedural aspects for considering a petition for waiver and issuing a ruling thereon, including the burden of persuasion; the manner in which a petition for waiver must be evaluated; the limits of the waiver, if one is issued; and the circumstances under which the board may place a condition on the waiver. When the rule from which a waiver 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 similarly situated persons. The board shall have the sole discretion to decide whether to grant a waiver.

6.10(1) Form of ruling. An order granting or denying a waiver 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 duration of the waiver, if one is issued.

6.10(2) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 90 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a pending city development action, the board shall grant or deny the petition no later than the time at which the final decision in that matter is issued.

6.10(3) 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. However, the board shall remain responsible for issuing an order denying a waiver.

6.10(4) 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.

6.10(5) Filing of waiver ruling. Within 60 days of granting or denying a waiver, the board shall submit information as required by Iowa Code section 17A.9A(4).

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.11(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.12(17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.13(17A) Defense. After the board issues an order granting a waiver, 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.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 17A.9A.

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Filed ARC 5823C (Notice ARC 5620C, IAB 5/19/21), IAB 8/11/21, effective 9/15/21]

[Filed ARC 7704C (Notice ARC 7136C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 7
VOLUNTARY ANNEXATION

263—7.1(368) Purpose and scope. This chapter addresses the requirements and processes for city development board approval of voluntary annexation within another city's urbanized area; voluntary annexation, including property without the owner's consent; and boundary adjustments between cities by petition and consent. Such requests for board approval shall be initiated pursuant to Iowa Code section 368.7 or 368.25A and this chapter. A city's request for board approval of such actions will be referred to in this chapter as a petition.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.2(368) Contents of petition. This rule describes the information and documentation a city is required to include in its petition.

7.2(1) Landowner application requirements. The board will verify that each landowner's application for annexation includes the items required by Iowa Code section 368.7(1) "c" and is dated and signed by all owners of record or their authorized representatives. If voluntary annexation is requested for a parcel of land being sold on contract, the contract seller and the contract buyer should both approve the application. If voluntary annexation is requested for property owned by a business organization or entity other than a natural person or persons, the applicant should provide documentation establishing authorization to act on behalf of the owner entity.

7.2(2) City requirements. In addition to any applicable landowner applications submitted in compliance with subrule 7.2(1), a city's petition must include all of the following:

a. A general statement of the proposed annexation, briefly describing the current and expected use of the annexation territory, any services that the city currently provides to the territory, and the reasons for a landowner's request for annexation, if known.

b. A statement indicating whether the city is a party to an existing moratorium agreement entered pursuant to Iowa Code section 368.4 and, if so, whether the proposed annexation is consistent with the terms of that agreement.

c. A complete legal description of the territory proposed to be annexed, including the right-of-way to the center line of all secondary roads adjoining the territory. If the applicable county and city have entered an agreement pursuant to Iowa Code chapter 28E that allows exclusion of the right-of-way, a copy of the agreement shall be included with the petition.

d. Documentation that the county auditor has verified the accuracy and completeness of the legal description of all territory proposed to be annexed and verified current ownership of the parcel(s) included in the proposed territory. If the auditor fails to respond to the city's request for verification within 14 days, the city may provide a copy of the request and a statement indicating that no response was received.

e. A map clearly showing the entire boundary of the existing city, all territory proposed to be annexed, adjacent roadways, and the relationship of the territory to the petitioning city and, if the annexation territory is within the urbanized area of another city, the relationship of the territory to the neighboring city. More than one map may be submitted if necessary to provide all information required by this paragraph.

f. A statement indicating whether state-owned property or county-owned road right-of-way has been included in the proposed annexation and, if so, certification that the city has complied with the notice requirements of Iowa Code section 368.5. If the territory proposed for annexation includes right-of-way for a state highway, documentation of consultation with the Iowa department of transportation should also be included.

g. Certification that the city has complied with all applicable notice and hearing requirements of Iowa Code section 368.7, including proof of mailing of the application and affidavit of publication of the required public notice. If railway right-of-way or public land is included without the written consent of the owner or agency with jurisdiction over the public land, the city shall certify notice was given to the owner or agency as required by Iowa Code section 368.7(1) "c." For purposes of calculating the required

period of notice, business days include Monday through Friday of each week, except legal holidays as set forth in Iowa Code section 4.1(34).

h. A city council resolution approving the landowner's application, including, if applicable, the terms of the transition of city taxes as provided by Iowa Code sections 368.7(5) and 368.11(3) "m."

7.2(3) Additional information for petitions, including nonconsenting landowners. In addition to the information to be included pursuant to subrule 7.2(2), a petition that includes property without the consent of the owner(s) must provide the additional information indicated in this subrule.

a. Names and addresses of all owners of land included without the owners' consent and a legal description of all land owned by each nonconsenting owner.

b. Documentation submitted pursuant to paragraph 7.2(2) "d" relating to county auditor verification, including verification of the legal description of land owned by each nonconsenting owner.

c. The acreage of each parcel or parcels owned by each voluntary applicant and nonconsenting landowner, the acreage of any railroad right-of-way included pursuant to Iowa Code section 368.7(1), and the acreage of any state- or county-owned property included pursuant to Iowa Code section 368.5.

d. A calculation showing the percentage of the territory for which voluntary annexation applications have been received by the city and the percentage of territory included without the consent of the owner(s), prepared in a manner consistent with Iowa Code section 368.7(1) "a." Only contiguous land area may be considered for purposes of calculating the amount of the land area which may be included without the owner's consent.

e. A map indicating the relationship of the parcels included without the consent of the owner(s) to the rest of the territory and to the city.

f. The city council's resolution approving the annexation submitted pursuant to paragraph 7.2(2) "h" that must set forth the reason(s) that land is included without the consent of the owner(s).

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.3(368) Filing. A city shall send two copies of its petition, including all supporting documentation, to the board. The petition will be deemed filed with the board on the date it is received by board staff. Board staff will acknowledge receipt of a petition.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.4(368) Staff review. Within two weeks of receiving a petition filed pursuant to this chapter, board staff will review the petition to determine whether the city has included all required information. If the petition is incomplete, staff shall notify the petitioning city, identifying the required item(s) omitted and offering the city an opportunity to provide the omitted information prior to submission of the petition to the board.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.5(368) Submission to the board—notice.

7.5(1) A petition filed pursuant to this chapter will be considered by the board at the first board meeting conducted 31 or more days after the petition is filed. The board shall provide notice of all meetings at which the board will consider a petition to the petitioning city and the entities required by Iowa Code section 368.7(3) to receive notice of an application. Such notices will be provided by regular mail.

7.5(2) If rule 263—7.8(368) applies, the board may proceed as described in that rule at a board meeting less than 31 days after the petition is filed, at the request of the petitioning city. However, if the board considers a petition pursuant to this subrule, the filings to complete an annexation approved by the board will only be made if no other petition for any or all of the applicable territory is filed with the board within 30 days of the filing of the petition.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.6(368) Amendment of petition.

7.6(1) After a petition has been filed with the board, it may not be amended to include additional territory.

7.6(2) A city may, upon its own motion or at the request of the board, seek amendment to delete one or more parcels included in the territory proposed for annexation.

a. A motion to amend a petition may be made at any time prior to issuance of the board order approving or denying the petition.

b. The board shall provide notice of a proposed amendment to all owners of land included in the petition, the entities required by Iowa Code section 368.7(3) to receive notice of an application, and all other parties of record in the board proceeding. Such notices will be provided by regular mail.

c. A party to the proceeding may file a resistance to the motion to amend within 14 days of the date of service of notice provided pursuant to paragraph 7.6(2)“*b.*”

d. The board may grant a motion to amend a petition if it determines that the amendment serves the public interest.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.7(368) Initial board review.

7.7(1) The board shall review all petitions filed pursuant to this chapter to determine compliance with the requirements of Iowa Code chapter 368 and this chapter. If a petition is incomplete or otherwise not in compliance with the requirements of Iowa Code chapter 368 or this chapter, the board may request further information from a landowner or city or may dismiss the petition.

7.7(2) If the annexation requested in the petition is barred pursuant to Iowa Code section 368.17, the board shall deny the petition, stating in its order the reason(s) for the denial.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.8(368) Board proceedings on unanimous petitions when no conflicting petition is received within 30 days.

7.8(1) Applicability. Petitions will be considered pursuant to this rule when all territory proposed for annexation is included upon application of the owner, by notice to the owner of railway right-of-way pursuant to Iowa Code section 368.7(1), or by notice to the Iowa attorney general or a county attorney pursuant to Iowa Code section 368.5.

7.8(2) Information considered. Any interested person or party may submit written comment prior to or at the time of board consideration of the petition. The board may:

a. Allow an opportunity for oral comment;

b. Consider public documents; or

c. Request additional information from affected cities, counties or persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.8(3) Criteria. The board shall consider whether the proposed annexation serves the public interest and may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code section 368.16.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.9(368) Board proceedings on petitions which include nonconsenting landowners.

7.9(1) Applicability. Petitions will be considered pursuant to this rule when not more than 20 percent of the land area of the territory proposed for annexation is included without the consent of the owner, pursuant to Iowa Code section 368.7(1)“*a.*”

7.9(2) Hearing and information considered.

a. If a petition to which this rule applies is complete and in proper form, the board will conduct a public hearing on the petition. The board shall provide notice of the hearing to all owners of land included in the petition, the petitioning city, the entities required by Iowa Code section 368.7(3) to receive notice of an application, and the state department of transportation. Such notice shall be provided by regular mail sent at least ten days prior to the hearing.

b. The board hearing will be conducted informally. Representatives of the petitioning city shall be given an opportunity to explain the proposed annexation, the city’s reason for including nonconsenting landowners, and any other information the city believes will assist the board in acting on the petition.

The county, all owners of property within the territory proposed for annexation, the regional planning authority, affected public utilities, and any other person affected by the annexation will be provided an opportunity to submit information to the board during the hearing or in writing prior to the hearing.

c. The board may request additional information from the city, county or other persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.9(3) Criteria. The board shall consider the same criteria as set forth in subrule 7.8(3). The board may not approve a petition considered pursuant to this rule unless the board finds that the land of the nonconsenting owners was included to avoid creating an island or create more uniform boundaries. A petition considered pursuant to this rule shall not be approved unless four members of the board vote in favor of approving the petition.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.10(368) Board proceedings when one or more conflicting petitions are received within 30 days.

7.10(1) Applicability. Petitions will be considered pursuant to this rule if any other petitions containing common territory are submitted to the board pursuant to Iowa Code chapter 368 within 30 days. If all conflicting petitions are validly dismissed or denied by the board, the board will proceed on a remaining petition as if no conflicting petition had been filed.

7.10(2) Hearing and information considered. If conflicting petition(s) are complete and in proper form, the board shall consider any petitions, including voluntary application(s) submitted by a landowner pursuant to Iowa Code section 368.7(4), and shall conduct a public hearing pursuant to the procedure set forth in subrule 7.9(2).

7.10(3) Criteria. Within 90 days of receipt of the petition, the board or a committee appointed by the board shall meet to assess the petition, including voluntary application(s) submitted by a landowner and any evidence received at the public hearing. If the petition meets the applicable requirements of Iowa Code chapter 368, the board or committee shall approve the petition unless the board makes an applicable finding as described in Iowa Code section 368.7(4) "a."

7.10(4) Conversion to an involuntary petition. If the petition is not approved, the board shall issue an order setting forth its reason(s) for failing to approve the petition and requiring conversion of the petition into an involuntary petition. Within 30 days of the board's order issued pursuant to this subrule, the city shall withdraw its petition or convert its petition into an involuntary petition containing all information required by Iowa Code section 368.11 and any rules adopted by the board applicable to involuntary petitions.

7.10(5) Local committee. Following conversion to an involuntary petition, the board shall order appointment of a special local committee to consider all pending petitions for annexation of common territory, pursuant to Iowa Code section 368.14A and rule 263—8.10(368). The special local committee shall conduct a public hearing to receive evidence and comment on all petitions pending before it. The committee will determine the order of presentation prior to commencement of the hearing. The committee will conduct the hearing pursuant to 263—Chapter 9.

7.10(6) Committee action. The committee shall, within a reasonable time following conclusion of the public hearing, meet to determine appropriate means to resolve the common territory issues among the petitions before it.

a. The committee shall resolve common territory issues by amending or denying one or more of the pending petitions.

b. Upon resolution of the common territory issues, the committee shall proceed with consideration of each remaining petition in accordance with Iowa Code sections 368.16 and 368.17 and any applicable rules adopted by the board.

c. A petition converted to an involuntary petition pursuant to subrule 7.10(4) that contains some land without the consent of the owner shall not be approved unless at least four of the board members and at least one-half of the local representatives vote in favor of approval.

d. The committee shall issue a separate decision setting forth its findings and conclusions relating to each of the petitions. The committee shall file its decision with the board and promptly notify the parties of the decision, as required by Iowa Code section 368.19.

7.10(7) Board action. Upon receipt of a committee decision approving all or a portion of a petition pursuant to subrule 7.10(6), the board shall proceed in acting on the decision pursuant to 263—Chapter 10.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.11(368) Board proceedings when a conflicting involuntary petition was filed more than 30 days before a voluntary petition.

7.11(1) Applicability. Petitions will be considered pursuant to this rule if a petition that includes voluntary application(s) submitted by a landowner is filed more than 30 days following filing of a conflicting involuntary petition filed pursuant to Iowa Code section 368.11 and 263—Chapter 8.

7.11(2) Delay. The board will receive the petition including voluntary application(s) submitted by a landowner and table action on it until processing of the petition for involuntary annexation is complete.

7.11(3) Same city. If the petition including voluntary application(s) submitted by a landowner proposes to annex territory to the same city filing the involuntary petition, the board may proceed on the voluntary petition pursuant to rule 263—7.8(368).

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.12(368) Board proceedings on boundary adjustments between cities by petition and consent.

7.12(1) Petition. A petition to sever real property from one city and to annex the same real property to another city shall be initiated pursuant to Iowa Code section 368.25A. The petition pursuant to this rule shall be in substantially the same form as a petition submitted pursuant to Iowa Code section 368.7 and rule 263—7.2(368).

7.12(2) Hearing and information considered. If the petition is complete and in proper form, the board shall hold a public hearing on the severance, annexation, and any agreement between the cities pursuant to the procedure set forth in subrule 7.9(2). The board shall give notice of the public hearing in the same manner as notice given pursuant to Iowa Code section 368.11(5). The board may request additional information from the city, county or other persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.12(3) Criteria. The board shall consider the same criteria as set forth in subrule 7.8(3).

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.13(368) Board decisions—costs.

7.13(1) Board approval. If the board approves a petition considered pursuant to this chapter, the board shall issue a written decision and provide a copy of the decision to the clerk of the annexing city; the entities required by Iowa Code section 368.7(3) to receive notice of an application; the state department of transportation; and any other parties of record in the board's proceeding, including, if applicable, a city from which territory is severed pursuant to rule 263—7.12(368). Upon expiration of the time for appeal, the board shall file with the secretary of state and record with the county recorder of each county containing a portion of the city or territory involved copies of the board's proceedings, as required by Iowa Code section 368.20(2). The cost of recording the board order shall be paid by the city to which territory is annexed.

7.13(2) Board denial. If the board denies a petition considered pursuant to this chapter, the board shall issue an order setting forth the reasons for the denial. A copy of the order shall be provided to the clerk of any impacted city, the entities required by Iowa Code section 368.7(3) to receive notice of an application, the state department of transportation, and any other party of record in the board's proceeding.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapter 368.

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¹ July 6, 2011, effective date of 7.2(2)“j” delayed 70 days by the Administrative Rules Review Committee at its meeting held June 14, 2011.

CHAPTER 8
PETITIONS FOR INVOLUNTARY CITY DEVELOPMENT ACTION

[Prior to 12/11/02, see 263—Ch 2]

263—8.1(368) Purpose. This chapter addresses the requirements and processes for city development board approval of petitions for involuntary city development action, including incorporation, discontinuance, annexation, severance, or consolidation. Such petitions shall be initiated pursuant to Iowa Code section 368.11 or 368.13 and this chapter. The body or bodies initiating the petition will be referred to in this chapter as the petitioner.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.2(368) Contents of the petition. This rule describes the information and documentation a petitioner is required to include in its petition.

8.2(1) General requirements. The petition must provide all applicable information required by Iowa Code section 368.11(3). The petition must clearly identify the petitioner, the proposed action, and the name and address of each property owner within the affected territory. Affected territory shall be identified by complete legal description including, if applicable, right-of-way to the center line of secondary roads. The petition shall state that it does not propose any action prohibited by Iowa Code section 368.17. The petition shall include an overview of the proposed action and briefly describe the affected city or cities, the affected territory and the reasons for the proposed action.

8.2(2) Moratorium. The petition shall contain a statement indicating whether an applicable city is a party to an existing moratorium agreement entered pursuant to Iowa Code section 368.4 and, if so, whether the proposed annexation is consistent with the terms of the agreement.

8.2(3) Map. The map or maps included in the petition shall clearly show all boundaries of the affected city or cities and all affected territory, adjacent roadways, the relationship of the affected territory to any city, and all geographic features deemed relevant to the proposed action. If the petition proposes incorporation, the proposed city boundary shall be shown. The board may request that the petitioner provide information demonstrating the existing and anticipated use of the territory.

8.2(4) County auditor verification. The petition shall include documentation that the county auditor has verified the accuracy and completeness of the legal description of all affected territory and verified current ownership of the parcel(s) included. If the auditor fails to respond to the petitioner's request for verification within 14 days, the petitioner may provide a copy of the request and a statement indicating that no response was received.

8.2(5) Assessed valuations. The petition shall include the assessed valuation and classification assigned for tax purposes (agricultural, residential, commercial, etc.) for each parcel of platted and unplatted land within the affected territory. Documentation shall be provided that the information required by this subrule has been verified in writing by the applicable city or county assessor. If the assessor fails to provide the requested verification within 14 days, the petitioner may provide a copy of the request and a statement indicating that the verification was not provided.

8.2(6) Population density. Population density shall be delineated for the existing city, for the territory, and for the resulting city if the proposal is approved. Population density shall be expressed as persons per acre if the petition proposes annexation or persons per square mile if the petition proposes incorporation, discontinuance, severance or consolidation.

8.2(7) Population growth. If the petition seeks annexation, consolidation or incorporation, the petition shall include projected population growth for the city and the territory. Population projections shall be for a 10- or 20-year period and may be taken from an existing comprehensive plan or may be calculated based on relevant data if no comprehensive plan exists.

8.2(8) Regulations and projections. The petition shall include a description of current and proposed zoning regulations that apply to the affected territory. Projected development and land use patterns shall be described as if existing land use regulations will be continued and as if new applicable land use regulations would be applied after annexation, if approved. Residential, commercial, and industrial development projections shall be provided based on population projections for the city and territory.

If the petition proposes annexation, the amount of vacant developable land within the existing corporate limits and within the territory, as well as an estimate of the amount of developable land needed to accommodate future growth, shall be provided.

8.2(9) *Topography.* Topographical information shall be in map and narrative form. Maps shall include any affected city and the affected territory and shall consist of contour lines at ten-foot intervals as may be taken from contour maps of the United States Geological Survey or any other source acceptable to the board. A narrative description shall identify flood plains, drainage areas, drainage ways, slopes and bluffs. In petitions proposing annexation or incorporation, the narrative shall also address potential impacts of topography on development of urban uses and the extension of municipal services.

8.2(10) *Plans.* Petitions shall describe plans for disposal of assets, assumption of liabilities, and provision of services as applicable to the action requested in the petition.

a. Petitions for annexation, consolidation and incorporation shall describe existing and proposed municipal services and facilities, including but not limited to water supply, sewage disposal, police and fire protection, and street and road maintenance, and the estimated cost of providing proposed services.

b. Petitions for annexation shall describe the capability of the existing city sewage system; water system; transportation infrastructure; park and recreation system; and police, fire, and public works departments to accommodate the addition of territory and projected development. The petition shall also include an analysis of existing bonding capacity and bonded indebtedness and the assets a city may receive including property tax, increase in municipal bonding capacity, state and federal shared revenues, special assessment policies, revenue bonds, user fees, and federal funds where applicable.

c. Petitions for incorporation shall describe the capability of the proposed city to develop a sewage system; water system; transportation infrastructure; park and recreation system; and police, fire, and public works departments to accommodate the territory proposed for incorporation and an explanation of the assets the proposed city may receive, including property tax, an increase in municipal bonding capacity, state and federal shared revenues, special assessment policies, revenue bonds, user fees, and federal funds where applicable.

d. Petitions for severance and discontinuance shall describe the adequacy of sewage disposal, water supply, police and fire protection, and other municipal services being provided to the territory by the city. Such petitions shall also include a statement of the capability and intent of the county in which the city or territory is located to assume responsibility for police protection, street and road maintenance and repair, and other services and an analysis of the capability of the township fire district to provide fire protection.

e. Petitions for discontinuance shall include an inventory of all real estate, funds, and personal property owned by the city and all existing liabilities of the city, and a proposal for disposition of all assets and satisfaction or assumption of all liabilities.

8.2(11) *Committee consideration.* The petition shall include documentation to allow assessment of the relevant considerations for committee approval in Iowa Code section 368.16.

8.2(12) *Service agreements.* The petition shall identify services that may be provided through agreement with township fire districts and rural water and sanitary districts and proposed agreements with any county or city for police protection, ambulance service, or any other service deemed to be of importance to the proposed boundary adjustment and shall present examples of existing service agreements.

8.2(13) *Shared roads.* The petition shall include a proposed formal agreement between affected municipal corporations and counties for the maintenance and improvement and traffic control of any road that is divided as a result of an incorporation or a boundary adjustment.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.3(368) Preliminary notice and public meeting. A petitioner initiating an involuntary city development proceeding shall comply with the applicable notice, publication, and public meeting requirements contained in Iowa Code section 368.11. For purposes of calculating the required period of notice, business days include Monday through Friday of each week, except legal holidays as set forth in

Iowa Code section 4.1(34). Proof of substantial compliance with these requirements, including copies of certified mail receipts, certification of publication of notice of the meeting, minutes of the public meeting and copies of the documents received at the meeting, shall accompany each petition submitted pursuant to this chapter.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.4(368) Filing and service. The petitioner shall send two copies of a petition, including all supporting documentation, to the board. A petition will be deemed filed with the board on the date it is received by board staff. The board shall acknowledge receipt of the petition. The petitioner shall serve notice of the filing as required by Iowa Code section 368.11(1) within seven days of filing a petition with the board. The petitioner shall file proof of compliance with the service requirement with the board.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.5(368) Costs. All costs that are incurred in drafting a petition, preparing supporting documents, mailing and publishing notices and other preliminary proceedings and the cost of recording, if the proposal is approved, shall be borne by the petitioner.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.6(368) Staff review of petition. Within two weeks of receiving a petition filed pursuant to this chapter, board staff will review the request to determine whether the petitioner has filed all required information. If the petition is incomplete, staff shall notify the petitioner, identifying the required item(s) omitted and offering the petitioner an opportunity to provide the omitted information prior to submission of the petition to the board.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.7(368) Submission of petition to the board—notice. A petition filed pursuant to this chapter will be considered by the board at the first meeting conducted 31 days or more after the petition is filed. The board shall provide the petitioner with notice of all meetings at which the board will consider the petition.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.8(368) Board review of petition—waiver. Upon submission of a petition, the board shall review the petition for substantial compliance with Iowa Code section 368.11 and this chapter. In conducting this review, the board will presume that factual assertions made within the petition are accurate. The board may, however, request and examine appropriate public records or request additional information from the petitioner if deemed necessary to its review. The board may waive any requirement of this chapter upon finding the requirement inapplicable to the petition under review.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.9(368) Board action on petition. The board shall accept for further proceedings any petition that it finds to be in substantial compliance with Iowa Code section 368.11 and this chapter. The board may dismiss a petition pursuant to Iowa Code section 368.12.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.10(368) Formation of local committee. If the petition is accepted by the board for further proceedings, the board shall direct the appointment of local representatives to a committee as required by Iowa Code section 368.14. Committee appointments shall be made by resolutions of the appropriate governing bodies within 45 days of issuance of the board's order. The resolutions shall state that the local representative selected is qualified to serve on the committee pursuant to Iowa Code section 368.14. Copies of the resolutions and the address and telephone number of each local representative shall be promptly submitted to the board. In the event a city or county fails to timely notify the board of appointment of its local representative, the committee may conduct its proceedings in the absence of that local representative so long as a quorum is present.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapter 368.

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¹ July 6, 2011, effective date of 8.3(9) delayed 70 days by the Administrative Rules Review Committee at its meeting held June 14, 2011.

CHAPTER 9
COMMITTEE PROCEEDINGS ON PETITIONS
FOR INVOLUNTARY CITY DEVELOPMENT ACTION
[Prior to 12/11/02, see 263—Ch 3]

263—9.1(368) Formation of committee. A committee formed pursuant to Iowa Code section 368.14 and rule 263—8.10(368) shall conduct proceedings consistent with Iowa Code sections 368.15 through 368.19. The board shall notify all parties that the committee has been formed and direct the parties to file all motions, pleadings, and submissions relating to the petition with the committee, in care of the board.
[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.2(368) Meetings. Meetings of the committee shall be conducted in compliance with Iowa Code chapter 21.

9.2(1) Scheduling. Committee hearings shall be scheduled by the board and may be tentatively scheduled when the board accepts a petition. Board staff shall verify the availability of local representatives to participate on the scheduled hearing date and will notify the board if the local representatives are not all available on the date initially selected by the board.

9.2(2) Quorum. A quorum of the committee, as established by Iowa Code section 368.14, must be present in order for the committee to conduct a meeting or hearing.

9.2(3) Chairperson. The chairperson of the board, or the chairperson's designee, shall serve as chairperson of all committee proceedings.

9.2(4) Notice. Notice of the time, place, and purpose of each meeting shall be provided by regular mail to all parties, posted at the office of the board, and made available to all interested persons upon request. Notice of a committee public hearing will also be published as required by Iowa Code section 368.15.

9.2(5) Meeting format or location. The committee chairperson may, on the chairperson's own motion or as requested by a party, order hearings or argument to be held by electronic means in which all parties have an opportunity to participate. The chairperson will consider convenience of the witnesses or parties, as well as the nature of the case, when a meeting format or location is chosen. Objections, if any, shall be filed with the committee and served on all parties at least three business days in advance of the hearing.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.3(368) Parties to proceedings. An individual or entity may become a party by filing a written appearance identifying one person upon whom the board or committee may serve all orders or correspondence. The written appearance may be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed. If available, the appearance shall include reference to the applicable docket numbers. The city for which the boundary adjustment is proposed, any city whose urbanized area contains the territory, and any county or regional planning authority that contains the territory will be considered a party without filing an appearance.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.4(368) Filing of documents. Each party shall serve any document that it files with the board or committee on all other parties and provide proof of service. The board or committee shall give all parties a copy of any document filed with the board or committee that was not served on all other parties or that was provided by someone other than a party. All parties shall have an opportunity to comment on any such document either orally or in writing as the board or committee so specifies. Except as otherwise provided by law, a document is deemed filed at the time it is received by board staff.

9.4(1) Form of motions.

a. No technical form for motions is required. Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

b. 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 the committee.

c. In ruling on a motion, the committee may consider a failure to respond within the required time period as evidence of a lack of objection to the motion.

9.4(2) Proof of service.

a. Proof of mailing includes either a legible United States Postal Service nonmetered 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 board title) 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)

b. The committee chairperson may by order permit service or filing of a particular document by email or similar electronic means, unless precluded by a provision of law. In the absence of such an order, electronic transmission shall not satisfy service or filing requirements but may be used to supplement service or filing.

9.4(3) Time requirements.

a. Time shall be computed as provided in Iowa Code section 4.1(34).

b. For good cause, the committee 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 committee shall afford all parties an opportunity to be heard or to file written arguments.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.5(17A) Ex parte communication.

9.5(1) There shall be no communication, direct or indirect, between the committee members that would constitute prohibited ex parte communications pursuant to Iowa Code section 17A.17. Nothing in this provision is intended to preclude the committee members from seeking the advice or help of board staff or persons other than those with a personal interest in, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to a committee member any ex parte communications that those persons have received of a type that the committee member would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

9.5(2) Prohibitions on ex parte communications pursuant to subrule 9.5(1) commence with the receipt of a petition for board members and with appointment to a committee for local representatives and continue for as long as the case is pending.

9.5(3) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate in any communications with the committee. Notice of written communications shall be provided in compliance with rule 263—9.4(368) and may be supplemented by telephone, email or other means of notification. Where permitted, oral communications may be initiated through electronic means as long as those means include all parties or their representatives.

9.5(4) Committee members may communicate with each other without notice or opportunity for parties to participate, provided that a quorum of the committee is not present.

9.5(5) Board staff or other persons may be present in deliberations or otherwise advise the committee members without notice or opportunity for parties to participate as long as the board staff or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and the board staff or other persons comply with subrule 9.5(1).

9.5(6) Communications with the committee members 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 committee members when feasible and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 263—9.9(368).

9.5(7) A committee member who receives a prohibited ex parte communication must initially determine if the effect of the communication is so prejudicial as to warrant disqualification pursuant to rule 263—9.6(17A). If 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 committee member received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the committee member determines that disqualification is not warranted, the documents identified in this subrule shall be included in the record of the proceeding 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.

9.5(8) Promptly after being assigned to serve as committee member, a committee member 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 a petition or similar document need not be separately disclosed by the committee member as long as such documents have been or will shortly be provided to the parties.

9.5(9) The committee may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the committee.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.6(17A) Disqualification.

9.6(1) A committee member shall withdraw from participation in the making of any proposed or final decision in a proceeding pursuant to this chapter if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship who:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

9.6(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 that is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter that culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as committee member in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 9.5(9) and 9.6(3).

9.6(3) If a committee member knows of information that might reasonably be deemed a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit, including a statement of the reasons for the determination that withdrawal is unnecessary.

9.6(4) If a party asserts disqualification on any appropriate ground, 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.

9.6(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.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.7(368) Prehearing activities.

9.7(1) Prehearing conference. An informal conference of parties may be ordered at the discretion of the committee chairperson or at the request of any party prior to a hearing in any proceeding. A written request for prehearing conference or an order for prehearing conference on the committee chairperson's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date.

a. Notice of a prehearing conference shall be provided as described in subrule 9.2(4).

b. A prehearing conference may be ordered for the purpose of formulating issues and considering the following:

(1) The simplification of issues.

(2) The necessity or desirability of amending the petition or other filings for the purpose of clarification, amplification or limitation.

(3) Stipulations of law or fact or on the admissibility of exhibits.

(4) The procedure at the hearing.

(5) The propriety of prior mutual exchange of prepared testimony and exhibits between or among the parties.

(6) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

c. Action agreed upon at the conference shall be made a part of the record in such manner as may be prescribed by the committee chairperson at the close of the conference.

9.7(2) Discovery. Parties involved in involuntary boundary adjustment proceedings shall follow the discovery procedures specified in the Iowa Rules of Civil Procedure. At the public hearings, such evidence may be introduced and entered into the record if the evidence would otherwise be admissible.

a. Discovery procedures applicable in civil actions apply to proceedings conducted pursuant to this chapter. Unless lengthened or shortened by these rules or by order of the committee chairperson, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. 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 committee. 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 9.4(3). The committee may rule on the basis of the written motion and any response or may order argument on the motion.

c. Interrogatories, depositions and other documents and evidence discovered shall not be submitted to the committee prior to the public hearings. Evidence obtained in discovery may be used in the boundary adjustment proceeding if that evidence would otherwise be admissible in that proceeding.

9.7(3) Subpoenas. Witnesses who are subpoenaed are entitled to the same fees as subpoenaed witnesses in the district court of Iowa. These fees shall be paid by the party at whose insistence the testimony is to be given. Service of subpoenas shall be in like manner as provided by law for service of subpoenas in the district court of Iowa.

a. Board staff shall issue subpoenas upon written request. Subpoenas issued may compel the attendance of witnesses at depositions or hearings 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 depositions or hearings or may be issued separately.

b. A request for a subpoena shall include the following information, as applicable:

- (1) The name, address and telephone number of the person requesting the subpoena;
- (2) The name and address of the person to whom the subpoena shall be directed;
- (3) The date, time and location at which the person shall be commanded to attend and give testimony;

(4) Whether the testimony is requested in connection with a deposition or hearing;

(5) A description of the books, papers, records or other real evidence requested;

(6) The date, time and location for production or inspection and copying.

c. Each subpoena shall contain, as applicable:

(1) The caption of the case;

(2) The name, address and telephone number of the person who requested the subpoena;

(3) The name and address of the person to whom the subpoena is directed;

(4) The date, time and location at which the person is commanded to appear;

(5) Whether the testimony is commanded in connection with a deposition or hearing;

(6) A description of the books, papers, records or other real evidence the person is commanded to produce;

(7) The date, time, and location for production, or inspection and copying;

(8) The time within which a motion to quash or modify the subpoena must be filed;

(9) The signature, address and telephone number of the board's administrator or designee;

(10) The date of issuance;

(11) A return of service.

d. Board staff shall mail or provide the subpoenas to the requesting party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena and providing copies of the subpoena to all parties to the proceeding.

e. Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party 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 committee 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.

f. Upon receipt of a timely motion to quash or modify a subpoena, the committee may issue a decision. The committee may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the committee may schedule oral argument or hearing by electronic means or in person.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.8(368) Notice of public hearings. Notices shall comply with subrule 9.2(4).

9.8(1) Notice of the public hearing shall include:

a. A statement of the time, place and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved; and

d. A short and plain statement of the matters asserted.

9.8(2) Notice of the public hearing shall comply with Iowa Code section 362.3 and chapter 21.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.9(368) Continuance. Hearings or proceedings relating to matters that are within the jurisdiction of the committee may be continued by the committee, and notice thereof shall be given to all parties. Prior to the commencement of the hearing or other proceeding, a party may, upon written motion to the committee, request a continuance. Copies of said written motion must include proof of service upon all parties to the proceedings. All parties shall have an opportunity to file resistances to said motion, and

the committee may, in its discretion, allow the parties to present oral arguments relative to the motion pursuant to rule 263—9.4(368). A party may, during said hearing or proceeding, but not ex parte, request a continuance. All parties shall have an opportunity to comment on a request for a continuance made at the hearing either orally or in writing as specified by the committee.

9.9(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

9.9(2) An oral application for a continuance may be made if the committee 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 committee. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

9.9(3) In determining whether to grant a continuance, the committee 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.

9.9(4) Board staff may enter an order granting an uncontested application for a continuance. Upon consultation with the committee chairperson or the chairperson's designee, board staff may deny an uncontested application for a continuance or rule on a contested application for continuance.

9.9(5) If a hearing is continued prior to the commencement of the hearing, notice of the continued hearing will be given as required in rule 263—9.8(368).

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.10(368) Public hearings.

9.10(1) *General provisions.*

a. Public hearings shall be held on dates and at locations determined by the committee. The hearing shall be held in a place open to the public.

b. The committee shall, prior to serving notice, make the petition or plan available for public inspection. The committee shall ensure that the petition or plan is available on or before the date of notice and publication.

c. Before testimony is presented, the record shall show the identity of the committee members present, identity of the assistant attorney general and board staff, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. The chairperson may also outline any ground rules and time limitations to allow all parties an opportunity to speak. The committee chairperson or assistant attorney general representing the committee may make a brief opening statement, including a summary of actions taken by the committee prior to the hearing.

d. The committee chairperson shall be in control of the proceedings and have the authority to admit or exclude testimony or other evidence and to rule on all motions and objections.

e. The committee shall listen to testimony and arguments from all those concerned and may ask questions of anyone at any point during any hearing.

f. Legal counsel shall be at the discretion and expense of any party to the proceedings.

g. Parties appearing before the committee should select one or two persons to serve as primary spokespersons for their positions.

h. Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated either orally or in writing, shall be accompanied by a short statement of the grounds of such objections, and shall be included in the record. No such objection shall be deemed waived by further participation by the objector in the hearing or proceeding.

i. The committee may adjourn a hearing for good cause from time to time, upon request of either party or legal counsel representing the committee, for the purpose of a fair hearing.

j. The committee chairperson shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

9.10(2) *Format of public hearings.* The format of the public hearings will generally follow the procedure outlined below. However, the committee chairperson may tailor the format to the nature of the case. The petitioners shall have the burden of proof and shall present their evidence first. Other parties in the case will present their evidence following the petitioners as determined by the committee chairperson. The format will generally permit each party an opportunity to make an opening statement, including the names of any witnesses to be called to explain the party's basic arguments, and to present testimony, evidence and exhibits in support of the party's arguments.

a. After each party's presentation, questions may be asked of the presenters by members of the committee. Then the other parties may ask questions and cross-examine witnesses. Then others who are not parties may ask questions of the presenters.

b. After the cross-examination and questioning are completed, there will be a comment period during which those who are not parties may make comments expressing their views regarding the petition. Those who wish to comment need not preregister with the committee prior to the hearing but need only to sign up at the time of the hearing. The committee chairperson may limit the length of the comments when a large number of people wish to testify.

c. After the comment period, the parties will be offered an opportunity for rebuttal to evidence presented during the hearing. The petitioner will have the final opportunity for rebuttal.

d. At the conclusion of all presentation of evidence, each party shall be permitted an opportunity for a closing statement summarizing its arguments.

e. Failure to appear.

(1) If a party to a hearing fails to appear, that party shall be deemed to have waived opportunity for the hearing or to participate in the hearing unless there is a show of good cause for such failure.

(2) If a petitioner fails to appear at a proceeding, the hearing may be dismissed or postponed at the discretion of the committee or the committee may approve the petition on the basis of verified proof and affidavits, if any, filed in the case, which shall be considered as having been offered in evidence at the hearing by the petitioner.

9.10(3) *Testimony at hearings.* At the public hearing, evidence may be presented in narrative form or question and answer form for each witness at the discretion of the committee chairperson.

a. At the public hearing, all parties shall be allowed the opportunity to cross-examine witnesses and be given an opportunity for rebuttal.

b. The committee members have the right to examine witnesses at any stage of the witnesses' testimony. The committee chairperson may limit questioning in a manner consistent with law.

9.10(4) *Evidence.* Rules of evidence shall be those set forth in Iowa Code section 17A.14.

a. The committee chairperson shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

b. 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 committee chairperson may rule on the objection at the time it is made or may reserve a ruling until the written decision.

c. 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 committee chairperson, 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.

d. Individuals unable to attend a public hearing may submit written comments to the committee. Written comments shall become part of the permanent file of the hearing.

e. When any material or relevant matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. If, in the judgment of the committee, such immaterial or irrelevant matter would unnecessarily encumber the record, such book, paper or document will not be received in evidence as a whole, but the material or relevant portions thereof, if otherwise admissible, may be read into the record or a true copy thereof supplied in the form of an exhibit.

f. The committee may take note of appropriate public documents and records of a general scientific or technical nature by notice to all parties involved, limiting the time within which such parties may object to the accuracy of the facts sought to be proved from such documents or records.

g. 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. Copies shall also be furnished to members of the committee. All exhibits admitted into evidence shall be appropriately marked, and the original exhibit shall be made part of the record. Written or printed materials shall be in sufficient quantity to supply one copy for each member of the committee and one copy for all other parties to the proceedings.

h. Stipulation of facts is encouraged. The committee chairperson may make decisions based on stipulated facts.

i. At any stage of the hearing or after the close of the hearing but prior to decision, the committee may call for further evidence to be presented by the parties concerned. All parties shall be given a copy of said additional evidence and shall have an opportunity to comment on said evidence either orally or in writing as the committee so specifies.

9.10(5) Record of public hearing.

a. Oral proceedings shall be recorded.

b. Board staff shall prepare an official record of all proceedings, including testimony and exhibits. Testimony taken by a mechanical recording device may be incorporated by reference if a transcript is not made. Transcription of the oral proceedings will be retained by the board for two years following the decision or until the case is resolved, whichever is later.

c. Upon request, the board shall provide a copy of the whole record or any portion of the record. The requesting party may be required to pay the cost of preparing a copy of the record.

9.10(6) Posthearing brief. The committee shall allow ten days after the final public hearing within which the parties may file briefs.

a. Unless otherwise ordered by the committee chairperson, initial briefs shall be filed simultaneously by all parties. Briefs shall contain a concise statement of the case. Arguments shall be based on evidence introduced during the proceeding and shall specify the portions of the record where the evidence is found. No new evidence may be included in the posthearing briefs absent a request from the committee and compliance with paragraph 9.10(4) "i." The initial brief of the party who bears the burden of proof shall include all arguments it intends to offer in its brief in support of its case and against the record case of the adverse party or parties.

b. Reply briefs shall also be filed simultaneously, but only by those parties filing initial briefs, on a schedule set by the committee chairperson. A reply brief shall be confined to refuting arguments made in the brief of an adverse party.

c. A copy of such briefs shall be given to the committee and all parties and shall be accompanied by written evidence of service upon all parties.

d. A party's failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the committee from deciding the issue on the basis of evidence appearing in the record.

e. The committee chairperson may set a date and time for oral argument (including a time limit for argument), either in addition to or in lieu of briefs, when deemed necessary or in the public interest

by the chairperson. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.11(368) Committee decision.

9.11(1) After the final public hearing and filing of briefs, the committee will meet to decide whether or not to approve the petition.

- a.* Notice of the meeting will be provided pursuant to subrule 9.2(4).
- b.* The committee may consider all information and arguments presented at the public hearing and in the briefs that were filed.
- c.* No additional oral or written testimony will be taken or considered.
- d.* The committee may conduct its deliberations in closed session pursuant to Iowa Code section 21.5 but shall announce its decision in open session.
- e.* Within 90 days after the final public hearing, the committee shall approve or disapprove the petition or plan and shall file its written decision for record.
- f.* The committee may amend the petition or plan prior to approving it.
- g.* Decisions shall be in writing and rendered following the hearing. The decision shall include:
 - (1) Identification of parties and basic issues.
 - (2) Summary of findings of fact.
 - (3) Summary of conclusions of law.
 - (4) Ruling.
 - (5) Reasons for ruling.
 - (6) Order for implementation of the decision.

9.11(2) Committee decisions, orders or rulings shall be signed by the chairperson or the chairperson's authorized designee. Copies of the written decision shall be mailed to the parties.

9.11(3) A request for a decision that seeks only a change in the effective date shall be made by motion filed, served and acted upon in a like manner as other motions.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.12(368) Appeal of a committee decision.

9.12(1) An appeal of a committee decision or the legality of an election on the proposed boundary adjustment may be made pursuant to Iowa Code sections 17A.19 and 368.22.

9.12(2) Within 30 days of being notified of the filing of an appeal, board staff shall transmit a certified copy of the entire record of proceedings to the reviewing court. By stipulation of all parties to the appeal, the record of the proceedings may be shortened.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.13(368) Rehearing procedures.

9.13(1) Any party to a boundary adjustment proceeding may file an application for rehearing of the committee decision to approve or disapprove a proposed boundary adjustment.

9.13(2) The application for rehearing shall be filed within 20 days of the date of the committee decision as specified in the order. If no date is specified in the order, the date of the committee decision is the date it is mailed or the date of delivery if service is by another means.

9.13(3) The party applying for rehearing shall transmit a copy of the application for rehearing to all parties to the proceeding on the date of filing with the committee. If the application does not contain a certificate of service, the board shall file copies of the application on all parties, with the time for response beginning then.

9.13(4) Contents of application.

a. An application for rehearing shall specify the findings of fact and conclusions of law claimed to be erroneous and include a brief statement of the grounds of error.

b. The application shall state whether the applicant desires reconsideration of all or part of the committee decision on the existing record and whether, on the basis of paragraph 9.13(4)“c,” the applicant requests an opportunity to provide additional evidence.

- c.* A party may request the taking of additional evidence only by establishing:
- (1) The facts or other evidence arose after the original proceeding;
 - (2) The party offering such evidence could not reasonably have provided such evidence at the original proceeding; or
 - (3) The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.
- d.* No further hearing will be granted when it is apparent that the added evidence will merely be cumulative.
- e.* Any party may object to or resist an application for rehearing by filing a resistance with the committee within ten days of the filing of the application.
- f.* The committee may grant or deny an application with or without a hearing on the application.
- (1) The application for rehearing shall be deemed denied unless the committee grants the application within 20 days of its filing.
 - (2) An order granting or denying an application for rehearing is deemed issued on the date it is mailed by the committee or the date it is received if another method of delivery is used.
 - (3) If the committee grants an application for rehearing, the committee may schedule oral argument or rehearing on the application if additional evidence will be received. If additional evidence will not be received, the committee may issue a ruling without oral argument or hearing. The committee may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues.
 - (4) If the committee denies an application, the committee shall proceed as if no application had been filed.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapters 17A and 368.

[Filed 8/16/73, amended 9/12/73, 11/13/74]

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[Filed ARC 7707C (Notice ARC 7139C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 10
BOARD PROCEEDINGS ON PETITIONS FOR INVOLUNTARY BOUNDARY
CHANGE AFTER COMMITTEE APPROVAL

[Prior to 1/9/91, City Development Board[220] Ch 4]

[Prior to 12/11/02, 263—Ch 4]

263—10.1(368) Election. If a petition or plan is approved, the board shall submit the proposal at an election held pursuant to Iowa Code section 368.19, regardless of appeal or applications for rehearing filed pursuant to rule 263—9.13(368).

[ARC 7708C, IAB 3/6/24, effective 4/10/24]

263—10.2(368) Final order. The board will issue an order stating the boundary change is complete in conjunction with the procedure after approval specified in Iowa Code section 368.20 and include such order with documents filed or recorded.

[ARC 7708C, IAB 3/6/24, effective 4/10/24]

263—10.3(368) Record.

10.3(1) The record of an involuntary boundary adjustment proceeding shall include the following as applicable:

- a. The original petition or plan and any amendment;
- b. Proofs of service and publication of required public hearing notices;
- c. All pleadings filed with the board and committee and any answers or rulings on the pleadings;
- d. The public hearing transcript and all evidence received at public hearing;
- e. All briefs and documents filed on the board or committee by parties to the proceedings and all other filings made by those not parties;
- f. Public documents referenced by the board or committee;
- g. The committee's findings of fact, conclusions of law and determination;
- h. The board's election order;
- i. Certification and proof of publication of election results;
- j. The board's final order.

10.3(2) The record shall be opened when a petition is filed with the board and shall be closed when the board has issued its final order.

[ARC 7708C, IAB 3/6/24, effective 4/10/24]

263—10.4(368) Appeal.

10.4(1) When an appeal is filed pursuant to Iowa Code section 368.22, the appellant shall notify the board and provide a copy of the appeal.

10.4(2) Within 30 days after the filing of the petition, the board shall transmit to the reviewing court the original or a certified copy of the entire record of the case that is the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened.

[ARC 7708C, IAB 3/6/24, effective 4/10/24]

263—10.5(368) Board supervision of proposal execution. The board shall proceed accordingly in the following cases:

10.5(1) Discontinuance. The board will supervise discontinuance of a city pursuant to Iowa Code section 368.21. The board shall take control of all city balances, property, and records during the six-month period following the last notice of discontinuance published by the board. Upon the close of the six-month period, the board shall determine the extent of any unpaid allowed claims and such determination shall be verified by a certified public accountant or by the state auditor. In the case of unpaid allowed claims, the board shall approve payment from the discontinued city's account or shall direct the appropriate governing body to levy the necessary taxes.

10.5(2) Boundary adjustment. The board may, upon request of the applicable governing bodies, provide advisory assistance in implementation of an annexation, severance, or consolidation.

10.5(3) Consolidation. After a consolidation has been approved in an election held pursuant to Iowa Code section 368.19, the board may authorize the cities to continue to operate as individual cities until an election of a new city council has been held and the result certified. The election of a new city council shall be held within 90 days of the date of the appeal period authorized by Iowa Code section 368.22.

[ARC 7708C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 17A.19 and chapter 368.

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[Prior to 12/11/02, 263—Ch 5]
Rescinded **ARC 7709C**, IAB 3/6/24, effective 4/10/24

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DIVISION X
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120.801(34CFR303) Early ACCESS system—state level
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CHAPTER 20
STUDENTS FIRST ACT—EDUCATION SAVINGS ACCOUNTS

281—20.1(257) Definitions.

20.1(1) “Annual income” means the same as line 4 of Form 2023 IA 1040 (Iowa taxable income). In calculating annual income, the department shall use information from the last year’s state tax form and need not include income of individuals who have no legal obligation to provide support to the student unless said individual is married to the parent or guardian who is responsible for financially supporting the student. If “annual income” cannot be clearly determined through review of the submitted tax return, the department director has authority to request additional information and determine eligibility. The department director may consider income reductions after the filing of the preceding year’s tax return. This subrule applies only for school years beginning July 1, 2023, and July 1, 2024; it will cease to be applicable by operation of law on July 1, 2025.

20.1(2) “Department” means the department of education.

20.1(3) “Full-time” means enrollment at a nonpublic school with a minimum school calendar that meets the requirement of Iowa Code section 279.10 for at least 75 percent of the school’s definition of “full-time.”

20.1(4) “Household” means the number of people who reside together and who are related by birth, marriage, adoption, legal guardianship, or placement in the home through a state agency. “Household” includes parents, student applicants, and other children who share at least one parent by birth, by adoption, by a parent’s current marriage, or by placement in the home through a state agency. A parent on military duty is considered to be residing in the household. If “household” cannot be clearly determined through review of the submitted tax return, the department director has authority to request additional information and determine eligibility. This subrule applies only for school years beginning July 1, 2023, and July 1, 2024; it will cease to be applicable by operation of law on July 1, 2025.

20.1(5) “Nonpublic school” means the same as defined in Iowa Code section 285.16.

20.1(6) “Qualified educational expenses” means the same as defined in Iowa Code section 257.11B(1) “b” as enacted by 2023 Iowa Acts, House File 68, section 7.

a. For purposes of this subrule, an approvable provider of “educational therapies” is qualified by recognized training and education to provide those educational therapies. To prevent waste, fraud, and abuse, “educational therapies” does not include therapies provided by the student’s family. For purposes of this subrule, “family” includes parents, step-parents, guardians, siblings, half siblings, step-siblings, grandparents, step-grandparents, aunts, uncles, or first cousins.

b. For purposes of this subrule, approvable “online education programs” means online education programs provided by online education providers approved by the department under 281—Chapter 15.

c. For purposes of this subrule, an approvable provider of “vocational and life skills education” is any entity approved by the department or any other unit of state government to provide the vocational and life skills education sought.

d. For purposes of this subrule, an approvable “accredited provider” is any individual or organization holding a credential issued by the Iowa board of educational examiners or any other credential issued by the state of Iowa to provide the service at issue. For purposes of this paragraph, paraprofessionals or assistants are sufficiently trained if they hold a credential issued under Iowa Code section 272.12 or if they have received training and education deemed sufficient by their supervising professional.

e. For purposes of this subrule, expenses listed in Iowa Code section 257.11B(1) “b” as enacted by 2023 Iowa Acts, House File 68, section 7, as “not included” in the definition of “qualified educational expenses,” are not eligible for payment.

20.1(7) “Resident” means the same as defined in Iowa Code section 282.1(2).

20.1(8) “Student” is synonymous with the term “pupil” as that term is used in Iowa Code section 257.11B as enacted by 2023 Iowa Acts, House File 68, section 7.

[ARC 7061C, IAB 8/23/23, effective 9/27/23; ARC 7652C, IAB 3/6/24, effective 4/10/24]

281—20.2(257) Eligible students.

20.2(1) Resident students are eligible as described in Iowa Code section 257.11B(2) as enacted by 2023 Iowa Acts, House File 68, section 7, with annual income determined pursuant to subrule 20.1(1).

20.2(2) Resident students are deemed to attend a nonpublic school for that school budget year under Iowa Code section 257.11B(2) as enacted by 2023 Iowa Acts, House File 68, section 7, if the student attends a nonpublic school on a full-time basis.

20.2(3) Resident students are deemed enrolled in a nonpublic school for the school year immediately preceding the school year for which the education savings account (ESA) payment is requested under Iowa Code section 257.11B(2) as enacted by 2023 Iowa Acts, House File 68, section 7, if they enrolled in and attended a nonpublic school at any point in the immediately preceding school year.

[ARC 7061C, IAB 8/23/23, effective 9/27/23]

281—20.3(257) Application process. The parent or guardian of an eligible student may request an ESA payment during the time period specified by Iowa Code section 257.11B(3) as enacted by 2023 Iowa Acts, House File 68, section 7, by applying to the department, in a manner prescribed by the department. Within the time frame provided by Iowa Code section 257.11B(5) as enacted by 2023 Iowa Acts, House File 68, section 7, the department will provide a response to the application.

[ARC 7061C, IAB 8/23/23, effective 9/27/23]

281—20.4(257) Administration, accountability, monitoring, and enforcement.

20.4(1) The department will take reasonable efforts to verify eligibility of parents, students, nonpublic schools, and providers to participate in this chapter, including verifying information with other state agencies.

20.4(2) The department will make an equal distribution of funds under this chapter to a third-party entity, for distribution to eligible students' accounts, after confirming enrollment at the start of the academic year and enrollment and attendance at the midpoint of the academic year.

20.4(3) The department's actions under Iowa Code section 257.11B(5) "e" and "f" as enacted by 2023 Iowa Acts, House File 68, section 7, may be any action consistent with the department's authority under Iowa Code section 256.1.

20.4(4) The department must recover all improperly paid ESA funds. The department and its director have flexibility to engage in voluntary collection activities if overpayments were based on a good faith error. For purposes of this chapter, a "false claim" is a statement made in conjunction with this program that is knowingly false or in reckless disregard of the truth.

20.4(5) A parent or guardian may appeal to the state board of education any administrative decision the department or third-party entity makes pursuant to this chapter, including determinations of eligibility, allowable expenses, and removal from the program. An appeal under this subrule must be signed and in writing. Electronic submissions and signatures are allowed. Any appeals under this subrule are timely if filed within 30 days of the date of the administrative decision and are governed by 281—Chapter 6.

[ARC 7061C, IAB 8/23/23, effective 9/27/23]

These rules are intended to implement Iowa Code section 257.11B as enacted by 2023 Iowa Acts, House File 68.

[Filed ARC 7061C (Notice ARC 7023C, IAB 5/31/23), IAB 8/23/23, effective 9/27/23]

[Filed ARC 7652C (Notice ARC 7315C, IAB 12/27/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 25
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT PROGRAM; GAP TUITION
ASSISTANCE PROGRAM

DIVISION I
GENERAL PROVISIONS

281—25.1(260H,260I) Definitions.

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

“*Director*” means the director of the Iowa department of education.

“*Dislocated worker*” means an individual eligible for services and benefits under the federal Trade Adjustment Act of 2002, P.L. 107-210. To be eligible, an individual must meet both criteria 1 and 2, plus any one of criteria 3 through 8:

1. The individual is registered for the selective service, if applicable; and
2. The individual is a citizen or national of the United States, a lawfully admitted permanent resident alien, a lawfully admitted refugee or parolee or an individual authorized by the Attorney General to work in the United States.

3. The individual:

- Has been laid off or terminated, and
- Is eligible for or has exhausted entitlement to unemployment compensation, and
- Is unlikely to return to the individual’s previous industry or occupation; or

4. The individual:

- Is in receipt of a notice of layoff or termination from employment, and
- Will be entitled to unemployment compensation at the time of layoff or termination, and
- Is unlikely to return to the individual’s previous industry or occupation; or

5. The individual:

- Has been laid off or terminated, or has received a termination notice, and
- Has been employed for a duration of time to sufficiently demonstrate attachment to the workforce, and

- Is not eligible for unemployment compensation due to insufficient earnings, or has performed services for an employer not covered under the unemployment compensation law, and

- Is unlikely to return to the individual’s previous industry or occupation; or

6. The individual has been laid off or terminated, or has received notice of layoff or termination, as a result of a permanent closure of or any substantial layoff at a plant, facility or enterprise; or

7. The individual was formerly self-employed and is unemployed from the individual’s business;
or

8. The individual:

- Is a displaced homemaker who has been providing unpaid services to family members in the home, and

- Has been dependent on the income of another family member, and is no longer supported by that income, and

- Is unemployed or underemployed, and

- Is experiencing difficulty in obtaining or upgrading employment.

“*Federal poverty level*” means the most recently revised poverty income guidelines published by the federal Department of Health and Human Services.

“*IWD*” means the Iowa workforce development department.

“*Low skilled*” means an adult individual who is basic skills deficient, has lower level digital literacy skills, has an education below a high school diploma, or has a low level of educational attainment that inhibits the individual’s ability to compete for skilled occupations that provide opportunity for a self-sufficient wage.

“*State board*” means the Iowa state board of education.

“*Underemployed*” means an adult individual who is working less than 30 hours per week, or who is employed any number of hours per week in a job that is substantially below the individual’s skill level and that does not lead to self-sufficiency.

“*Unemployed*” means an adult individual who is involuntarily unemployed and is actively engaged in seeking employment.

[ARC 7653C, IAB 3/6/24, effective 4/10/24]

DIVISION II
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT (PACE) PROGRAM

281—25.2(260) PACE program. The pathways for academic career and employment program (hereinafter referred to as PACE) is established to provide funding to community colleges for the development of projects that will lead to gainful, quality, in-state employment for members of target populations by providing them with both effective academic and employment training to ensure gainful employment and customized support services.

25.2(1) Target populations. Individuals included in target populations are those individuals who meet one or more of the following:

- a. Are deemed by definition to be low skilled.
- b. Earn incomes at or below 250 percent of the federal poverty level.
- c. Are unemployed.
- d. Are underemployed.
- e. Are dislocated workers.

25.2(2) Eligibility criteria for projects. Projects eligible for funding for PACE are to be projects that further the ability of members of target populations to secure gainful, quality employment; that further partnerships linking community colleges to industry and nonprofit organizations; and that further the following program outcomes:

- a. Enabling members of the target populations to:
 - (1) Acquire and demonstrate competency in basic skills.
 - (2) Acquire and demonstrate competency in a specified technical field.
 - (3) Complete a specified level of postsecondary education.
 - (4) Earn a national career readiness certificate.
 - (5) Obtain employer-validated credentials.
 - (6) Secure gainful employment in high-quality, local jobs.
- b. Meeting economic and employment goals, including:
 - (1) Economic and workforce development requirements in each region served by the community colleges as defined by local advisory boards established pursuant to Iowa Code section 84A.4.
 - (2) Needs of industry partners in areas including but not limited to the fields of information technology, health care, advanced manufacturing, transportation and logistics, and any other industry designated as in-demand by a local advisory board established pursuant to Iowa Code section 84A.4.

[ARC 7653C, IAB 3/6/24, effective 4/10/24]

281—25.3(260H) Program component requirements. Program components for a PACE project implemented at a community college are to meet the terms of Iowa Code section 260H.5.

[ARC 7653C, IAB 3/6/24, effective 4/10/24]

281—25.4(260H) Pipeline program. Each community college receiving funding for PACE is to meet the terms of Iowa Code section 260H.6.

[ARC 7653C, IAB 3/6/24, effective 4/10/24]

281—25.5(260H) Career pathways and bridge curriculum development program. Each community college receiving funding for PACE is to meet the terms of Iowa Code section 260H.7.

[ARC 7653C, IAB 3/6/24, effective 4/10/24]

281—25.6(260H) Pathway navigators. A community college may use moneys for the PACE program to employ pathway navigators to assist students as specified in Iowa Code section 260H.7A.
[ARC 7653C, IAB 3/6/24, effective 4/10/24]

DIVISION III
GAP TUITION ASSISTANCE PROGRAM

281—25.7(260I) Gap tuition assistance program. A gap tuition assistance program is established to provide funding to community colleges for need-based tuition assistance to enable applicants to complete continuing education certificate training programs for in-demand occupations.

25.7(1) Applicants for tuition assistance. Eligibility for tuition assistance will be based on financial need. Eligibility criteria are set forth in Iowa Code sections 260I.3 and 260I.4.

25.7(2) Eligible costs. Costs of an eligible certificate program are set forth in Iowa Code section 260I.5.

25.7(3) Eligible certificate programs. For the purposes of this division, “eligible certificate program” means a program satisfying the criteria in Iowa Code section 260I.6.
[ARC 7653C, IAB 3/6/24, effective 4/10/24]

281—25.8(260I) Initial assessment. An eligible applicant for tuition assistance under this division is subject to an initial assessment administered by the community college pursuant to Iowa Code section 260I.7. In assessing an applicant under this division, a community college will use the national career readiness certificate; an assessment eligible under the Adult Education and Family Literacy Act, 20 U.S.C. Ch. 73, and approved by the department for use in an adult education and literacy program; or an established process utilizing valid measures for determining preparedness for the eligible certificate program, which may include processes for measuring academic preparedness used by the community college for placement of students into credit coursework.
[ARC 7653C, IAB 3/6/24, effective 4/10/24]

281—25.9(260I) Program interview. An eligible applicant for tuition assistance under this division is subject to an initial interview with the gap tuition assistance coordinator for the community college receiving the application. This interview is subject to the provision of Iowa Code section 260I.8.
[ARC 7653C, IAB 3/6/24, effective 4/10/24]

281—25.10(260I) Participation requirements. Participating individuals are subject to the provisions of Iowa Code section 260I.9.
[ARC 7653C, IAB 3/6/24, effective 4/10/24]

281—25.11(260I) Oversight. Statewide oversight, evaluation, and reporting efforts for the gap tuition assistance program are coordinated by the department pursuant to the terms of Iowa Code section 260I.10.

25.11(1) A steering committee consisting of the Iowa department of education, the Iowa workforce development department, and community college continuing education deans and directors is established to determine whether the performance measures of the gap tuition assistance program are being met and to correct any deficiencies. The steering committee will meet at least quarterly to evaluate and monitor the performance of the gap tuition assistance program.

25.11(2) A common intake tracking system is established pursuant to Iowa Code section 260I.10(2).

25.11(3) The steering committee will develop the required program criteria for PACE and gap tuition assistance-certified programs to be eligible for tuition assistance and program funding. These criteria will be developed based on best practices in the development and delivery of career pathway programs that provide a clear sequence of education coursework and credentials aligned with regional workforce skill needs; clearly articulate from one level of instruction to the next; combine occupational skills and remedial adult education; lead to the attainment of a credential or degree; assist with job placement; and provide wraparound social and socioeconomic support services with the goal of increasing the individual’s skills attainment and employment potential.

25.11(4) To ensure efficient delivery of services, the department, in consultation with the community colleges, may redistribute funds available to the community colleges for purposes of this division.
[ARC 7653C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapters 260H and 260I.

[Filed ARC 0102C (Notice ARC 0020C, IAB 2/22/12), IAB 4/18/12, effective 5/23/12]

[Filed ARC 1875C (Notice ARC 1783C, IAB 12/10/14), IAB 2/18/15, effective 3/25/15]

[Filed ARC 2309C (Notice ARC 2182C, IAB 10/14/15), IAB 12/9/15, effective 1/13/16]

[Filed ARC 4700C (Notice ARC 4524C, IAB 7/3/19), IAB 10/9/19, effective 11/13/19]

[Filed ARC 6380C (Notice ARC 6301C, IAB 4/20/22), IAB 6/29/22, effective 8/3/22]

[Editorial change: IAC Supplement 8/23/23]

[Filed ARC 7653C (Notice ARC 7158C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 27
WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS

281—27.1(260C) Definitions.

“*Community college*” or “*college*” means a community college established under Iowa Code chapter 260C.

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

“*Fund*” or “*funds*” means the workforce training and economic development funds created by Iowa Code section 260C.18A and allocated to each community college.

“*Project*” means a training or educational activity funded under this chapter.

“*State board*” or “*board*” means the Iowa state board of education.

“*Targeted areas*” means the areas of advanced manufacturing; information technology and insurance; alternative and renewable energy, including the alternative and renewable energy sectors listed in Iowa Code section 476.42(1) “*a*”; and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology.

[ARC 7654C, IAB 3/6/24, effective 4/10/24]

281—27.2(260C) Funds allocation. A fund is created and the department will allocate moneys as specified in Iowa Code section 260C.18A(2).

[ARC 7654C, IAB 3/6/24, effective 4/10/24]

281—27.3(260C) Community college workforce and economic development fund plans and progress reports. Each community college, to receive its allocation for the forthcoming fiscal year, is to prepare and submit to the department for state board consideration the following items for the fiscal year.

27.3(1) Workforce training and economic development fund plan. Each college will adopt a workforce training and economic development fund plan for the upcoming year that outlines the community college’s proposed use of moneys appropriated to its fund. Plans are to be based on fiscal years and submitted to the department, in a manner prescribed by the department, by September 30 for the current fiscal year allocation. Plans are to describe how the college proposes to allocate funds to support individual allowable uses pursuant to rule 281—27.4(260C) and the planned amount to be used to support targeted areas.

27.3(2) Progress reports. Each college that receives an allocation of moneys pursuant to rule 281—27.2(260C) will prepare an annual progress report detailing the plan’s implementation. The report is to be submitted to the department by September 30 of each year in a manner and form as prescribed by the department. The report will provide information regarding projects supported by the college’s fund, including the number of participants enrolled in each program, the number of participants who complete each program, the dollars spent on each allowable use pursuant to rule 281—27.4(260C), the dollars spent in targeted areas, and other data necessary to report on state program performance metrics.

[ARC 7654C, IAB 3/6/24, effective 4/10/24]

281—27.4(260C) Use of funds. Moneys deposited into each community college fund are to be expended as specified in Iowa Code section 260C.18A. Any individual project using over \$1 million of moneys from a workforce training and economic development fund requires prior approval from the state board.

[ARC 7654C, IAB 3/6/24, effective 4/10/24]

281—27.5(260C) Annual plan and progress report approval.

27.5(1) The state board will review and consider approval of reports and plans submitted pursuant to rule 281—27.3(260C).

27.5(2) The state board may reject a plan or progress report for any of the following reasons, including:

- a. Incomplete information or data;
- b. Failure to comply with rule 281—27.4(260C);
- c. Project not operated in compliance with state or federal law.

27.5(3) If the state board does not accept a college's annual progress report, the college is subject to the following actions as prescribed by the board based upon the severity of the noncompliance or default, including:

- a.* The withholding of a portion of new fiscal year moneys based upon amounts awarded deemed to be ineligible;
- b.* Tighter oversight and control of the college's fund by the department;
- c.* Loss of funds for one year;
- d.* Other action deemed appropriate by the board.

[ARC 7654C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 260C.18A.

[Filed ARC 1662C (Notice ARC 1529C, IAB 7/9/14), IAB 10/15/14, effective 11/19/14]

[Filed ARC 7654C (Notice ARC 7159C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 32
HIGH SCHOOL EQUIVALENCY DIPLOMA
[Prior to 9/7/88, see Public Instruction Department[670] Ch 8]

281—32.1(259A) Definitions. As used in this chapter:

“*Adult education and literacy program*” means the same as defined in 877—Chapter 32.

“*Approved program*” means any defined option established under this chapter for the completion of a high school equivalency diploma that has been approved by the department.

“*Approved test*” means the entire battery of subtests given under a high school equivalency test adopted by the department and administered at department-approved testing sites.

“*Contact hour*” means the same as described in 281—Chapter 21.

“*Continuous enrollment*” means a participant has not exited from the approved program as defined in the federal Workforce Innovation and Opportunity Act (34 CFR §361.150(c)), effective December 13, 2023.

“*Demonstrated competence*” means the ability to apply the knowledge and skills required to perform critical functions specific to a program of study. Competencies that measure the attainment of the knowledge, skills, and abilities equivalent to a high school program of study are to be aligned with content standards for adult education as referenced in 877—Chapter 32 and twenty-first century learning skills.

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

“*Eligible institution*” means an entity as described in 877—Chapter 32.

“*High school credit*” means credit awarded for the successful completion of a secondary course or demonstrated competence equivalent to one-half unit as defined in 281—Chapter 12.

“*High school equivalency diploma*” means the credential granted by the department to adults who did not graduate from high school and are unable to receive a high school diploma through traditional means but who are able to demonstrate attainment of the knowledge, skills, and abilities that are equivalent to those that would be attained in a high school program of study.

“*Resident*” means an individual who satisfies the provisions of 281—subrule 21.2(11).

“*Twenty-first century learning skills*” means the same as defined in 281—Chapter 12.

“*Work-site learning*” means a planned and supervised work experience, equivalent to the training services defined in the federal Workforce Innovation and Opportunity Act (29 U.S.C. §3174(c)(3)(D)), effective December 13, 2023, that follows workplace laws and regulations, including the minimum wage prescribed by Iowa law or the federal Fair Labor Standards Act, if applicable.

[ARC 7655C, IAB 3/6/24, effective 4/10/24]

281—32.2(259A) Eligibility to participate.

32.2(1) No one under 16 years and nine months of age is allowed to participate in an approved program, with the exception of a person who is at least 16 years of age and satisfies one or more of the following conditions:

- a. Is a resident of an Iowa juvenile institution;
- b. Is an active participant in Job Corps; or
- c. Is under the supervision of a probation office.

32.2(2) Anyone 16 years and nine months of age or older who is not enrolled in a secondary school nor is a high school graduate is permitted to apply for enrollment in an approved program. The requirements for admission into an approved program are:

a. Proof of age and, for an applicant under 18 years of age, consent of the applicant’s parent or guardian.

b. For an applicant under 19 years of age, verification of nonenrolled status from the last high school attended.

c. Completion of a comprehensive intake by an eligible institution. For purposes of this chapter, the intake includes all of the following:

- (1) Assessment of the applicant’s reading level and career interests and aptitudes.

(2) Discussion of program options available to the applicant regarding completion of a high school equivalency diploma, to include the requirements, expectations, benefits, and limitations of each option.

(3) Development of a plan for the completion of one of the options discussed and subsequent activities necessary to work toward an identified goal, career pathway, occupation, or further education.

32.2(3) An eligible participant who successfully completes an approved program will not be awarded a high school equivalency diploma until the participant reaches 18 years of age and the participant's ninth grade class has graduated from high school. This subrule does not apply to eligible participants described in paragraphs 32.2(1) "a" through "c," who may receive their diploma at any time after completion.

[ARC 7655C, IAB 3/6/24, effective 4/10/24]

281—32.3(259A) By whom administered. An approved program is to be administered by an eligible institution, which may provide one or more approved programs. The department will maintain a process by which an eligible institution may apply to offer an approved program.

[ARC 7655C, IAB 3/6/24, effective 4/10/24]

281—32.4(259A) Diploma, transcript, verification fees. Upon payment to the department or its designee of a fee for the actual cost of production and distribution of a high school equivalency diploma, transcript, or verification letter not to exceed \$20 per document, the department will issue a high school equivalency diploma, transcript, or verification letter to an applicant who has achieved the minimum standards established in this chapter. Upon payment to the department or its designee of a fee for the actual cost of verification and issuance of a duplicate diploma, transcript, and verification letter not to exceed \$20, the department or its designee will issue a duplicate diploma, transcript, or provide verification to the applicant or person authorized by the applicant to request these documents. Approved providers must track and submit to the department evidence of the applicant's completion of the program requirements for the issuance of a high school equivalency diploma.

[ARC 7655C, IAB 3/6/24, effective 4/10/24]

281—32.5(259A) Application, course, and testing fees. The applicant or the applicant's supporting agency is to pay an application, course, or testing fee to cover only necessary and reasonable testing or program costs. Fees paid directly to an approved program are considered program income and are to adhere to the federal Office for Management and Budget Uniform Guidance cost principles (as codified in 2 CFR §200.80), effective December 13, 2023.

[ARC 7655C, IAB 3/6/24, effective 4/10/24]

281—32.6(259A) High school equivalency diploma program based on a department-approved test. The department will award a high school equivalency diploma to an applicant who achieves the appropriate minimum standard scores on an approved test.

32.6(1) Validity of test scores. Scores on an approved test remain valid for a period of five years from the date of the first subtest taken. If an applicant has not earned a high school equivalency diploma within this five-year period, the applicant must retake any expired subtest. The only exception is for test series that expire prior to the five-year period, in which case all previously taken subtests are void.

32.6(2) Retest. Any applicant not achieving the minimum standard test score on any subtest in effect at the time of testing is permitted to apply for retest. Applicants may retest twice per calendar year, provided one of the following conditions is met:

a. A period of three months from the date of initial testing has elapsed; or

b. The applicant completes instruction in an adult education and literacy program in each subject area to be retested. This instruction is to be certified by an official of the adult education and literacy program provider to the test administrator authorized to release the retest.

[ARC 7655C, IAB 3/6/24, effective 4/10/24]

281—32.7(259A) High school equivalency diploma program based on attainment of high school credits. The department will award a high school equivalency diploma to an applicant who demonstrates completion of an approved program consisting of at least 36 high school credits. The approved program will be inclusive of the graduation requirements established under 281—Chapter 12 and consist of at least

eight high school credits in English or communications; six credits in mathematics; six credits in science; six credits in social studies, including government; and ten elective credits that meet the requirements of subrule 32.7(4).

32.7(1) *Award of prior credit.* The applicant is to provide certified, translated transcripts from any Iowa school district, accredited public or nonpublic high school, or regionally accredited college or university to document completion of credits earned that are equivalent to those required in an approved program established under this rule. Additional documentation may be requested to validate credits earned.

32.7(2) *Minimum participation requirement.* An eligible applicant is to demonstrate competence through continuous enrollment in an approved program for a minimum of two high school credits.

32.7(3) *Minimum graduation requirements.* If the applicant is not continuously enrolled in an approved program, the applicant becomes subject to the minimum graduation requirements applicable to the date of reenrollment.

32.7(4) *Electives.*

a. Coursework for electives will align with twenty-first century learning skills and be classified in one of the following five areas:

- (1) Civic literacy;
- (2) Health literacy;
- (3) Technology literacy;
- (4) Financial literacy;
- (5) Employability skills.

b. Work-site learning may be counted toward an elective, under the following conditions:

(1) Evidence of prior work-site learning will be evaluated using a state-developed assessment tool and may be awarded a maximum of two high school credits. Credit earned for prior work-site learning will not be counted toward the minimum participation requirement, as described in subrule 32.7(2).

(2) Current work-site learning will be evaluated using a state-developed assessment tool and may be awarded a maximum of two high school credits. Credit earned for current work-site learning may be counted toward the minimum participation requirement, as described in subrule 32.7(2).

32.7(5) *Postsecondary credit.* Credit awarded by a regionally accredited postsecondary institution for the successful completion of a course that applies toward the requirements of a postsecondary credential, including a certificate or diploma, or associate, bachelor, or graduate-level degree program, will be accepted to fulfill the requirements for the satisfactory completion of a program as follows:

a. One postsecondary semester credit or its equivalent is equal to one-third high school credit. The resulting high school credit may be used to satisfy either a core or elective credit requirement of an approved program.

b. Twenty contact hours of noncredit postsecondary coursework is equal to one-third high school credit provided the coursework is aligned to regional career pathways and occupational needs. This credit can be used to satisfy an elective credit requirement of an approved program.

[ARC 7655C, IAB 3/6/24, effective 4/10/24]

281—32.8(259A) High school equivalency diploma program based on postsecondary degree.

32.8(1) *Postsecondary degree from a United States postsecondary institution.* The department will award a high school equivalency diploma to a resident applicant who presents an associate degree or higher that includes general education coursework and is awarded by a regionally accredited postsecondary institution. The applicant is to provide official transcripts to an adult education and literacy program to document completion of program requirements.

32.8(2) *Postsecondary degree from a foreign postsecondary institution.* The department will award a high school equivalency diploma to a resident applicant who presents a postsecondary degree equivalent to an associate degree or higher, provided that the following conditions are met:

a. The applicant presents to an adult education and literacy program an official transcript from an institution of higher education attesting to the completion of the program of study for the postsecondary degree. If the transcript is not in English, the applicant will also provide a certified translation.

- b.* The applicant is a United States citizen or meets both of the following conditions:
- (1) Demonstrates proficiency in speaking, listening, reading, and writing as defined by the department's approved English language proficiency standards; and
 - (2) Has successfully completed a course in government or civics education as a component of an approved program.

[ARC 7655C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapter 259A.

[Filed 10/6/65, amended 9/18/69, 7/12/72]

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CHAPTER 35

EDUCATIONAL AND PROGRAM STANDARDS FOR CHILDREN'S RESIDENTIAL FACILITIES

281—35.1(282) General. All school-age children, including children younger than 5 years of age and older than 18 years of age who are eligible children to receive special education, who are living in any children's residential facility providing residential care to children within the state of Iowa, which is not otherwise exempted by the Iowa Code, are to be provided an appropriate education.

[ARC 7656C, IAB 3/6/24, effective 4/10/24]

281—35.2(282) Definitions. For purposes of this chapter, the following definitions apply:

“Child” or *“children”* means an individual or individuals under 18 years of age. A child is “school-age” if the child is at least 5 years of age on September 15 but not more than 21 years of age or if the child is younger than 5 years of age or older than 18 years of age and is an eligible child to receive special education.

“Children’s residential facility” means the same as defined in Iowa Code section 237C.1(3) and may also be referred to as a “private facility.” It does not include any facility that houses school-age children and children eligible to receive special education who are under the jurisdiction of the department of corrections, department of health and human services, board of regents, or other governmental agency and that has current authority to offer direct instruction to children from funding available to one of the above agencies.

[ARC 7656C, IAB 3/6/24, effective 4/10/24]

281—35.3(282) Establishing an appropriate educational program. A children's residential facility may accept any child of school age or a child who is eligible to receive special education services only after it has been issued a certificate of approval by the department of health and human services and has established an appropriate educational program and services under this chapter.

35.3(1) A private facility will establish an appropriate educational program using one of the options provided in Iowa Code section 282.34(1).

35.3(2) Any contract established by the private facility with a school district or accredited nonpublic school is to include, at a minimum, the physical location of the educational program and educational services; the parties involved; the purpose of the contract; the program description in detail; the powers, duties and authority of each party to the contract; the jurisdiction of each party to the contract; the dispute resolution procedure; specifications of the services that are contracted, if any, and how costs are to be calculated; billing procedures; how each legal, testing, and reporting obligation will be met; ownership of property belonging to the party that paid the cost or contributed the item; contract amendment procedures; contract approval procedures; contract renewal and termination procedures; duration of the contract; cross indemnification; application of laws, rules and regulations; binding effect; severability; assurances; and signature of the school board with legal power to authorize the terms of the contract. Any contract developed under this rule is to be submitted to the department of education for review and approval by the director of the department prior to enactment. A contract that fails to comply with any of the provisions of this chapter is void.

35.3(3) Children residing in a private facility who need treatment or security throughout the day shall have classrooms made available at the site of the private facility at no cost to the school district providing the instructional program or instructional supervision. The classroom is to meet the requirements for educational space for children in accordance with the Iowa Code, administrative rules, and state fire marshal regulations.

35.3(4) Nothing included in this chapter regulates religious education curricula of any private facility.

[ARC 7656C, IAB 3/6/24, effective 4/10/24]

281—35.4(282) Notices, fees, and reporting.

35.4(1) A private facility is to comply with Iowa Code sections 282.34(1) “b” and 282.34(1) “c.”

35.4(2) If the educational programs and educational services are provided by or through the public school district of location, only fees related to the educational programs and educational services that are authorized by the Iowa Code, including but not limited to Iowa Code chapter 282, may be charged. The public school district cannot charge nonresident students a higher fee than resident students.

35.4(3) A private facility is to comply with requests by the Iowa department of education for basic educational and financial information.

[ARC 7656C, IAB 3/6/24, effective 4/10/24]

281—35.5(282) Provision of appropriate educational services.

35.5(1) A private facility is to fully cooperate with the area education agency and school district in which the facility is located to fulfill the area education agency's responsibilities for child find under 281—Chapter 41, including making a child available for evaluation and provision of services for which the child is eligible.

35.5(2) If a child does not need treatment or security by a private facility in such a time or manner as is needed to remain on the campus of the private facility, a child with an individual education plan is to be provided special education instruction and related services with other nondisabled children within the least restrictive environment to the maximum extent appropriate.

35.5(3) The area education agency in which the private facility is located, the school district of residence, and other appropriate public or private agencies or private individuals involved with the care or placement of a child will cooperate with the school district in which the private facility is located in sharing educational information, textbooks, curricula, assignments, and materials to plan and to provide for the appropriate education of the child living in a private facility and to ensure academic credit is granted to the child for instructional time earned upon discharge from the private residential facility.

35.5(4) A private facility that houses eligible children who are four years of age by September 15 of the school year will notify the parents or legal guardians of these eligible children about the opportunities to access quality preschool programs. Children whose parents are Iowa residents may access the statewide voluntary preschool program under 281—Chapter 16 at no cost to the parents, and transportation will be provided by the public school district in which the statewide voluntary preschool provider is located from the school district's statewide voluntary preschool programs funding. Children whose parents are not Iowa residents may access the statewide voluntary preschool programs, if space is available, through a tuition and transportation agreement with the public school district in which the statewide voluntary preschool program provider is located.

[ARC 7656C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 282.34.

[Filed ARC 2946C (Notice ARC 2852C, IAB 12/7/16), IAB 2/15/17, effective 3/22/17]

[Filed ARC 7656C (Notice ARC 7162C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

TITLE VI
INTERSCHOLASTIC COMPETITION
 CHAPTER 36
 EXTRACURRICULAR INTERSCHOLASTIC COMPETITION
 [Prior to 9/7/88, see Public Instruction Department[670] Ch 9]

281—36.1(280) Definitions.

“Associate member school” means a nonaccredited nonpublic school that has been granted associate member status by any corporation, association, or organization registered with the department pursuant to Iowa Code section 280.13, upon approval by the department based upon proof of compliance with:

1. Iowa Code section 279.19B, and rules adopted by the department related to the qualifications of the affected teaching staff, and
2. The student eligibility rules of this chapter.

Associate membership is subject to the requirements, dues, or other obligations established by the organization for which associate membership is sought.

“Coach” means an individual, with coaching endorsement or authorization as required by Iowa law, employed by a school district under the provisions of an extracurricular athletic contract or employed by a nonpublic school in a position responsible for an extracurricular athletic activity. *“Coach”* also includes an individual who instructs, diagnoses, prescribes, evaluates, assists, or directs student learning of an interscholastic athletic endeavor on a voluntary basis on behalf of a school or school district.

“Compete” means participating in an interscholastic contest or competition and includes dressing in full team uniform for the interscholastic contest or competition as well as participating in pregame warm-up exercises with team members. *“Compete”* does not include any managerial, recordkeeping, or other noncompetitor functions performed by a student on behalf of a member or associate member school.

“Department” means the Iowa department of education.

“Dropout” means a student who quit school because of extenuating circumstances over which the student had no control or who voluntarily withdrew from school. This does not include a student who has been expelled or one who was doing failing work when the student voluntarily dropped from school.

“Executive board” means the governing body authorized under a constitution or bylaws to establish policy for an organization registered under this chapter.

“Executive officer” means the executive director or secretary of each governing organization.

“Member school,” for purposes of this chapter, means a public school or accredited nonpublic school that has been granted such status by any corporation, association, or organization registered with the department pursuant to Iowa Code section 280.13.

“Parent” means the natural or adoptive parent having actual bona fide custody of a student.

“Student” means a person under 20 years of age enrolled in grades 9 through 12. For purposes of these rules, ninth grade begins with the summer immediately following eighth grade. The rules contained herein apply uniformly to all students.

“Superintendent” means a superintendent of a local school or a duly authorized representative.

“Varsity” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.

[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.2(280) Registered organizations. Organizations registered with the department include the following:

- 36.2(1)** Iowa High School Athletic Association (hereinafter association).
- 36.2(2)** Iowa Girls’ High School Athletic Union (hereinafter union).
- 36.2(3)** Iowa High School Music Association (hereinafter music association).
- 36.2(4)** Iowa High School Speech Association (hereinafter speech association).
- 36.2(5)** Unified Iowa High School Activities Federation (hereinafter federation).

281—36.3(280) Filings by organizations. Each organization will maintain a current file of the following items, available for inspection by the department:

- 36.3(1)** Constitution and bylaws, approved by the state board of education.
- 36.3(2)** Current membership and associate membership lists.
- 36.3(3)** Organization policies.
- 36.3(4)** Minutes of all meetings of organization boards.
- 36.3(5)** Proposed constitution and bylaw amendments or revisions.
- 36.3(6)** Audit reports.
- 36.3(7)** General bulletins.
- 36.3(8)** Other information pertinent to clarifying organization administration.

[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.4(280) Executive board.

36.4(1) Membership. Each organization will have an executive board, containing some representation from school administrators, teachers, and elective school officers; provided, however, that the membership will include the following:

- a.* One member who is a member of a school board in Iowa, appointed by the Iowa association of school boards to represent the lay public.
- b.* One member who is either a coach, sponsor or director of an activity sponsored by the organization to which the member is elected and who works directly with the students or the program. This member is to be elected by ballot of the member schools, the vote to be cast by the school's designated representative of the organization involved.

36.4(2) Organization elections. The election procedure for each organization is to be conducted as provided by the organization's constitution, which is to set criteria for protecting the voter's anonymity and ensuring adequate notice of elections. In addition, one representative designated by the department director will be present at the counting of all ballots and will validate election results.

36.4(3) Federation membership. The federation, in addition to conforming to other requirements in this rule, will have in its membership the executive board of the association, union, music association, speech association, and school administrators of Iowa.

[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.5(280) Fiscal provisions.

36.5(1) Salary. No remuneration, salary, or remittance may be made to any member of an executive board, representative council or advisory committee of an organization for the member's service.

36.5(2) Expenses. Travel and actual expenses of executive board members, representative council members, advisory committee members, and officers may be paid from organizational funds only when on official business for the organization. Actual expenses are to be paid for travel for transportation outside the state, along with necessary and reasonable expenses that are to be itemized. Itemized accounting of the travel and business expenses of employees are to be furnished to the department in an annual report on a form prescribed by the department.

36.5(3) Financial report. Full and detailed reports of all receipts and expenditures are to be filed annually with the department.

36.5(4) Bond. The executive board of each activity organization will purchase a blanket fidelity bond from a corporate surety approved by the executive board, conditioned upon the faithful performance of the duties of the executive officer, the members of the executive board, and all other employees of the activity organization. Such blanket bond is to be in a penal amount set by the executive board and is to be the sum of 50 percent of the largest amount of moneys on hand in any 30-day period during the preceding fiscal year, and 20 percent of the net valuation of all assets of the activity organization as of the close of the last fiscal year, but such bond will in no case be in an amount less than \$10,000.

36.5(5) Audit.

- a. General.* The financial condition and transaction of all organizations will be examined once each year, or more often if directed by the director of education, by either a certified public accountant

chosen by the organization or by a committee chosen by the organization and approved by the director of education.

b. Examinations by auditors. Auditors have the right while making the examination to examine all organization papers, books, records, tickets, and documents of any of the officers and employees of the organizations, and have the right in the presence of the custodian or deputy to have access to the cash drawers and cash in the official custody of the officer and to the records of any depository that has funds of the organization in its custody.

c. Access to records. Upon request, organizations will make available to the department or its delegated representative all records, data, written policies, books, accounts, and other materials relating to any or all aspects of their operations.

[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.6(280) Appearance before state board. At the request of the state board of education or its executive officer, members of the governing boards and employees of the organizations will appear before and give a full accounting and details on the aforesaid matters to the state board of education.

[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.7(280) Interscholastic athletics. In addition to the requirements of rule 281—36.8(280), organizations will implement the provisions described below for participants in interscholastic athletic competition.

36.7(1) Physical examination. Every year, each student will present to the student's superintendent a certificate signed by a licensed physician and surgeon, osteopathic physician and surgeon, osteopath, qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner, to the effect that the student has been examined and may safely engage in athletic competition.

Each doctor of chiropractic licensed as of July 1, 1974, is to affirm on each certificate of physical examination completed that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic.

The certificate of physical examination is valid for the purpose of this rule for one calendar year. A grace period not to exceed 30 calendar days is allowed for expired physical certifications.

36.7(2) Sportsmanship. It is the clear obligation of member and associate member schools to ensure that their contestants, coaches, and spectators in all interscholastic competitions practice the highest principles of sportsmanship, conduct, and ethics of competition. The governing organization has the authority to penalize any member school, associate member school, contestant, or coach in violation of this obligation.

36.7(3) Awards. At no time may any student accept an award of cash.

36.7(4) Interstate competition. Every student participating in interstate athletic competition on behalf of the student's school must meet the eligibility rules.

36.7(5) Competition seasons. The length of training periods and competition seasons is determined solely by the governing organization.

36.7(6) Tournaments. The number and type of state tournaments for the various sports is solely determined by the organization. In scheduling and conducting these tournaments, the organization has the final authority for determining the tournament eligibility of all participants. Organization bylaws are to provide for a timely method of seeking an internal review of initial decisions regarding tournament eligibility.

36.7(7) Ineligible player competition. Member or associate member schools that permit or allow a student to compete in an interscholastic competition in violation of the eligibility rules or that permit or allow a student who has been suspended to so compete are subject to penalties imposed by the executive board. The penalties may include forfeiture of contests or events or both, involving any ineligible student(s); adjustment or relinquishment of conference/district/tournament standings; and return of team awards or individual awards or both.

If a student who has been declared ineligible or who has been suspended is permitted to compete in an interscholastic competition because of a current restraining order or injunction against the school, registered organization, or department, and if such restraining order or injunction subsequently is

voluntarily vacated, stayed, reversed, or finally determined by the courts not to justify injunctive relief, the penalties listed above may be imposed.

This rule is intended to implement Iowa Code section 280.13.
[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.8(280) Eligibility requirements.

36.8(1) *Local eligibility and student conduct rules.* Local boards of education may impose additional eligibility requirements not in conflict with these rules. Nothing herein is to be construed to prevent a local school board from declaring a student ineligible to participate in interscholastic competition by reason of the student's violation of rules adopted by the school pursuant to Iowa Code sections 279.8 and 279.9. A member or associate member school shall not allow any student, including any transfer student, to compete until such time as the school has reasonably reliable proof that the student is eligible to compete for the member or associate member school under these rules.

36.8(2) *Scholarship rules.*

a. All contestants are to be enrolled and in good standing in a school that is a member or associate member in good standing of the organization sponsoring the event.

b. All contestants who have attained the age of 20 years old are not eligible.

c. All contestants will receive credit in at least four subjects, each of one period or "hour" or the equivalent thereof, at all times. To qualify under this rule, a "subject" will meet the requirements of 281—Chapter 12. Coursework taken from a postsecondary institution and for which a school district or accredited nonpublic school grants academic credit toward high school graduation is used in determining eligibility. No student is to be denied eligibility if the student's school program deviates from the traditional two-semester school year.

(1) Each contestant shall be passing all coursework for which credit is given and making adequate progress toward graduation requirements at the end of each grading period. Grading period, graduation requirements, and any interim periods of ineligibility are determined by local policy. For purposes of this subrule, "grading period" means the period of time at the end of which a student in grades 9 through 12 receives a final grade and course credit is awarded for passing grades.

(2) If at the end of any grading period a contestant is given a failing grade in any course for which credit is awarded, the contestant is ineligible to dress for and compete in the next occurring interscholastic athletic contests and competitions in which the contestant is a contestant for 20 consecutive calendar days, unless the student has already served a period of ineligibility for 20 consecutive calendar days in another school-sponsored activity. A student will not serve multiple periods of ineligibility because of a failing grade.

d. A student with a disability who has an individualized education program will not be denied eligibility on the basis of scholarship if the student is making adequate progress, as determined by school officials, toward the goals on the student's individualized education program, unless the course in which the student receives a failing grade has no relationship to those goals.

e. A student who meets all other qualifications may be eligible to participate in interscholastic athletics for a maximum of eight consecutive semesters upon entering the ninth grade for the first time. However, a student who engages in athletics during the summer following eighth grade is also eligible to compete during the summer following twelfth grade. Extenuating circumstances, such as health, may be the basis for an appeal to the executive board that may extend the eligibility of a student when the executive board finds that the interests of the student and interscholastic athletics will be benefited.

f. All member schools will provide appropriate interventions and necessary academic supports for students who fail or who are at risk to fail.

g. A student is academically eligible upon entering the ninth grade.

h. A student is not eligible to participate in an interscholastic sport if the student has, in that same sport, participated in a contest with or against, or trained with, a National Collegiate Athletic Association (NCAA), National Junior College Athletic Association (NJCAA), National Association of Intercollegiate Athletics (NAIA), or other collegiate governing organization's sanctioned team. A student may not participate with or against high school graduates if the graduates represent a collegiate

institution or if the event is sanctioned or sponsored by a collegiate institution. Nothing in this subrule precludes a student from participating in a one-time tryout with or against members of a college team with permission from the member school's administration and the respective collegiate institution's athletic administration.

i. No student is eligible to participate in any given interscholastic sport if the student has engaged in that sport professionally.

j. The local superintendent of schools, with the approval of the local board of education, may give permission to a dropout student to participate in athletics upon return to school if the student is otherwise eligible under these rules.

k. Remediation of a failing grade by way of summer school or other means does not affect the student's ineligibility. All failing grades will be reported to any school to which the student transfers.

36.8(3) General transfer rule. A student who transfers from a school in another state or country or from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days, as defined in 281—Chapter 12, exclusive of summer enrollment, unless one of the exceptions listed in paragraph 36.8(3) "a" applies. The period of ineligibility applies only to varsity level contests and competitions. In ruling upon the eligibility of transfer students, the executive board will consider the factors motivating student changes in residency, which it may consider from both direct and circumstantial evidence. Unless otherwise provided in these rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes.

a. Exceptions. The executive officer or executive board will consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten school days:

(1) Upon a contemporaneous change in parental residence, a student is immediately eligible if the student transfers to the new district of residence or to an accredited nonpublic member or associate member school located in the new school district of residence. In addition, if with a contemporaneous change in parental residence, the student had attended an accredited nonpublic member or associate member school immediately prior to the change in parental residence, the student may have immediate eligibility if the student transfers to another accredited nonpublic member or associate member school. For purposes of this subparagraph, a contemporaneous change in parental residence includes a change in a student's residence from the residence of one parent or guardian to the residence of a different parent or guardian.

(2) If the student is attending in a school district as a result of a whole-grade sharing agreement between the student's resident district and the new school district of attendance, the student is immediately eligible.

(3) A student who has attended high school in a district other than where the student's parent(s) resides, and who subsequently returns to live with the student's parent(s), becomes immediately eligible in the parent's resident district.

(4) A student whose residence changes due to any of the following circumstances set forth in Iowa Code section 256.46 is immediately eligible provided the student meets all other eligibility requirements in these rules and those set by the school of attendance. For purposes of Iowa Code section 256.46(1) "d," participation in a foreign exchange program is based on a J-1 visa issued by the United States government, unless the student attends the school primarily for athletic purposes.

(5) A transfer student who attends in a member or associate member school that is a party to a cooperative student participation agreement, as defined in rule 281—36.13(280), with the member or associate member school the student previously attended is immediately eligible in the new district to compete in those interscholastic athletic activities covered by the cooperative agreement.

(6) Any student whose parents change district of residence but who remains in the original district without interruption in attendance continues to be eligible in the member or associate member school of attendance.

(7) A special education student whose attendance center changes due to a change in placement agreed to by the district of residence is eligible in either the resident district or the district of attendance, but not both.

(8) A student who is found by the attending district to be a homeless child or youth as described in rule 281—33.2(256) is eligible.

(9) In any transfer situation not provided for elsewhere in this chapter, the executive board will exercise its administrative authority to make any eligibility ruling that it deems to be fair and reasonable. The executive board will consider the motivating factors for the student transfer, which it may consider from both direct and circumstantial evidence. The determination will be made in writing with the reasons for the determination clearly delineated. The burden of proving entitlement to administrative discretion under this provision lies with the party seeking it.

b. In ruling upon the transfer of students who have been emancipated by marriage or have reached the age of majority, the executive board will consider all circumstances with regard to the transfer to determine if it is principally for school or athletic purposes, in which case participation will not be approved.

c. A student who participates in the name of a member or associate member school during the summer following eighth grade is ineligible to participate in the name of another member or associate member school in the first 90 consecutive school days of ninth grade unless a change of residence has occurred after the student began participating in the summer.

d. A school district that has more than one high school in its district will set its own eligibility policies regarding intradistrict transfers, subject to Iowa Code section 279.82(6).

36.8(4) *Open enrollment transfer.* The transfer of a student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment is governed by Iowa Code section 282.18(9).

36.8(5) *Eligibility for other enrollment options.*

a. Shared-time students. A nonpublic school student who is enrolled only part-time in the public school district of the student's residence under a "shared-time" provision or for driver education is not eligible to compete in interscholastic athletics in the public school district.

b. Dual enrollment. A student who receives competent private instruction, not in an accredited nonpublic or public school, may seek dual enrollment in the public school of the student's resident district and is eligible to compete in interscholastic athletic competition in the resident school district provided the student meets the eligibility requirements of these rules and those set by the public school of attendance.

If a student seeking such dual enrollment is enrolled in an associate member school of the union or association, the student is eligible for and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing agreement. (Eligibility in such case is governed by rule 281—36.1(280).)

Any ineligibility imposed under this chapter begins with the first day of participation under dual enrollment. Any period of ineligibility applies only to varsity level contests and competitions.

c. Competent private instruction. A student who receives competent private instruction, and is not dual-enrolled in a public school, may participate in and be eligible for interscholastic athletics at an accredited nonpublic school if the student is accepted by that school and the student meets the eligibility requirements of this chapter and those set by the accredited nonpublic school where the student participates. Application will be made to the accredited nonpublic school on a form provided by the department.

If a student seeking such participation is enrolled in an associate member school of the union or association, the student is eligible for and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing agreement. (Eligibility in such case is governed by rule 281—36.1(280).)

Any ineligibility imposed under this chapter begins with the first day of participation with the accredited nonpublic school. Any period of ineligibility applies only to varsity level contests and competitions.

36.8(6) *Summer camps and clinics and coaching contacts out of season.*

a. School personnel, whether employed or volunteers, of a member or associate member school shall not coach that school's student athletes during the school year in a sport for which the school personnel are currently under contract or are volunteers, outside the period from the official first day of practice through the finals of tournament play. However, school personnel may coach a senior student from the coach's school in an all-star contest once the senior student's interscholastic athletic season for that sport has concluded. In addition, volunteer or compensated coaching personnel shall not require students to participate in any activities outside the season of that coach's sport as a condition of participation in the coach's sport during its season.

b. A summer team or individual camp or clinic held at a member or associate member school facility shall not conflict with sports in season. Coaching activities between June 1 and the first day of fall sports practices will not conflict with sports in season. The associations in their discretion may establish a dead period up to 14 calendar days in length. During a dead period, coaches will not be allowed to have contact with students.

c. Penalty. A school whose volunteer or compensated coaching personnel violate this rule is ineligible to participate in a governing organization-sponsored event in that sport for one year with the violator(s) coaching.

36.8(7) Nonschool team participation. The local school board will, by policy, determine whether or not participation in nonschool athletic events during the same season is permitted and provide penalties for students who may be in violation of the board's policy.

This rule is intended to implement Iowa Code sections 256.46, 280.13 and 282.18.
[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.9(280) Executive board review. A student, parent of a minor student, or school contesting the ruling of a student's eligibility based on these rules, other than subrule 36.8(1) or paragraph 36.8(2) "b," "c," "d," "f," or "k" or based on a challenge to a local district finding that a student was not subject to a founded incident of harassment or bullying, or a school contesting a penalty imposed under paragraph 36.8(6) "b," will state the basis of the objections in writing, addressed to the executive officer of the board of the governing organization. Upon request of a student, parent of a minor student, or school, the executive officer will schedule a hearing before the executive board on or before the next regularly scheduled meeting of the executive board but not later than 20 calendar days following the receipt of the objections, unless a later time is mutually agreeable. The executive board will give at least five business days' written notice of the hearing. The executive board will consider the evidence presented and issue findings and conclusions in a written decision within five business days of the hearing and will mail a copy to the appellant. The burden of proving entitlement to relief under this rule lies with the party seeking it.

[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.10(280) Appeals to director. If the claimant is still dissatisfied, an appeal may be made in writing to the director of education by giving written notice of the appeal to the state director of education with a copy by registered mail to the executive officer of the governing organization. An appeal is to be in the form of an affidavit and be filed within ten business days after the date of mailing of the decision of the governing organization. The director of education will establish a date for hearing within 20 calendar days of receipt of written notice of appeal by giving at least 5 business days' written notice of hearing to the appellant, unless another time is mutually agreeable. The procedures for hearing adopted by the state board of education and found at 281—Chapter 6 are applicable, except that the decision of the director is final. Appeals to the executive board and the state director are not contested cases under Iowa Code section 17A.2(5). The burden of proving entitlement to relief under this rule lies with the party seeking it.

[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.11(280) Organization policies. The constitution or bylaws of organizations sponsoring contests for participation by member schools will reflect the following policies:

36.11(1) Expenditure policy. It is the expenditure policy of each organization, after payment of costs incurred in rules 281—36.6(280) through 281—36.9(280) and legitimate expenses for housing, equipment and supplies, including by agreement with other organizations having a mutual interest in interscholastic activities, to use all receipts to promote and fiscally sponsor those extracurricular interscholastic contests and competitions deemed by the organization to be most beneficial to all eligible students enrolled in member schools. Organizations with large revenues may provide assistance in staff, space, equipment and the transfer of funds to other organizations whose contests or competitions do not generate sufficient moneys to carry out an adequate program in their areas of service. Each organization will make an annual payment to the federation to cover the necessary expenditures of the federation. The amount of this payment will be determined by the federation.

36.11(2) Calendar of events. The federation will establish yearly in advance a calendar of events for the interscholastic contests and competitions sponsored by the organizations.

36.11(3) Information to local member schools. The federation will distribute to member schools the yearly calendar of events and other information believed by officers of the federation to be helpful to local school officials in providing a comprehensive program of extracurricular interscholastic contests or competitions.

36.11(4) Participation. Participation in interscholastic contests or competitions will be by school teams only and not selected individuals, with the exception of individual sports events such as wrestling, track, cross country, golf, tennis, and music and speech activities.

36.11(5) Contests outside Iowa. Out-of-state contest participation by a member school is limited to regularly scheduled interscholastic activities.

36.11(6) Promoting interstate contests. No activity organization is to sponsor interstate contests or competition between individuals, teams or groups.

36.11(7) Chaperones. It is the responsibility of all school districts to see that all teams or contestants are properly chaperoned when engaged in interscholastic activities.

36.11(8) Membership. Membership in an organization is limited to schools accredited by the department or approved by the department solely for purposes of associate membership in a registered organization.

[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.12(280) Eligibility in situations of district organization change. Notwithstanding any other provision of this chapter, in the event eligibility of one or more students is jeopardized or in question as a result of actions beyond their control due to pending reorganization of school districts approved by the voters under Iowa Code chapter 275; action of the district boards of directors under Iowa Code section 274.37; or the joint employment of personnel and sharing of facilities under Iowa Code section 280.15 and the result is a complete discontinuance of the high school grades, or discontinuance of the high school grades pursuant to Iowa Code section 282.7(1), the boards of directors of the school districts involved may, by written agreement, determine the eligibility of students for the time the district of residence does not provide an activity program governed by this chapter. When the respective boards have not provided by written agreement for the eligibility of students whose eligibility is jeopardized or questioned four weeks prior to the normal established time for beginning the activity, students or parents of students involved may request a determination of eligibility from the governing body of the organization involved. All parties directly interested will be given an opportunity to present their views to the governing board.

A determination of eligibility by the governing board will be based upon fairness and the best interests of the students.

In the event that one or more parties involved in the request for determination before the governing board are dissatisfied with the decision of the governing board, an appeal may be made by the dissatisfied party to the director of the department under the provisions of rule 281—36.10(280). A decision of the director in the matter is final.

The above provisions apply insofar as applicable to changes of organization entered into between two or more nonpublic schools.

This rule is intended to implement Iowa Code section 280.13.
[ARC 7657C, IAB 3/6/24, effective 4/10/24]

281—36.13(280) Cooperative student participation. Notwithstanding any other provision of this chapter, in the event a member or associate member school does not directly make participation in an interscholastic activity available to its students, the governing board of the member or associate member school may, by formally adopted policy if among its own attendance centers, or by written agreement with the governing board of another member or associate member school, provide for the eligibility of its students in interscholastic activities provided by another member or associate member school. The eligibility of students under a policy, insofar as applicable, or a written agreement is conditioned upon the following:

36.13(1) All terms and conditions of the agreement are in writing;

36.13(2) The attendance boundary of each school that is party to the agreement is contiguous to or contained within the attendance boundary of one of the other schools, unless the activity is not offered at any school contiguous to the party district, or all schools that are contiguous refuse to negotiate an agreement with the party district, in which case the contiguous requirement may be waived by the applicable governing organization. For the purposes of this rule, a nonpublic school member will utilize the attendance boundaries of the public school in which its attendance center is located;

36.13(3) Any interscholastic activity not available to students of the schools participating in the agreement may be included in the agreement. A school's students may be engaged in cooperative activities under the terms of only one agreement.

However, if several schools are in a consortia cooperative agreement for a specific activity, they are not precluded from having a separate agreement with one or more of the same schools for a different activity as long as all schools of the consortia agree to such a separate agreement;

36.13(4) Agreements will be for a minimum of one school year. Amendments may be made to agreements, including allowing additional member schools to join an existing agreement, without necessarily extending the time of existence of the agreement;

36.13(5) All students participating under the agreement are enrolled in one of the schools, are in good standing, and meet all other eligibility requirements of these rules;

36.13(6) A copy of the written agreement between the governing boards of the particular schools involved, and all amendments to the agreement, will be filed with the appropriate governing organization(s) no later than April 30 for the subsequent year, unless exception is granted by the organization for good cause shown. The agreements and amendments are deemed approved unless denied by the governing organization(s) within ten calendar days;

36.13(7) It is the purpose of this rule to allow individual students participation in interscholastic competition in activities not available to them at the school they attend, through local policy or arrangements made between the governing boards of the schools involved, so long as the interscholastic activities of other schools are not substantially prejudiced. Substantial prejudice includes situations where a cooperative effort may result in an unfair domination of an activity or substantial disruption of activity classifications and management. In the event an activity organization determines, after investigation, that an agreement between schools that was developed under the terms of this rule results in substantial prejudice to other schools engaged in the activity, or the terms of the agreement are not in conformity with the purpose and terms of this rule, the activity organization may give timely notice to the schools involved that the local policy or agreement between them is null and void for the purposes of this rule, insofar as cooperative student participation is concerned with a particular activity. Determinations are appealable to the director of education under the applicable terms of

rule 281—36.10(280). For notice to be timely, it must be given at least 45 calendar days prior to the beginning of the activity season.

This rule is intended to implement Iowa Code section 280.13.

[ARC 7657C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 256.46, 280.13, and 282.18.

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[Filed ARC 7657C (Notice ARC 7161C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

[◇] Two or more ARCs

¹ See rule 36.20, last paragraph.

² See Education, Department of[281], IAB.

CHAPTER 37
EXTRACURRICULAR ATHLETIC ACTIVITY
CONFERENCE FOR MEMBER SCHOOLS

281—37.1(280) General. It is the policy of the state of Iowa that each school desiring to be a member of a conference providing extracurricular athletic contests and competitions for students is granted this opportunity. For purposes of this chapter, “member school” means a school or school district granted such status by any corporation, association, or organization registered with the state department of education pursuant to Iowa Code section 280.13 and includes associate members.

37.1(1) Criteria. To the maximum extent appropriate, membership shall be with other schools of comparable size and within reasonable geographic proximity.

37.1(2) Initial responsibility. The initial authority and responsibility for conference development, membership, and alignment rests with the board of directors of each public school district and the authorities in charge of each nonpublic school.

[ARC 7658C, IAB 3/6/24, effective 4/10/24]

281—37.2(280) Complaint to the director, department of education. A member school that believes it has been unfairly excluded or prevented from obtaining membership in an athletic activity conference that would provide the opportunity for participation of its students in athletic events or contests with students from other member schools of comparable size and within reasonable geographic proximity may file a complaint stating this concern with the director of the department of education. The complaint is to set forth in a plain and concise manner the reasons the member school believes the director should intervene in conference alignment decisions and the specific relief requested by the member school. The complaint is to be signed by the president of the board of directors of a public school district or a representative of the officials in charge of an accredited nonpublic school. The director or the director’s designee will, within ten days, acknowledge to the member school receipt of the complaint in writing.

[ARC 7658C, IAB 3/6/24, effective 4/10/24]

281—37.3(280) Mediation.

37.3(1) The director of the department of education will establish a mediation team consisting of the executive director of the Iowa high school athletic association (hereinafter association) and the executive secretary of the Iowa girls’ high school athletic union (hereinafter union) organizations recognized in 281—Chapter 36, or their designees, to meet with the complainant and representatives of other affected member schools. If the complaint involves conference alignment for athletic activities represented by only one of the organizations, only that organization will be involved in the mediation. A copy of all materials filed with the director by the complainant member school will be provided to the mediation team.

37.3(2) The mediation team will meet with administrators or board members of schools potentially affected by changes in conference alignment related to the complaint. Schools will send representatives who have knowledge of the impact of a conference realignment and full authority to respond on behalf of their member school. Factors to be weighed in reaching resolution include school enrollment figures (current and projected), travel distances, comparability of instructional programs, traditional rivalries, number of existing and proposed schools in the conference, and comparability of athletic programs and other school-sponsored programs.

[ARC 7658C, IAB 3/6/24, effective 4/10/24]

281—37.4(280) Resolution or recommendation of the mediation team. If mediation results in resolution of the complaint, no further action is necessary on the part of the director and the implementation of the mediation agreement will be left with the boards of directors of school districts and the authorities in charge of nonpublic schools. If no resolution is reached within 50 days of the start of the mediation process, the mediation team will make a recommendation to the director as to the best resolution of the complaint. Copies of this recommendation will be given to all affected member schools. The director will establish a time for a hearing on this recommendation within 45 days of

the receipt of the mediation team's recommendation. The director or director's designee will conduct the hearing, at which time all affected parties will be given the opportunity to provide oral or written testimony or submit other evidence. The director or director's designee reserves the right to establish time limits on appearances at the hearing.

[ARC 7658C, IAB 3/6/24, effective 4/10/24]

281—37.5(280) Decision; effective date.

37.5(1) In reaching a decision on the complaint, the director will consider information gathered by the mediation team and its recommendation as well as the written and oral testimony from the hearing. In addition, the director or the director's designee may consult with other individuals, organizations, or conference representatives able to provide input on a decision. If a designee of the director conducts the hearing and review process, the findings of the designee shall be reviewed by the director. A final decision on the complaint will be made by the director. The decision may affect conference realignment or direct other appropriate relief to remedy the complaint. The director will make a decision within 60 days of the hearing, and copies of the decision will be provided to all affected parties.

37.5(2) If the decision results in conference realignment, the date of this change shall be made with deference given to existing contracts and commitments. Alignment changes will be made for four-year periods with automatic review by the director after two years so that further necessary changes take effect at the conclusion of the four-year period, unless agreement exists that implementation of the changes can occur at an earlier date.

[ARC 7658C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 280.13.

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CHAPTER 47

CAREER ACADEMIES

[Formerly Ch 28 under Department of Public Instruction]

[Prior to 9/7/88, see Vocational Education Advisory Council[843] Ch 1]

Rescinded **ARC 2947C**, IAB 2/15/17, effective 3/22/17

March 22, 2017, effective date of ARC 2947C [the rescission of Chapters 46 and 47 and the adoption of new Chapter 46] delayed until the adjournment of the 2018 General Assembly by the Administrative Rules Review Committee at its meeting held March 10, 2017.

CHAPTER 48

WORK-BASED LEARNING

Rescinded **ARC 7659C**, IAB 3/6/24, effective 4/10/24

CHAPTER 49
INDIVIDUALIZED CAREER AND EDUCATION PLAN

281—49.1(279) Definitions. For purposes of this chapter, the following definitions apply:

“*Approved system*” means a vendor-provided career information and decision-making system that meets the standards of rule 281—49.5(279).

“*Board*” means the board of directors of a public school district.

“*Career cluster*” means a nationally recognized framework for organizing and classifying career and technical education programs.

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

“*Director*” means the director of the Iowa department of education.

“*District plan*” means the career and academic plan developed by each school district that details the delivery of career guidance and development in compliance with this chapter.

“*Educational program*” means the educational program as defined in 281—Chapter 12.

“*Plan*” means the individualized career and academic plan established under this chapter that is created by each student of the school district in eighth grade and which, at a minimum, meets the standards of rule 281—49.2(279).

“*Postsecondary readiness*” means college and career readiness in Iowa as defined by the state board of education.

“*School counseling program*” means the school counseling program established by Iowa Code section 256.11(9A).

“*Student*” means an enrolled student as defined in 281—Chapter 12.

“*Work-based learning*” means planned and supervised connections of classroom, laboratory and industry that prepare students for current and future careers.

[ARC 7659C, IAB 3/6/24, effective 4/10/24]

281—49.2(279) Individualized career and academic plan. The plan established under this rule is to, at a minimum, comply with the provisions of Iowa Code section 279.61.

[ARC 7659C, IAB 3/6/24, effective 4/10/24]

281—49.3(279) Essential components. The district is to engage each student in activities that support the following essential components of the individualized career and academic plan:

49.3(1) Self-understanding. Students are to engage in developmentally appropriate inventories and assessments that promote self-understanding and the connection to work and engage in meaningful reflective activities about the results.

49.3(2) Career information. Students are to research careers based on self-understanding results and engage in meaningful reflection about the findings.

49.3(3) Career exploration. Students are to engage in activities that reveal connections among school-based instruction, career clusters, and the world of work and engage in meaningful reflection.

49.3(4) Postsecondary exploration. Students are to engage in activities to explore relevant postsecondary education and training options related to career interests and engage in meaningful reflection on the exploration experience.

49.3(5) Career and postsecondary decision. Students are to complete relevant activities to meet their postsecondary goals consistent with the plan and stated postsecondary intention.

[ARC 7659C, IAB 3/6/24, effective 4/10/24]

281—49.4(279) District plan.

49.4(1) Components of district plan. The school district shall develop a written career plan. The district plan is to include the following components:

a. The district is to, at a minimum, describe the following aspects of the district plan:

(1) The activities to be undertaken in each grade level to achieve the provisions of rule 281—49.2(279).

(2) Integration of the career plan within connected district initiatives and other facets of the school district's comprehensive school counseling program.

(3) At the district's discretion, any additional outcomes to be integrated into the career and academic planning system.

b. Designation of team. The superintendent of each school district is to designate a team of education practitioners to carry out the duties assigned to the school district under this rule. The district plan is to include a list, by job position, of the designated district team.

(1) Team composition. The team will include a school administrator; a school counselor; teachers, including career and technical education teachers; and individuals responsible for coordinating work-based learning activities.

(2) Duties. The team is responsible for the following:

1. Implementation of the district plan.

2. Annually reviewing and, as necessary, proposing to the school district revisions to the district plan.

3. Coordination of activities which integrate essential components into classroom instruction and other facets of the school district's educational program.

4. Regularly consulting with representatives of employers, state and local workforce systems and centers, higher education institutions, and postsecondary training programs.

49.4(2) Maintenance of district plan. The district plan will be regularly reviewed and revised by the team and the board.

[ARC 7659C, IAB 3/6/24, effective 4/10/24]

281—49.5(279) Career information and decision-making systems. Each district shall use a career information and decision-making system that meets the standards established in subrule 49.5(3).

49.5(1) Review process. The department will establish a process for the review of vendor-provided career information and decision-making systems to determine which career information and decision-making systems meet the minimum specifications established in subrule 49.5(3).

49.5(2) State-designated system. The department will establish a process for the review and approval of a single state-designated career information and decision-making system from among the systems approved through the process established in subrule 49.5(1), which districts may use in compliance with this chapter.

49.5(3) Minimum functions of approved systems. An approved system is to, at a minimum, support implementation of rule 281—49.2(279) and meet the following specifications:

a. Allow for the creation of student accounts, which allow a student to store and access the results and information gathered from the inventories, searches, and associated activities outlined in paragraphs 49.5(3) "b" through "d."

b. Include developmentally appropriate inventories and assessments that promote self-understanding and the connection to work. Inventories and assessments are to include an interest inventory; a work values assessment; and an abilities, strengths, or skills assessment.

c. Include a search platform for career information. The platform is to allow a student to access and review career information related to the results of the inventories listed in paragraph 49.5(3) "b." Career information will include current and accurate state and national wage, earning, and employment outlook data for a given occupation; job descriptions, including such information as essential duties and aptitudes; and training and education requirements. The career information search platform is to, at a minimum, allow a student to sort information by wage and earning, career cluster, and training and education requirements.

d. Include a search platform for postsecondary information. Postsecondary information is to include, but not be limited to, a current, accurate, and comprehensive database of accredited professional colleges, technical and community colleges, and public and private baccalaureate colleges and universities; and include or provide links to apprenticeship and military opportunities. The postsecondary information search platform will, at a minimum, allow a student to sort information by program and degree type, institution type, location, size of enrollment, and affiliation and appropriate

institutional characteristics, such as designation as a historically black college and university or Hispanic-serving institution, and religious affiliation.

e. Track basic utilization for the functions outlined in paragraphs 49.5(3)“a” through “d.” Districts are to have the ability to generate and export a report on the utilization statistics.

f. Ensure compliance with applicable federal and state civil rights laws.

g. Disclose the source and age of, as well as frequency of updates to, all information and data.

h. Provide auxiliary services, including:

- (1) A process for districts to submit comments, feedback, and modification requests to the vendor.
- (2) Technical assistance during regular school district operating hours.
- (3) Appropriate training for users.

49.5(4) Supplemental systems. The department will maintain a list of supplemental systems that districts may use to satisfy the components of rule 281—49.2(279).

a. The department is to establish a process for the review of supplemental systems. The review will, at a minimum, identify the components of rule 281—49.2(279) and paragraphs 49.5(3)“b” through “d,” which are satisfied through the supplemental system. All supplemental systems are to comply with paragraphs 49.5(3)“f” and “g.”

b. A district that chooses to use a supplemental system is to specify which components of rule 281—49.2(279) are satisfied through the use of the supplemental system in the district plan established in rule 281—49.4(279). A district that chooses to utilize a supplemental tool must continue to utilize and make available to students an approved system.

[ARC 7659C, IAB 3/6/24, effective 4/10/24]

281—49.6(279) Compliance. The director will monitor school districts for compliance with the provisions of this chapter through the accreditation process established for school districts under 281—Chapter 12.

49.6(1) Maintenance of student records. Each school district is to maintain evidence of student completion of the individualized career and academic plan established in rule 281—49.2(279), pursuant to rule 281—12.3(256).

49.6(2) Reporting. The board of directors of each school will complete the reports set forth in Iowa Code section 279.61(5). The board is to report to the department at least annually, and in a manner and frequency established by the department, regarding student participation in work-based learning programs established by the board, including registered apprenticeships, quality pre-apprenticeships, internships, on-the-job training, and projects through the Iowa clearinghouse for work-based learning.

49.6(3) Department responsibilities. Iowa Code section 279.61(6) is incorporated by this reference.

[ARC 7659C, IAB 3/6/24, effective 4/10/24]

281—49.7(256) Program established. The provisions of this rule implement the future ready Iowa state-recognized work-based learning program as authorized under Iowa Code section 256.7 and chapter 256, subchapter VII, part 4.

49.7(1) Definitions. As used in this rule:

“*Apprenticeship program*” means an apprenticeship program authorized under federal statute or by the Iowa office of apprenticeship.

“*Eligible program*” means a program eligible under the future ready Iowa skilled workforce last-dollar scholarship program.

49.7(2) Alignment with last-dollar scholarship. The rules governing eligibility for students, programs, and institutions are the same as the eligibility criteria specified in 283—Chapter 15 for the future ready Iowa skilled workforce last-dollar scholarship program.

49.7(3) Eligibility. Pursuant to 283—subparagraph 15.3(1)“j”(2), a student enrolled in an apprenticeship program aligned to an eligible program may be enrolled in an eligible program on a part-time basis.

[ARC 7659C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 279.61.

[Filed Emergency ARC 2620C, IAB 7/20/16, effective 6/21/16]

[Filed ARC 2749C (Notice ARC 2627C, IAB 7/20/16), IAB 10/12/16, effective 11/16/16]
[Filed ARC 4164C (Notice ARC 4049C, IAB 10/10/18), IAB 12/5/18, effective 1/9/19]
[Filed ARC 6928C (Notice ARC 6758C, IAB 12/14/22), IAB 3/8/23, effective 4/12/23]
[Filed ARC 7659C (Notice ARC 7164C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 61
IOWA READING RESEARCH CENTER

281—61.1(256) Establishment. There is established an Iowa reading research center (center). The director of the department of education will select a public education entity to serve as the host for the center. The director will give preference to a school district, an area education agency, or the joint area education agencies system. The selection of a host is to be for a specified period of time.

[ARC 7660C, IAB 3/6/24, effective 4/10/24]

281—61.2(256) Purpose. The center's purpose is set forth in Iowa Code section 256.9(49) "c"(1).

[ARC 7660C, IAB 3/6/24, effective 4/10/24]

281—61.3(256) Intensive summer literacy program. The center hereby establishes program criteria and guidelines for voluntary implementation of the program by school districts.

61.3(1) Program criteria: summer reading programs pursuant to Iowa Code section 279.68. Each district that chooses to implement a summer reading program as part of its implementation of Iowa Code section 279.68(2) "a"(6) is to comply with the terms of that section and 281—Chapter 62. A school district will employ appropriately licensed and supervised teachers and paraprofessionals, will monitor student progress, and is encouraged to use an evidence-based curriculum.

61.3(2) Additional voluntary program criteria: intensive summer literacy program. Each district's voluntary intensive summer literacy program is encouraged to meet, in addition to the terms of subrule 61.3(1), the following program criteria:

a. Criterion 1. Each district is encouraged to adopt instructional practices or programs that have some evidence of success and that include explicit and systematic instruction in foundational reading skills based on student need, consistent with Iowa Code section 279.68.

b. Criterion 2. Each district is to employ skilled, high-quality instructors. For the purposes of this paragraph, a district may hire or employ personnel directly, through an agreement with one or more other districts, through an agreement with one or more accredited nonpublic schools, through an agreement with one or more state agencies or governmental subdivisions, through an agreement with one or more private not-for-profit community agencies, or some combination thereof.

c. Criterion 3. Each district is encouraged to allow sufficient time for meaningful reading instruction and student learning.

d. Criterion 4. Each district is encouraged to provide instruction in small classes and small groups. To meet this criterion, a district is encouraged to employ the same instructional grouping formats described in the evidence-based intervention chosen. In the absence of specifications from the intervention chosen, a district is encouraged to ensure that it delivers whole-class instruction in class sizes of 15 or fewer students and that it delivers targeted intervention based on student need in small groups of 5 or fewer students.

e. Criterion 5. Each district is encouraged to monitor and promote student attendance.

f. Criterion 6. Each district is encouraged to evaluate student outcomes and the quality of program implementation, including implementation of these voluntary criteria.

g. Criterion 7. Each program is to be under the leadership and supervision of at least one appropriately licensed teacher and at least one appropriately licensed administrator. The two roles may be filled by the same individual. Nonlicensed personnel are to be supervised by an appropriately licensed teacher. It is encouraged that either the teacher or the administrator holds a reading (K-8) endorsement or a reading specialist endorsement.

h. Option to use private providers. A district may enter into an agreement with a private provider that uses evidence-based instructional strategies to provide summer literacy instruction under this chapter and 281—Chapter 62, at the election of a parent and in lieu of programming provided by the district. Any election under this paragraph is at the parent's sole cost.

61.3(3) Guidelines for implementation by school districts. The center is to:

a. Publish guidelines to assist school districts in applying the program criteria contained in subrule 61.3(1) and the voluntary criteria contained in subrule 61.3(2) and in improving the performance of intensive summer literacy programs.

b. Make such guidelines available on its website.
[ARC 7660C, IAB 3/6/24, effective 4/10/24]

281—61.4(256) Nature of the center’s operation. The center’s work is governed by the provisions of Iowa Code section 256.9(49) “c”(2). Annually, the center submits the report specified in Iowa Code section 256.9(49) “c”(3).

[ARC 7660C, IAB 3/6/24, effective 4/10/24]

281—61.5(256) Nature of the center’s products.

61.5(1) General. The center’s strategies, models, materials, and assessments, including the products referred to in subrule 61.6(3), are judged by and subject to the following requirements. To the extent possible, strategies, models, materials, and assessments, including the products referred to in subrule 61.6(3), shall:

- a.* Be research-based.
- b.* Contain evidence establishing that they are replicable by Iowa school districts, area education agencies, and accredited nonpublic schools.
- c.* Contain evidence establishing that they are capable of sustainable implementation.
- d.* Be widely and liberally distributed and used.

61.5(2) Intellectual property. Regardless of any intellectual property right that may accrue to the center, the department of education and each school district, area education agency, and accredited nonpublic school will have a perpetual, irrevocable, royalty-free, nonexclusive, nontransferable license to use any of the strategies, models, and materials produced by the center. Regardless of any intellectual property right that may accrue to the center, each school district, area education agency, accredited nonpublic school, and practitioner preparation program approved by the department of education has a perpetual, irrevocable, royalty-free, nonexclusive, nontransferable license to use any of the strategies, models, and materials produced by the center to provide training to current and prospective teachers and administrators.

[ARC 7660C, IAB 3/6/24, effective 4/10/24]

281—61.6(256) Governance and leadership of the center.

61.6(1) Director and other personnel. The center’s director will be employed by the host referred to in rule 281—61.1(256). The director of the department of education or the director’s designee, in consultation with the host and the advisory council, will select, determine the compensation of, and annually evaluate the director of the center.

- a.* Responsibilities of the director of the center will include the following:
 - (1) Enacting the priorities of the reading research center, as defined by the department;
 - (2) Achieving the Iowa reading research center’s mission and purpose;
 - (3) Directing the center’s budget;
 - (4) Managing the center’s staff;
 - (5) Managing and overseeing the request for proposal (RFP) or contracting process or both to enact priorities of the center;
 - (6) Providing oversight and management of all contracts and projects initiated by the center;
 - (7) Establishing models for an intensive summer literacy program replicable in Iowa schools;
 - (8) Disseminating literacy research and its application; and
 - (9) Submitting required reports to the department and the general assembly.

b. The center may employ such other personnel as may be necessary to fulfill its responsibilities, upon approval of such positions by the director of the department of education.

61.6(2) Advisory council. When setting priorities for the center, the department of education seeks advice and assistance from an advisory council. The advisory council is to establish its bylaws and govern itself by the following paragraphs:

a. The advisory council will consist of representatives of the department, school districts, area education agencies, accredited nonpublic schools, institutions of higher education, organizations representing reading and literacy teachers, community-based nonprofit organizations that are focused on literacy, statewide literacy organizations, and parents. Members who offer other perspectives may be appointed. Members may serve in more than one role. Members are appointed by the director of the department of education or the director's designee. Actual expenses for members of the advisory council may be assumed by the center.

b. The advisory council will recommend and continually review center priorities, which are to be consistent with these rules. The advisory council annually will submit to the department a recommended set of projects and priorities for the reading research center.

c. The advisory council will provide input to the director of the department on the desired qualifications for the position of director of the center.

d. The advisory council will advise and assist the center in preparing the annual report as set out in rule 281—61.4(256).

e. The advisory council will foster collaboration across the Iowa reading research and evaluation community and will serve as a facilitator in identifying additional research needs and ways to apply research to practice in Iowa schools and communities.

f. The advisory council will assist the director of the center in reviewing proposals for quality, viability, and statewide impact.

g. Meetings of the advisory council are public meetings subject to Iowa Code chapter 21.

61.6(3) *Use of advisory council recommendations.* The department is to consider the priorities established by its advisory council in determining which projects or activities to direct the center to enact, consistent with these rules and with the center's funding.

61.6(4) *Contracts and awards.* In the furtherance of its work, the center may contract with other entities or may make awards by competitive bid. The rules in this chapter are incorporated by reference in any contract or award under this subrule. Any product produced pursuant to a contract or award is subject to these rules, including subrule 61.5(2).

[ARC 7660C, IAB 3/6/24, effective 4/10/24]

281—61.7(256) Financing of the center. The center will be financed in the following manner:

61.7(1) *Host as fiscal agent.* The host is the fiscal agent for the center.

61.7(2) *Public or private funds.* The host and the center may solicit and accept funds from public and private sources for the fulfillment of the mission and purpose of the center.

61.7(3) *Oversight by the department.* The department has oversight responsibilities for the financial operations of the center.

[ARC 7660C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 256.7(31) "b" and 256.9(49) "c."

[Filed ARC 0475C (Notice ARC 0389C, IAB 10/3/12), IAB 11/28/12, effective 1/2/13]

[Filed ARC 2343C (Notice ARC 2186C, IAB 10/14/15), IAB 1/6/16, effective 2/10/16]

[Filed ARC 3290C (Notice ARC 3148C, IAB 7/5/17), IAB 8/30/17, effective 10/4/17]

[Filed ARC 7660C (Notice ARC 7165C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 80
STANDARDS FOR PARAEducATOR PREPARATION PROGRAMS

281—80.1(272) Definitions. The following definitions apply to this chapter:

“Authorized official” means an individual with the authority within the institution and the unit to monitor and ensure compliance with this chapter.

1. If the unit is within a community college, an institution of higher education under the state board of regents, or an accredited private institution of higher education, the official must maintain, oversee, and be responsible for the program within the unit.

2. If the unit is within an Iowa public school district or area education agency, the official must have one or more of the following credentials issued by the board of educational examiners: a teacher license (with the exception of a substitute teaching license), an administrator license, a professional services license, an elementary professional school counselor endorsement, a secondary professional school counselor endorsement, a school nurse endorsement, a special education support personnel authorization, or a statement of professional recognition. Other authorizations or certificates issued by the board of educational examiners do not satisfy the terms of this paragraph.

“Department” means the department of education.

“Director” means the director of the department of education.

“Diverse groups” means one or more groups of individuals possessing certain traits or characteristics, including but not limited to age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status.

“Institution” means an Iowa public school district, area education agency, community college, institution of higher education under the state board of regents or accredited private institution as defined in Iowa Code section 261.9(1) offering a paraeducator preparation program(s).

“Paraeducator candidate” means an individual who is enrolled in a paraeducator preparation program leading to certification as a generalist, a generalist with area(s) of concentration, or an advanced paraeducator.

“Paraeducator preparation program” means the program of paraeducator preparation leading to certification of paraeducators.

“State board” means Iowa state board of education.

“Unit” means the organizational entity within an institution with the responsibility of administering the paraeducator preparation program(s).

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.2(272) Institutions affected. All institutions engaged in preparation of paraeducators and seeking state board approval of the institutions’ paraeducator preparation program(s) shall meet the standards contained in this chapter.

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.3(272) Criteria for Iowa paraeducator preparation programs. Each institution seeking approval of its paraeducator preparation program(s) will submit to the state board evidence of the extent to which the program meets the standards contained in this chapter. After the state board has approved an institution’s paraeducator preparation program(s), students who complete the program(s) may be recommended by the authorized official of that institution for issuance of the appropriate certificate.

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.4(272) Application; approval of programs. Approval of paraeducator preparation programs by the state board will be based on the recommendation of the director after study of the factual and evaluative evidence of record about each program in terms of the standards contained in this chapter. Approval, if granted, will be for a term of seven years; however, approval for a shorter term may be granted by the state board if it determines conditions so warrant. If approval is not granted, the applicant institution will be advised concerning the areas in which improvement or changes appear to be essential

for approval. In this case, the institution will be given the opportunity to present factual information concerning its programs at the next regularly scheduled meeting of the state board. The institution may also reapply at its discretion to provide evidence of the actions taken toward suggested improvement. Any application submitted under this rule is to be submitted by the authorized official.

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.5(272) Periodic reports. In addition to reports pursuant to this chapter, the department may ask institutions placed on the approved programs list to make periodic reports necessary to keep records of each paraeducator preparation program up to date, to provide information necessary to carry out research studies relating to paraeducator preparation, and for any other purpose the department deems advisable. Any reports submitted under this rule are to be submitted by the authorized official.

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.6(272) Reevaluation of paraeducator preparation programs. Each paraeducator preparation program will be reviewed and reevaluated at least once every seven years, at a shorter interval specified pursuant to rule 281—80.4(272), or at any time deemed necessary by the director. Recommendations as to whether to grant continued approval are governed by rule 281—80.4(272).

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.7(272) Approval of program changes. Upon application by an institution, the director is authorized to approve minor additions to, or changes within, the institution's approved paraeducator preparation program. When an institution proposes revisions that exceed the primary scope of its program, the revisions become operative only after approval by the state board.

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.8(272) Organizational and resource standards. Organization and resources adequately support the preparation of paraeducator candidates to enable them to meet state standards in accordance with the provisions of this rule.

80.8(1) The unit provides resources and support necessary for the delivery of a quality certification program, including resources to support a quality hands-on (clinical) experience and resources to support technological and instructional needs to enhance candidate learning.

80.8(2) The unit provides evidence of collaboration with members of the professional community, including the unit's advisory committee comprised of school administrators, classroom teachers, currently employed paraprofessionals and others, to design, deliver, and evaluate programs to prepare paraeducators.

80.8(3) The unit's use of staff in teaching roles is purposeful and managed to ensure integrity, quality, and continuity of the program(s).

80.8(4) The unit ensures that resources are equitable for all program components, regardless of delivery or location.

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.9(272) Diversity standards.

80.9(1) The unit will ensure that the paraeducator preparation program meets the following diversity standards:

a. The unit provides an environment and experiences to paraeducator candidates to support candidate growth in knowledge, skills, and dispositions to help diverse groups of PK-12 students learn.

b. The unit's plans, policies, and practices document its efforts in establishing and maintaining a diverse staff, climate, and paraeducator candidate pool that strives to represent the diverse makeup of the community at large.

80.9(2) In addition to the provisions of rule 281—80.11(272), the unit is to gather data about its implementation of this rule, use those data to make program improvements, and share those data and improvements with the schools and communities the unit serves.

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.10(272) Faculty standards. Unit staff qualifications and performance facilitate the unit's role in the preparation of a professional paraeducator in accordance with the provisions of this rule.

80.10(1) The unit documents the alignment of teaching duties for each faculty member with that member's preparation, knowledge, experiences, and skills appropriate for training paraeducators to serve in a school setting.

80.10(2) The institution holds unit staff accountable for teaching the critical concepts and principles of the discipline.

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.11(272) Program assessment and evaluation standards. The unit's assessment system will appropriately monitor individual candidate performance and use that data in concert with other program information to improve the unit and its programs in accordance with the provisions of this rule.

80.11(1) Each paraeducator candidate's knowledge and skills will be measured against state certification standards adopted by the board of educational examiners under Iowa Code section 272.12 and the unit's learning outcomes for any certificate for which the unit may recommend the candidate.

80.11(2) Programs will submit curriculum exhibits for approval by the department.

80.11(3) The unit will establish a standard of satisfactory performance of paraeducator candidates, which will comply with the following paragraphs:

a. The unit uses measures for candidate assessment that are fair, reliable, and valid.

b. The unit assesses candidates on their demonstration and attainment of unit standards.

c. The unit uses a variety of assessment measures for assessment of candidates on each unit standard.

d. The unit provides candidates with formative feedback on their progress toward attainment of unit standards.

80.11(4) The unit will conduct a survey of graduates and their employers to ensure that its graduates are well prepared for their assigned roles.

80.11(5) The unit will have a clearly defined, cohesive assessment system and regularly review, analyze, and revise its assessment practices.

80.11(6) The unit will collect and analyze aggregated candidate and program data, use those data to make program improvements, and share those data and improvements with stakeholders on a regular basis.

80.11(7) An annual report including a composite of evaluative data collected by the unit will be submitted to the department by September 30 of each year.

80.11(8) When it publicly reports data, the unit will comply with all applicable privacy laws, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g.

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

281—80.12(272) Clinical practice standards. The unit and its school partners will provide clinical experience opportunities that assist candidates in becoming successful paraeducators in accordance with the provisions of this rule.

80.12(1) Paraeducator clinical experiences support learning in the context in which paraeducators will practice.

80.12(2) Paraeducator clinical experiences include the following:

a. A minimum of ten hours of experience in a state-approved school or educational facility under the supervision of a licensed educator.

b. Opportunities for paraeducator candidates to observe and be observed by others in the application of skills and knowledge.

[ARC 7661C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 256.7(22).

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[Filed ARC 7661C (Notice ARC 7167C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 83
TEACHER AND ADMINISTRATOR QUALITY PROGRAMS

DIVISION I
GENERAL STANDARDS APPLICABLE TO BOTH ADMINISTRATOR AND TEACHER QUALITY PROGRAMS

281—83.1(284,284A) Definitions. For the purpose of these rules, the following definitions apply:

“*Administrator*” or “*school leader*” means the same as “administrator” as defined in Iowa Code section 284A.2(1).

“*Beginning administrator*” means the same as defined in Iowa Code section 284A.2(2).

“*Beginning teacher*” means the same as defined in Iowa Code section 284.2(1). For purposes of the beginning teacher mentoring and induction program created pursuant to Iowa Code section 284.5 or in an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15, “beginning teacher” also includes preschool teachers who are licensed by the board of educational examiners under Iowa Code chapter 272 and are employed by a school district or area education agency.

“*Comprehensive evaluation*” means, with respect to a beginning teacher, the same as defined in Iowa Code section 284.2(2). With respect to a beginning administrator, “comprehensive evaluation” means the same as defined in Iowa Code section 284A.2(3).

“*Department*” means the department of education.

“*Director*” means the director of the department of education.

“*District facilitator*” means an individual in Iowa who serves as a coordinator for a district mentoring and induction program.

“*Evaluator*” means the same as defined in Iowa Code section 284.2(5).

“*Intensive assistance*” means the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed 12 months.

“*Leadership standards*” means the Iowa standards for school administrators adopted pursuant to Iowa Code section 256.7(27).

“*Mentor*” means, with respect to a beginning teacher, the same as defined in Iowa Code section 284.2(7). With respect to a beginning administrator, “mentor” means the same as defined in Iowa Code section 284A.2(7).

“*Performance review*” means the same as defined in Iowa Code section 284.2(8).

“*School board*” means the same as defined in Iowa Code section 284.2(9).

“*State board*” means the state board of education.

“*Teacher*” means the same as defined in Iowa Code section 284.2(11).

[ARC 7662C, IAB 3/6/24, effective 4/10/24]

DIVISION II
SPECIFIC STANDARDS APPLICABLE TO TEACHER QUALITY PROGRAMS

281—83.2(284) Mentoring and induction program for beginning teachers.

83.2(1) Option one: beginning teacher mentoring and induction program. Completion of a beginning teacher mentoring and induction program is one manner in which a beginning teacher may satisfy Iowa Code section 272.28(1).

a. General.

(1) School districts and area education agencies may provide a beginning teacher mentoring and induction program for all beginning teachers as specified in Iowa Code section 284.5.

(2) A school district or area education agency may offer a teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district or area education agency determines that the teacher is likely to successfully complete the mentoring and induction program by meeting the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district’s or area education agency’s expense. A teacher granted

a third year of eligibility shall, in cooperation with the teacher's evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district's or area education agency's mentoring and induction program. The school district or area education agency will notify the board of educational examiners that the teacher will participate in a third year of the school district's program. The teacher will undergo a comprehensive evaluation at the end of the third year. For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation necessary for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria are as described in rule 281—83.3(284). A school district or area education agency will participate in state program evaluations.

b. Plan. Each school district or area education agency that offers a beginning teacher mentoring and induction program shall develop a sequential two-year beginning teacher mentoring and induction plan based on the Iowa teaching standards. A school district or area education agency will have the board adopt a beginning teacher mentoring and induction program plan and written procedures for the program. At the board's discretion, the district or area education agency may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district's or area education agency's beginning teacher mentoring and induction program shall include, but are not limited to, the following:

- (1) Goals for the program.
- (2) A process for the selection of mentors.
- (3) A mentor training process that:
 1. Is consistent with effective staff development practices and adult professional needs to include skills needed for teaching, demonstration, and coaching.
 2. Addresses mentor needs, indicating a clear understanding of the role of the mentor.
 3. Results in the mentor's understanding of the personal and professional needs of new teachers.
 4. Provides the mentor with an understanding of the district expectations for beginning teacher competencies based on the Iowa teaching standards.
 5. Facilitates the mentor's ability to provide guidance and support to new teachers.
- (4) A supportive organizational structure for beginning teachers that will include:
 1. Activities that provide access and opportunities for interaction between a mentor and a beginning teacher that at a minimum provide:
 - Released time for a mentor and a beginning teacher to plan;
 - The demonstration of classroom practices;
 - The observation of teaching; and
 - Feedback.
 2. A selection process for who will be in the mentor/beginning teacher partnership.
 3. Roles and responsibilities of the mentor.
- (5) An evaluation process for the program, which includes:
 1. An evaluation of the district and area education agency program goals,
 2. An evaluation process that provides for the minor and major program revisions, and
 3. A process for how information about the program will be provided to interested stakeholders.
- (6) The process for dissolving mentor and beginning teacher partnerships.
- (7) A plan that reflects the needs of the beginning teacher employed by the district or area education agency.
- (8) Activities designed to support beginning teachers by:
 1. Developing and enhancing competencies for the Iowa teaching standards, and
 2. Providing research-based instructional strategies.
- (9) Funds, if appropriated by the general assembly, received by a school district or area education agency from the beginning teacher mentoring and induction program will be used for any or all of the following purposes: to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system for a pension and annuity retirement system established under Iowa Code chapter 294 for such amounts paid by the district or area education agency. These funds are miscellaneous funds or are considered encumbered. A school district or area education

agency will maintain a separate listing within its budget for payments received and expenditures made for this program. Funds that remain unencumbered or unobligated at the end of the fiscal year will not revert but will remain available for expenditure for the purposes of the program until the close of the succeeding fiscal year.

83.2(2) Option two: teacher leadership and compensation system.

a. General. Two years of successful teaching experience in a school district with an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15 (“framework for beginning teachers” for purposes of this rule) in one manner in which a beginning teacher may satisfy Iowa Code section 272.28(1).

b. Participation. School districts may provide an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15. A beginning teacher, as defined in this chapter, shall be informed by the school district, prior to the beginning teacher’s participation in a framework for beginning teachers, of the Iowa teaching standards and criteria upon which the beginning teacher will be evaluated and of the evaluation process utilized by the school district. The beginning teacher will be supported by the teacher leadership and compensation program as defined in part 4 of the submitted plan. The beginning teacher will be comprehensively evaluated by the end of the beginning teacher’s second year of teaching to determine whether the teacher meets expectations to move to the career level. The school district will recommend for a standard license a beginning teacher who has successfully met the Iowa teaching standards as determined by a comprehensive evaluation.

(1) If a beginning teacher who is participating in a framework for beginning teachers leaves the employ of a school district prior to completion of the framework, the school district or area education agency subsequently hiring the beginning teacher will credit the beginning teacher with the time earned in such a framework prior to the subsequent hiring.

(2) A school district may offer a teacher a third year of participation in a framework for beginning teachers if, after conducting a comprehensive evaluation, the school district determines that the teacher is likely to successfully meet the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district’s expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher’s evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district’s framework for beginning teachers. The school district shall notify the board of educational examiners that the teacher will participate in a third year of the school district’s framework for beginning teachers. The teacher is to undergo a comprehensive evaluation at the end of the third year.

(3) For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation necessary for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria are as described in rule 281—83.3(284). A school district shall participate in state program evaluations.

c. Plan assurances. Each school district that offers a framework under Iowa Code sections 284.15 through 284.17 and uses it for purposes of meeting the school district’s obligations to beginning teachers is to provide assurances to the department that the district’s framework for beginning teachers satisfies those Iowa Code sections and attends to the Iowa teaching standards and criteria described in rule 281—83.3(284).

d. Inapplicability to area education agencies. This subrule is not applicable to area education agencies. Only subrule 83.2(1) is applicable to area education agencies; however, a teacher employed by an area education agency may be included in a framework or comparable system established by a school district if the area education agency and the school district enter into a contract for such purpose. [ARC 7662C, IAB 3/6/24, effective 4/10/24]

281—83.3(284) Iowa teaching standards and criteria. Rule 281—83.4(284), as in effect on April 9, 2024, remains applicable until July 1, 2024. The Iowa teaching standards and supporting criteria provide Iowa school districts and area education agencies with a consistent representation of the complexity and

the possibilities of quality teaching. The standards serve as the basis for comprehensive evaluations of teachers and as a basis for professional development plans. Each standard with supporting criteria is outlined as follows:

83.3(1) Demonstrates ability to enhance academic performance and support for and implementation of the school district's student achievement goals.

a. The teacher:

(1) Provides multiple forms of evidence of student learning and growth to students, families, and staff.

(2) Implements strategies supporting student, building, and district goals.

(3) Uses student performance data as a guide for decision making.

(4) Accepts and demonstrates responsibility for creating a classroom culture that supports the learning of every student.

(5) Creates an environment of mutual respect, rapport, and fairness.

(6) Participates in and contributes to a school culture that focuses on improved student learning.

(7) Communicates with students, families, colleagues, and communities effectively and accurately.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" are described herein. The staff member:

(1) Uses knowledge and understanding of the area education agency's mission, goals, and strategic priorities to provide services that enhance academic performance.

(2) Understands and uses knowledge of area education agency and district goals and data to provide services that enhance academic performance.

(3) Participates in and contributes to a positive learning culture.

(4) Communicates with students, families, colleagues, and communities effectively and accurately.

(5) Uses area education agency, district, and student data as a guide for decision making.

83.3(2) Demonstrates competence in content knowledge appropriate to the teaching position.

a. The teacher:

(1) Understands and uses key concepts, underlying themes, relationships, and different perspectives related to the content area.

(2) Uses knowledge of student development to make learning experiences in the content area meaningful and accessible for every student.

(3) Relates ideas and information within and across content areas.

(4) Understands and uses instructional strategies that are appropriate to the content area.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" are described herein. The staff member:

(1) Understands, communicates, and uses key concepts and best practice in fulfillment of area education agency roles and responsibilities.

(2) Uses knowledge of child and adolescent development and of adult learning to make interventions and strategies meaningful, relevant, and accessible.

(3) Relates professional knowledge and services within and across multiple content and discipline areas.

(4) Understands and supports strategies and interventions that are best practice across content and discipline areas.

83.3(3) Demonstrates competence in planning and preparing for instruction.

a. The teacher:

(1) Uses student achievement data, local standards, and the district curriculum in planning for instruction.

(2) Sets and communicates high expectations for social, behavioral, and academic success of all students.

(3) Uses students' developmental needs, backgrounds, and interests in planning for instruction.

(4) Selects strategies to engage all students in learning.

(5) Uses available resources, including technology, in the development and sequencing of instruction.

b. Alternative criteria for area education agency staff who meet the definition of “teacher” are described herein. The staff member:

- (1) Demonstrates the ability to organize and prioritize time, resources, and responsibilities.
- (2) Demonstrates the ability to individually and collaboratively plan and prepare professional services that address the range of district, teacher, parent, and student needs.
- (3) Uses district and student data to develop goals and interventions.
- (4) Demonstrates the flexibility to plan for professional services based on changing conditions of the work context and environment.
- (5) Uses available resources, including technology, to plan and develop professional services.

83.3(4) Uses strategies to deliver instruction that meets the multiple learning needs of students.

a. The teacher:

- (1) Aligns classroom instruction with local standards and district curriculum.
- (2) Uses research-based instructional strategies that address the full range of cognitive levels.
- (3) Demonstrates flexibility and responsiveness in adjusting instruction to meet student needs.
- (4) Engages students in varied experiences that meet diverse needs and promote social, emotional, and academic growth.
- (5) Connects students’ prior knowledge, life experiences, and interests in the instructional process.
- (6) Uses available resources, including technology, in the delivery of instruction.

b. Alternative criteria for area education agency staff who meet the definition of “teacher” are described herein. The staff member:

- (1) Aligns service delivery to district, teacher, parent, and student needs.
- (2) Provides consultation, instruction, interventions, and strategies that align with learner needs.
- (3) Demonstrates flexibility and responsiveness in adjusting services to meet diverse learner needs.
- (4) Uses and supports research-based and evidence-based practices to meet learner needs.
- (5) Uses available resources, including technology, to provide professional services that meet learner needs.

83.3(5) Uses a variety of methods to monitor student learning.

a. The teacher:

- (1) Aligns classroom assessment with instruction.
- (2) Communicates assessment criteria and standards to all students and parents.
- (3) Understands and uses the results of multiple assessments to guide planning and instruction.
- (4) Guides students in goal setting and assessing their own learning.
- (5) Provides substantive, timely, and constructive feedback to students and parents.
- (6) Works with other staff and building and district leadership in analysis of student progress.

b. Alternative criteria for area education agency staff who meet the definition of “teacher” are described herein. The staff member:

- (1) Uses appropriate assessment, data collection, and data analysis methods that support alignment of services with learner needs.
- (2) Works collaboratively within the learning community to establish measurable goals and to identify formative and summative methods to monitor progress and the quality of implementation.
- (3) Communicates the rationale and criteria of assessment and monitoring methods.
- (4) Elicits and provides timely and quality feedback on assessment and monitoring.

83.3(6) Demonstrates competence in classroom management.

a. The teacher:

- (1) Creates a learning community that encourages positive social interaction, active engagement, and self-regulation for every student.
- (2) Establishes, communicates, models, and maintains standards of responsible student behavior.
- (3) Develops and implements classroom procedures and routines that support high expectations for student learning.
- (4) Uses instructional time effectively to maximize student achievement.
- (5) Creates a safe and purposeful learning environment.

b. Alternative criteria for area education agency staff who meet the definition of “teacher” are described herein. The staff member:

- (1) Models respectful dialogue and behaviors within and across job responsibilities.
- (2) Promotes and maintains a positive, safe, and productive environment.
- (3) Works collaboratively and is flexible.
- (4) Communicates accurately and effectively.

83.3(7) Engages in professional growth.

a. The teacher:

- (1) Demonstrates habits and skills of continuous inquiry and learning.
- (2) Works collaboratively to improve professional practice and student learning.
- (3) Applies research, knowledge, and skills from professional development opportunities to improve practice.
- (4) Establishes and implements professional development plans based upon the teacher’s needs aligned to the Iowa teaching standards and district/building student achievement goals.
- (5) Provides an analysis of student learning and growth based on teacher-created tests and authentic measures as well as any standardized and districtwide tests.

b. Alternative criteria for area education agency staff who meet the definition of “teacher” are described herein. The staff member:

- (1) Demonstrates habits and skills of continuous inquiry and learning.
- (2) Works collaboratively to improve professional practices.
- (3) Applies and shares research, knowledge, and skills from professional development.
- (4) Establishes and implements professional development plans aligned to area education agency, district, and student learning goals.

83.3(8) Fulfills professional responsibilities established by the school district.

a. The teacher:

- (1) Adheres to board policies, district procedures, and contractual obligations.
- (2) Demonstrates professional and ethical conduct as defined by state law and district policy.
- (3) Contributes to efforts to achieve district and building goals.
- (4) Demonstrates an understanding of and respect for all learners and staff.
- (5) Collaborates with students, families, colleagues, and communities to enhance student learning.

b. Alternative criteria for area education agency staff who meet the definition of “teacher” are described herein. The staff member:

- (1) Adheres to board policies, area education agency procedures, federal and state rules, and contractual obligations.
- (2) Demonstrates professional and ethical conduct as defined by state law and area education agency policies.
- (3) Contributes to efforts to achieve area education agency goals.
- (4) Demonstrates an understanding of and respect for all learners.
- (5) Collaborates with all learners.

83.3(9) The school board will provide comprehensive evaluations for beginning teachers using the Iowa teaching standards and criteria listed in this rule. The school board, for the purposes of performance reviews for teachers other than beginning teachers, will provide evaluations that contain, at a minimum, the Iowa teaching standards and criteria listed in this rule.

[ARC 7662C, IAB 3/6/24, effective 4/10/24]

281—83.4(284) Evaluator approval training. The department will approve eligible providers and their programs to conduct evaluator training. Only individuals certified through programs approved by the department qualify for evaluator certification by the board of educational examiners. A beginning teacher who has evaluator certification from the board of educational examiners shall not evaluate other teachers until the beginning teacher is no longer a probationary employee. Approved evaluator training programs are designed to align with the Iowa teaching standards and criteria, provide evaluators with the skills to conduct comprehensive evaluations and performance reviews pursuant to Iowa Code chapter 284,

and provide for the evaluation of the progress made on individual professional development plans. This training for evaluators is to incorporate components of theory, demonstration, practice, and application of evaluation knowledge and skills.

83.4(1) Applications for providers of evaluator approval training. Eligible applications for the provision of evaluator approval training include the following components:

- a. A curriculum that addresses participant skill development in:
 - (1) The identification of quality instruction and practices based on the Iowa teaching standards and criteria;
 - (2) The use of multiple forms of data collection for identifying and supporting performance and development;
 - (3) The understanding and development of conferencing and feedback skills; and
 - (4) The development of skills in data-based decision making.
- b. Demonstration that the evaluator approval training process design provides training as specified in this rule.
- c. A description of the process used to deliver the training to participants.
- d. A description of the procedures developed to certify the skill attainment of the evaluator being trained.
- e. A budget.
- f. Staff qualifications.
- g. Evidence of the provider's expertise in evaluation design and training processes.
- h. Provisions for leadership to support and implement ongoing professional development focused on student learning.
- i. A process that evaluates the effectiveness of the implementation of the training process and demonstrates that the trainees have attained the knowledge and skills as described in paragraph 83.4(1) "a." This evaluation will be conducted on an annual basis and submitted to the department.

83.4(2) Process used for the approval of evaluator approval training program applications.

a. Eligible providers will apply on forms prescribed by the department. Applications for new providers will be accepted and reviewed by the department by July 1 of each year. A review panel will be convened to review applications for evaluator approval training programs based on subrule 83.4(1). The panel will recommend for approval and the department will approve the evaluator approval training programs that satisfy that subrule. Applicants will be notified of their status within 30 days of the application deadline. An approved list of private providers will be maintained on the department website with an annual notification to school districts and area education agencies of the website address that contains provider information.

b. Eligible providers may be public or private entities, including school districts, consortia, and other public or private entities, including professional organizations. Applicants are to meet all applicable federal, state, and local health, safety and civil rights laws. Higher education administrative practitioner preparation institutions are to meet the review process through the state board approval and accreditation process for these institutions.

83.4(3) Local teacher evaluation plans. Local districts and area education agencies will develop and implement a teacher evaluation plan that contains the following components:

- a. The use of the Iowa teaching standards and criteria;
- b. Provisions for the comprehensive evaluation of beginning teachers that include a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.3(284) and the use of the comprehensive evaluation instrument developed by the department;
- c. Provisions for reviews of the performance of teachers other than beginning teachers as follows:
 - (1) Review once every three years by an evaluator to include, at a minimum, classroom observation of the teacher, a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.3(284) and additional standards and criteria if established under subrule 83.3(9), a review of the implementation of the teacher's individual professional development plan, and supporting documentation from other evaluators, teachers, parents, and students; and

(2) Review annually, other than the third-year review by an evaluator, by a peer group of teachers in accordance with Iowa Code section 284.8(1);

d. Provisions for individual professional development plans for teachers other than beginning teachers;

e. Provisions for an intensive assistance program as provided in Iowa Code section 284.8 that addresses the remediation defined under subrules 83.3(1) through 83.3(8).

(1) If a supervisor or an evaluator determines, at any time, as a result of a teacher's performance that the teacher is not meeting district expectations under subrules 83.3(1) through 83.3(8), the evaluator will, at the direction of the teacher's supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are not subject to negotiation or grievance procedures established pursuant to Iowa Code chapter 20.

(2) A teacher who is not meeting the applicable standards and criteria based on a determination made pursuant to paragraph 83.4(3) "e" will participate in an intensive assistance program. However, a teacher who has previously participated in an intensive assistance program relating to particular Iowa teaching standards or criteria is not entitled to participate in another intensive assistance program relating to the same standards or criteria and is subject to the provisions of paragraph 83.4(3) "f."

f. Following a teacher's participation in an intensive assistance program, the teacher will be reevaluated to determine whether the teacher successfully completed the intensive assistance program and is meeting district expectations under the applicable Iowa teaching standards or criteria. If the teacher did not successfully complete the intensive assistance program or continues not to meet the applicable Iowa teaching standards or criteria, the school board may do any of the following:

(1) Terminate the teacher's contract immediately pursuant to Iowa Code section 279.27.

(2) Terminate the teacher's contract at the end of the school year pursuant to Iowa Code section 279.15.

(3) Continue the teacher's contract for a period not to exceed one year. However, the contract will not be renewed and is not subject to Iowa Code section 279.15.

[ARC 7662C, IAB 3/6/24, effective 4/10/24]

281—83.5(284) Professional development for teachers.

83.5(1) *Professional development for school districts, area education agencies, and attendance centers.* The following provisions apply to professional development for school districts, area education agencies, and attendance centers:

a. Professional learning standards. Professional learning within an area education agency or local district is aligned with the state standards for teaching and learning and aligned to the following standards for professional development. Professional learning increases educator effectiveness and results for all students when it:

(1) Occurs within learning communities committed to continuous improvement, collective responsibility, and goal alignment.

(2) Requires skillful leaders to develop capacity, advocate, and create support systems for professional learning.

(3) Prioritizes, monitors, and coordinates resources for educator learning.

(4) Uses a variety of sources and types of student, educator, and system data to plan, assess, and evaluate effectiveness of instruction.

(5) Integrates theories, research, and models of human learning to achieve intended outcomes.

(6) Applies research on change and sustains support for implementation of professional learning for long-term change.

(7) Aligns its outcomes with educator performance and student curriculum standards.

b. District or area education agency professional development plan. The district or area education agency professional development plan is to be a long-term plan designed and implemented to increase student achievement and includes all on-site and district or area education agency personnel responsible for instruction. The district or area education agency professional development plan is to contain, but not be limited to, the following:

- (1) Implementation of a school district's or area education agency's plan for professional learning.
- (2) Documentation that the professional development is based on student data; aligned with district or attendance center student achievement goals; and focused on instruction, curriculum, and assessment.
- (3) The study and implementation of research-based instructional strategies that improve teaching and learning.
- (4) Collaborative inquiry into the area of greatest student learning need.
- (5) Research-based training strategies (e.g., theory, demonstration, observation, practice, coaching, reflection, evaluation) that promote transfer and positive outcomes as needed for learning new practices.
- (6) Allocation of time to collectively study content, instruction, and impact so necessary adjustments can be made to ensure student success.
- (7) Accountability and an evaluation that documents improvement of practice and the impact on student learning.

c. Attendance center professional development plans. Each attendance center within a school district will develop an attendance center professional development plan as a means of promoting group professional development. An attendance center professional development plan will further the needs of personnel responsible for instruction in the attendance center and enhance the student achievement goals of the attendance center and the goals of the district.

d. Individual professional development plans. The school district and area education agency shall support the development and implementation of the individual teacher professional development plan for each teacher as outlined in subrule 83.5(2). Each individual teacher professional development plan will align to the fullest extent possible with the district professional development plan.

e. Beginning teacher mentoring and induction. A school district will develop and implement a beginning teacher mentoring and induction plan as outlined in subrule 83.2(1) or a framework for beginning teachers as outlined in subrule 83.2(2). The district's beginning teacher mentoring and induction plan or framework for beginning teachers will align with the district professional development plan described in paragraph 83.5(1) "b." An area education agency will develop and implement a beginning teacher mentoring and induction plan as outlined in subrule 83.2(1), which will align with the area education agency's professional development plan described in paragraph 83.5(1) "b."

f. Organizational support for professional development. The school district will provide resources and support for the district professional development plan, including opportunities for professional development, time for collaborative work of staff, budgetary support, and policies and procedures that reflect the district's commitment to professional development.

83.5(2) Individual teacher professional development plan. Each school district and area education agency shall support the development and implementation of individual teachers' professional development plans for teachers other than beginning teachers. The purpose of the individual plan is to promote individual and collective professional development. At a minimum, the goals for an individual teacher professional development plan are based on the needs of the teacher and on the relevant Iowa teaching standards that support the student achievement goals of the teacher's classroom or classrooms, attendance center and school district or area education agency, as appropriate, as outlined in the comprehensive school improvement plan. The goals will go beyond those under the attendance center professional development plan described in paragraph 83.5(1) "c." The learning opportunities provided to meet the goals of the individual teacher plan include individual study and collaborative study of district-determined or area education agency-determined content to the extent possible. The individual plan will be developed by the teacher in collaboration with the teacher's evaluator. An annual meeting will be held between the teacher's evaluator and the teacher to review the goals and refine the plan.

83.5(3) Professional development provider standards.

a. A provider may be a school district; an area education agency; a higher education institution; a public or private entity, including a professional organization that provides long-term, ongoing support for the district's or area education agency's professional development plan; or a consortium of any of the foregoing. An educational organization or program with specific professional development accreditation or approval from the department is an approved provider.

b. Providers that are not currently accredited or approved through state accreditation procedures will follow approval procedures identified in the district’s or area education agency’s professional development plan. The potential provider will submit to the school district or area education agency a written application that provides the following documentation:

- (1) How the provider will deliver technical assistance that meets the Iowa professional development standards provided in paragraph 83.5(1) “*a.*”
- (2) How the provider intends to assist the local district or area education agency in designing, implementing, and evaluating professional development that satisfies paragraph 83.5(1) “*b.*”
- (3) A description of the qualifications of the provider.
- (4) Evidence of the provider’s expertise in professional development.
- (5) A budget.
- (6) Procedures for evaluating the effectiveness of the technical assistance delivered by the provider.

[ARC 7662C, IAB 3/6/24, effective 4/10/24]

281—83.6(284) Teacher quality committees. Each school district and area education agency will create a teacher quality committee pursuant to Iowa Code section 284.4. The committee is subject to Iowa Code chapter 21. To the extent possible, committee membership will have balanced representation with regard to gender. The committee will do all of the following:

1. Monitor the implementation of statutes and administrative code provisions relating to this chapter, including those that affect any agreement negotiated pursuant to Iowa Code chapter 20.
2. Monitor the evaluation provisions of this chapter to ensure evaluations are conducted in a fair and consistent manner throughout the school district or agency. The committee will develop model evidence for the Iowa teaching standards and criteria. The model evidence will minimize paperwork and focus on teacher improvement. The model evidence will determine which standards and criteria can be met through observation and which evidence meets multiple standards and criteria.
3. Determine, following the adoption of the Iowa professional development model by the state board of education, the use and distribution of the professional development funds distributed to the school district or agency as provided in Iowa Code section 284.13(1) “*d*” based upon school district or agency, attendance center, and individual teacher professional development plans.
4. Monitor the professional development in each attendance center to ensure that the professional development meets school district or agency, attendance center, and individual teacher professional development plans.
5. Determine the compensation for teachers on the committee for work responsibilities beyond the normal workday.
6. Make recommendations to the school board and the certified bargaining representative regarding the expenditures of market factor incentives.

[ARC 7662C, IAB 3/6/24, effective 4/10/24]

DIVISION III
SPECIFIC STANDARDS APPLICABLE TO ADMINISTRATOR QUALITY PROGRAMS

281—83.7(284A) Administrator quality program. An administrator quality program is established to promote high student achievement and enhanced educator quality and consists of the following four major components:

1. Adherence to the Iowa school leadership standards and criteria as the minimum basis for evaluations of administrators and as the basis for professional development plans for administrators.
2. Mentoring and induction programs that provide support for administrators in accordance with Iowa Code section 284A.5.
3. Professional development designed to directly support best practice for leadership.
4. Evaluation of administrators against the Iowa standards for school administrators.

[ARC 7662C, IAB 3/6/24, effective 4/10/24]

281—83.8(284A) Mentoring and induction program for administrators. Each school board will establish a beginning administrator mentoring and induction program as specified in Iowa Code section 284A.5.

[ARC 7662C, IAB 3/6/24, effective 4/10/24]

281—83.9(284A) Iowa school leadership standards for administrators. Rule 281—83.10(284), as in effect on April 9, 2024, remains applicable until July 1, 2024. The Iowa school leadership standards for administrators provide a framework to guide leadership practice and how leaders are prepared, hired, developed, supervised and evaluated. A local school board may establish additional administrator standards and related criteria but will, at a minimum, utilize the following standards:

83.9(1) *Mission, vision, and core values.* Educational leaders develop, advocate, and enact a shared mission, vision, and core values of high-quality education and academic success and well-being of each student.

83.9(2) *Ethics and professional norms.* Educational leaders act ethically and according to professional norms to promote each student's academic success and well-being.

83.9(3) *Equity and cultural responsiveness.* Educational leaders strive for equity of educational opportunity and culturally responsive practices to promote each student's academic success and well-being.

83.9(4) *Curriculum, instruction, and assessment.* Educational leaders develop and support intellectually rigorous and coherent systems of curriculum, instruction, and assessment to promote each student's academic success and well-being.

83.9(5) *Community of care and support for students.* Educational leaders cultivate an inclusive, caring, and supportive school community that promotes the academic success and well-being of each student.

83.9(6) *Professional capacity of school personnel.* Educational leaders develop the professional capacity and practice of school personnel to promote each student's academic success and well-being.

83.9(7) *Professional community for teachers and staff.* Educational leaders foster a professional community of teachers and other professional staff to promote each student's academic success and well-being.

83.9(8) *Meaningful engagement of families and communities.* Educational leaders engage families and the community in meaningful, reciprocal, and mutually beneficial ways to promote each student's academic success and well-being.

83.9(9) *Operations and management.* Educational leaders manage school operations and resources to promote each student's academic success and well-being.

83.9(10) *School improvement.* Educational leaders act as agents of continuous improvement to promote each student's academic success and well-being.

[ARC 7662C, IAB 3/6/24, effective 4/10/24]

281—83.10(284A) Evaluation. The board of directors of a school district will conduct an annual evaluation of an administrator who holds a professional administrator license issued under Iowa Code chapter 272, as specified in Iowa Code section 284A.7.

[ARC 7662C, IAB 3/6/24, effective 4/10/24]

281—83.11(284A) Professional development of administrators. Each school district is responsible for the provision of professional growth programming for individuals employed in a school district administrative position by the school district or area education agency as deemed appropriate by the board of directors of the school district or area education agency as specified in Iowa Code section 284A.6.

[ARC 7662C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapters 284 and 284A.

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HUMAN RIGHTS DEPARTMENT[421]

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TITLE I
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421—1.1(17A,216A) Definitions. As used in these rules, unless the context otherwise requires:

“*Board*” means the human rights board.

“*Department*” means the department of health and human services.

“*Director*” means the director of the department of health and human services.

“*Underrepresented*” means the historical marginalization of populations or groups in the United States and Iowa, including but not limited to African Americans, Asian and Pacific Islanders, persons who are deaf or hard of hearing, persons with disabilities, Latinos, Native Americans, women, persons who have low socioeconomic status, at-risk youth, and adults or juveniles with a criminal history.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—1.2(17A,216A) Authority. Rescinded ARC 7710C, IAB 3/6/24, effective 4/10/24.

421—1.3(17A,216A) History. Rescinded ARC 7710C, IAB 3/6/24, effective 4/10/24.

421—1.4(17A,216A) Mission. The department’s mission related to human rights is to ensure basic rights, freedoms, and opportunities for all by empowering underrepresented Iowans and eliminating economic, social, and cultural barriers. The department helps individuals attain economic independence by ensuring access to government services and advancing educational achievement and entrepreneurial success consistent with their aspirations.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; ARC 7710C, IAB 3/6/24, effective 4/10/24]

421—1.5(17A,216A) Contact information. Requests for assistance, information, inquiries, submissions, petitions, and other communications related to human rights may be directed to the department as follows: The office is located at 321 E. 12th Street, Des Moines, Iowa 50319. The main telephone number is (515)242-5655. The fax number is (515)242-6119. Regular office hours are Monday through Friday, 8 a.m.to 4:30 p.m., excluding legal holidays. The department’s website is hhs.iowa.gov.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; ARC 7710C, IAB 3/6/24, effective 4/10/24]

421—1.6(216A) Human rights board. The authority, duties and composition of the human rights board are specified in Iowa Code section 216A.3.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; ARC 7710C, IAB 3/6/24, effective 4/10/24]

421—1.7(216A) Potential conflicts of interest. Any member of the department’s boards, commissions, or councils established in Iowa Code chapter 216A who may have a conflict of interest shall not vote on any substantive action on the matter in conflict. When a conflict of interest is determined to exist, the member shall abstain from voting and shall be recorded as abstaining when votes are taken. A quorum may include any member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose. Any vote by a member with a conflict shall be excluded.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code chapters 17A and 216A.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

[Filed ARC 7710C (Notice ARC 7063C, IAB 8/23/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded **ARC 7710C**, IAB 3/6/24, effective 4/10/24

CHAPTER 3
PETITIONS FOR RULE MAKING
Rescinded **ARC 7710C**, IAB 3/6/24, effective 4/10/24

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING
Rescinded **ARC 7710C**, IAB 3/6/24, effective 4/10/24

CHAPTER 5
DECLARATORY ORDERS
Rescinded **ARC 7710C**, IAB 3/6/24, effective 4/10/24

CHAPTER 6
CONTESTED CASES
Rescinded **ARC 7710C**, IAB 3/6/24, effective 4/10/24

CHAPTER 7
WAIVER RULES
Rescinded **ARC 7710C**, IAB 3/6/24, effective 4/10/24

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HUMAN SERVICES DEPARTMENT[441]

Rules transferred from Social Services Department[770] to Human Services Department[498], see 1983 Iowa Acts, Senate File 464, effective July 1, 1983.

Rules transferred from agency number [498] to [441] to conform with the reorganization numbering scheme in general, IAC Supp. 2/11/87.

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CHAPTER 1
DEPARTMENTAL ORGANIZATION AND PROCEDURES

[Prior to 7/1/83, Social Services [770] Ch 1]

[Prior to 2/11/87, Human Services[498]]

MISSION STATEMENT

The Iowa department of human services is a public expression of Iowa's desire for a stronger community. Working cooperatively with others, the department of human services meets the unique needs of individuals who are experiencing personal, economic, social, or health problems. The primary responsibilities of the department are to help and empower individuals and families to become increasingly self-sufficient and productive, and strive to improve the well-being of all the people of the state of Iowa.

441—1.1(17A) Director. All operations of the department of human services are, by law, the responsibility of the director. The director's responsibilities include:

1.1(1) The formulation of department policy within the limits set forth in the statutes of the state of Iowa;

1.1(2) Establishing standards of performance for all divisions and offices of the department;

1.1(3) Maintaining liaison with the governor, other agencies of the state, and public and private agencies outside of state government on behalf of the department;

1.1(4) Fully informing the public of department programs;

1.1(5) Serving as principal agent for the department in all legal matters and development of legislative programs to support and improve agency efforts.

This rule is intended to implement Iowa Code section 17A.3(1) "a."

441—1.2(17A) Council. The director of the department has, by statute, the advice and counsel of the council on human services. This seven-member council is appointed by the governor with consent of two-thirds of the Senate and its powers and duties are policymaking and advisory with respect to the services and programs operated by the department.

1.2(1) A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

1.2(2) Where a quorum is present, a position is carried by a majority of the qualified members of the council.

1.2(3) Copies of administrative rules and other materials considered are made a part of the minutes by reference.

1.2(4) Copies of the minutes are kept on file in the director's office.

1.2(5) Tentative approval of departmental actions may be given by telephone when approval is needed prior to a formal meeting. A memorandum shall be kept of the approval and formal action taken at the next scheduled meeting.

1.2(6) At each meeting the council shall set the date and location of the next meeting.

a. The communications media shall be notified at least one week in advance of the meeting.

b. When it is necessary to hold an emergency meeting, the communications media shall be notified as far in advance of the meeting as time allows. The nature of the emergency shall be stated in the minutes.

1.2(7) In cases not covered by these rules, Robert's Rules of Order shall govern.

1.2(8) The department of inspections and appeals shall be the authorized representative to conduct hearings and appeals for the council on human services.

This rule is intended to implement Iowa Code section 17A.3(1) "a."

441—1.3(17A) Organization at state level. The director oversees all service and administrative functions of the department including continuous quality improvement. The deputy director for administration, the deputy director for policy, the deputy director for operations, and the office of communications report directly to the director.

1.3(1) Deputy director for administration. The deputy director for administration manages the general support functions of all divisions of the department. Principal responsibilities include development of program and operational budgets, accounting and administrative control of appropriation expenditures, design and development of data processing systems, and monitoring and processing of provider payments.

The administrators of the divisions of data management, fiscal management, support services, and organization development and support report directly to the deputy director for administration.

a. The administrator of the division of data management is responsible for the development and operation of the automated systems that collect and process information to generate client and vendor payments, track cases and caseloads, monitor and control agency business applications, and assess social programs. Additionally, the administrator is responsible for providing a wide range of technical support for the state institutions, personal computing assistance, office automation support, program and operational research and analysis, forecasting of program expenditures, and utilization and report development and preparation.

b. The administrator of the division of fiscal management is responsible for developing annual budgets to be presented to the council on human services, governor's office, and legislature; for monitoring expenditures; for providing management with monthly forecasts for all department budget units and subunits; and for filing quarterly federal expenditures and estimate of expenditure reports. Additionally, the administrator is responsible for providing the accounting for the department's programs and operations; for coordinating payment and contracting for purchased services; for processing claims, invoices, and payroll checks; and for operating the cost allocation system which enables recovery of federal dollars.

c. The administrator of the division of support services has responsibility for equipment, purchasing, space allocation, printing, food stamp issuance and accountability, supplies management, cash receipts, manual distribution, fixed assets inventory control, central information delivery system (CIDS) teleconferencing and the mail. Additionally, the administrator is responsible for providing administration of surplus food distribution programs, nutrition consulting services, state vehicle fleet management, and liaison with the department of general services in the development of capital improvements and major maintenance projects for department institutions.

d. The administrator of the division of organization development and support has responsibility for providing leadership, direction, and oversight of organization staff development (learning resource team) and employee services (human resource team) including labor relations, compensation, recruitment, health and safety, disaster assistance, volunteer programs, professional library services, and diversity, affirmative action, and equal opportunity programs for employees, vendors, and department clients.

1.3(2) Deputy director for policy. The deputy director for policy manages the development of the financial, medical and social services programs for eligible Iowans.

The administrators of the divisions of adult, children and family services, economic assistance, medical services, mental health and developmental disabilities, and policy and rule integration report directly to the deputy director for policy.

a. The administrator of the division of adult, children and family services is responsible for the development and direction of service, regulatory, and financial reimbursement programs for children, families and dependent adults, including programs for foster care, adoption, child protection, family services, day care, and child and adult abuse registries. Additionally, the administrator is responsible for setting program policy for the following institutions:

- (1) The state training school in Eldora.
- (2) The Iowa juvenile home in Toledo.

b. The administrator of the division of economic assistance is responsible for the development and direction of financial assistance programs, including the family investment program, the food stamp program, emergency assistance, PROMISE JOBS, entrepreneurial training, refugee cash assistance, the family development and self-sufficiency demonstration program, systematic alien verification for entitlements, diversion programs, individual development accounts, and the food stamp employment and training program.

c. The administrator of the division of medical services is responsible for the development and direction of medical service programs, including Medicaid, state supplementary assistance, refugee medical assistance, the child health insurance program (HAWK-I), and interim assistance reimbursement.

d. The administrator of the division of mental health and developmental disabilities is responsible for the development and direction of supports and services as well as the financing of such services for persons with mental illness, mental retardation, and developmental disabilities. Additionally, the administrator is responsible for setting program policy for the following institutions and programs:

- (1) Cherokee Mental Health Institute.
- (2) Clarinda Mental Health Institute, located on the grounds of the Clarinda Treatment Complex Institute Campus.
- (3) Independence Mental Health Institute.
- (4) Mount Pleasant Mental Health Institute, located on the grounds of the Mount Pleasant Treatment Center Complex.
- (5) Glenwood State Hospital-School.
- (6) Woodward State Hospital-School.
- (7) The Civil Commitment of Sexual Offenders Unit at Oakdale.

e. The administrator of the division of policy and rule integration is responsible for providing leadership and direction agencywide for the integration of policy development and the consistency of rules, including ensuring that program policies are consistent with state and federal law and are designed to achieve programmatic goals and results; monitoring state and federal programmatic policy and financial changes; and identifying policy and rule changes to ensure alignment with program and administrative divisions to facilitate alignment with the department's mission.

1.3(3) Deputy director for operations. The deputy director for operations manages the delivery of the financial, medical and social services programs for eligible Iowans. The administrators of the division of child support, case management, and refugee services and the office of field support and the administrators of the five departmental regions report directly to the deputy director for operations. Additionally, the deputy director is responsible for policy implementation and day-to-day operations at the following institutions: the state training school in Eldora; the Iowa juvenile home in Toledo; Cherokee Mental Health Institute; Clarinda Mental Health Institute, located on the grounds of the Clarinda Treatment Complex Institute Campus; Independence Mental Health Institute; Mount Pleasant Mental Health Institute, located on the grounds of the Mount Pleasant Treatment Center Complex; Glenwood State Hospital-School; Woodward State Hospital-School; and the Civil Commitment of Sexual Offenders Unit at Oakdale.

a. The administrator of the division of child support, case management, and refugee services is responsible for primary support services to all line elements of the department in the areas of child support and foster care collections and refugee services, and has responsibility for the department's Title XIX case management policy and budget.

b. The chief of the office of field support is responsible for the day-to-day contact with the regional offices on administrative and program operation issues and addressing client or constituent concerns.

1.3(4) Office of communications. The office of communications addresses the different facets of the department's internal and external communication needs. The office of communications is responsible for providing public information to clients, constituency groups, and the media, while also facilitating internal communications within the department.

a. The legislative liaison provides federal and state liaison services, maintains legislative relations, and reviews client and constituent concerns.

b. The internal communications consultant addresses the different facets of the department's internal communication needs.

c. The public information officer is responsible for the department's external communication to the media and other outside stakeholders.

441—1.4(17A) Field operations structure.

1.4(1) *Delivery system.* The department's community service delivery system is based on service areas with offices in each county that are strategically located for purposes of client accessibility. Each service area is headed by a service area manager who is responsible for the following within the service area: effective management of the delivery of social services within the area, management of the department offices, directing all personnel, implementation of departmental policies and procedures, support for the development of social service resources within the community, and resolution of service delivery complaints. The services delivered in a service area include income maintenance and social service programs, child protection and other specialized services.

1.4(2) *Local offices.* There shall be at least one local office in each county. These local offices may be full-time or less than full-time. Full-time offices will provide income maintenance and social service program delivery and will serve as a base for the less than full-time office staff. Additional services offered in local offices may include child protection and other specialized services. Less than full-time offices will be operated on a reduced number of days per week based on county need and will provide income maintenance and social services.

This rule is intended to implement Iowa Code section 17A.3(1) "a."

441—1.5 Rescinded, effective October 1, 1987.

441—1.6(17A) Mental health and developmental disabilities commission. The administrator of the division of mental health and developmental disabilities has, by statute, the advice and counsel of the mental health and mental retardation commission. This 15-member commission is appointed by the governor with confirmation by two-thirds of the members of the senate. The commission's powers and duties are policymaking and advisory with respect to mental health and mental retardation, services, and programs administered by the division of mental health and developmental disabilities.

1.6(1) A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

1.6(2) Where a quorum is present, a position is carried by a majority of the qualified members of the commission.

1.6(3) Copies of administrative rules and other materials considered are made a part of the minutes by reference.

1.6(4) Copies of the minutes are kept on file in the office of the administrator of the division of mental health and developmental disabilities.

1.6(5) At each meeting the commission shall determine the next meeting date. Special meetings may be called by the chair or at the request of the majority of commission members.

1.6(6) Any person wishing to make a presentation at a commission meeting shall notify the Administrator, Division of Mental Health and Developmental Disabilities, Hoover State Office Building, Des Moines, Iowa 50319-0114, (515)281-5874, at least 15 days prior to the commission meeting.

1.6(7) In cases not covered by these rules, Robert's Rules of Order shall govern.

1.6(8) The department of inspections and appeals shall be the authorized representative to conduct hearings and appeals for the mental health and mental retardation commission.

This rule is intended to implement Iowa Code section 17A.3.

441—1.7(17A) Governor's developmental disabilities council (governor's DD council). Pursuant to the Developmental Disabilities Assistance and Bill of Rights Act (DD Act), 42 U.S. Code, Section 6000 et seq., each state shall establish a state planning council to serve as an advocate for people with developmental disabilities. The department shall act as the council's designated state agency for the purposes of receiving funds under the DD Act.

1.7(1) *Governor's DD council responsibilities.* The governor's DD council shall:

a. Develop a state plan which meets the requirements of the DD Act.

b. Prepare and approve a budget to fund all activities and to hire staff and obtain services necessary to carry out its functions under the DD Act.

c. Hire after conferring with the director, supervise, and evaluate an executive director who shall hire and supervise council staff.

d. Prepare, submit and maintain all records and reports required by the Secretary of Health and Human Services.

1.7(2) Governor's DD council membership. The governor's DD council shall consist of up to 26 members appointed by the governor.

a. The principal state agencies, including, at a minimum, the departments of education, human services, and elder affairs, higher education training facilities, the university affiliated program, Iowa Protection and Advocacy Services, Inc., local agencies and nongovernmental agencies and private, nonprofit groups concerned with services to people with developmental disabilities in the state, shall be represented.

b. Consumers. At least one-half of the membership of the governor's DD council shall consist of people with developmental disabilities or their parents or guardians, or immediate relatives or guardians of people with mentally impairing developmental disabilities, and who are not employees of a state agency which receives funds or provides services under the provisions for state planning councils under the DD Act, who are not managing employees of any other entity which receives funds or provides services under the provisions for state planning councils under the DD Act, and who do not have an ownership or control interest with respect to such an entity.

(1) At least one-third of the consumer representatives shall be people with developmental disabilities.

(2) At least one-third of the consumer representatives shall be immediate relatives or guardians of people with mentally impairing developmental disabilities.

(3) At least one person shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability.

1.7(3) Governor's DD council terms. Members shall be appointed for three-year terms.

a. Appointments shall be staggered so that at least one-third of the members are appointed each year.

b. Governor's DD council members shall be appointed for a maximum of two consecutive, full terms. Members who have been reappointed for more than two consecutive terms on July 1, 1993, may complete the full term of their last appointment.

c. Governor's DD council members are not eligible to receive a per diem during their term. They shall receive reimbursement for expenses, including individual and family supports necessary for participation, subject to the limitations set for state boards and commissions.

1.7(4) Governor's DD council action.

a. A quorum shall consist of two-thirds of the members eligible to vote.

b. Where a quorum is present, a position is carried by a majority of the members eligible to vote.

c. The use of proxies shall not be allowed.

d. Any council member representing the council before any legislative committee, public body, governmental agency or media representative shall support the council's mission, guiding principles, goals, objectives and strategies approved by the council in its state plan and other policy positions adopted by the council.

1.7(5) Governor's DD council minutes. Copies of the minutes are kept on file in the office of the Governor's DD Council, 617 E. Second Street, Des Moines, Iowa 50309.

1.7(6) Governor's DD council meetings. The governor's DD council will meet at least four times a year. Dates will be determined by the governor's DD council. Special meetings may be called by the chair or upon the written request of a majority of governor's DD council members.

a. Any person wishing to make a presentation at a governor's DD council meeting shall submit a request to the executive director of the governor's DD council. The request shall be considered by the governor's DD council chair in setting the next meeting agenda.

b. The governor's DD council shall coordinate activities with the mental health and mental retardation commission in accordance with Iowa Code chapter 225C.

1.7(7) Attendance.

a. A member shall be considered to have submitted a resignation when absent for three consecutive, regular governor's DD council meetings or a total of more than one-half of all regular governor's DD council meetings during a calendar year in accordance with Iowa Code section 69.15.

b. The governor's office shall be immediately notified by the governor's DD council executive director of a resignation under this subrule.

1.7(8) Organization. No later than October 1 of each year, the governor's DD council shall organize by electing a chair, vice-chair, and executive committee.

a. The executive committee shall consist of the governor's DD council chair, vice-chair and three members at large, one of whom shall be the immediate past chair if a current member of the governor's DD council.

b. The executive committee may exercise the power of the governor's DD council between regular governor's DD council meetings but may not override a decision of the governor's DD council.

c. The governor's DD council has the authority to create other standing and special committees and task forces as deemed necessary and to create terms of office for officers, committees, and committee chairs.

(1) The members and chairs of standing and special committees shall be appointed by the chairperson from the governor's DD council's membership. Appointments shall be approved by the governor's DD council.

(2) Noncouncil members may serve as voting members of committees if approved by the governor's DD council and shall be subject to terms as determined by the governor's DD council.

(3) Committees may act based on a simple majority of those present.

(4) Committees may create temporary task forces to assist them in their work.

1.7(9) Procedure. In cases not covered by this rule, Robert's Rules of Order shall govern.

This rule is intended to implement Iowa Code sections 217.6 and 225C.3.

441—1.8(17A,217) Waivers of administrative rules (hereinafter referred to as exceptions to policy). Rescinded ARC 7711C, IAB 3/6/24, effective 4/10/24.

441—1.9(17A) Commission on children, youth and families. Rescinded IAB 10/7/98, effective 12/1/98.

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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CHAPTER 9
PUBLIC RECORDS AND FAIR
INFORMATION PRACTICES

PREAMBLE

These rules describe the records of the Iowa department of human services and procedures for access to these records. All records of the department are open to the public except those that the department is authorized or required by law to keep confidential.

These rules also implement the federal Health Insurance Portability and Accountability Act (HIPAA) regulations at 45 CFR Parts 160 and 164 as amended to August 14, 2002. These rules set forth the standards the department of human services must meet to protect the privacy of protected health information. The department has chosen to be considered a hybrid entity for purposes of HIPAA because there are parts of the department that are not part of the covered entity for purposes of HIPAA compliance.

The rules on protected health information apply only to those parts of the department that are considered part of the covered entity: the named health plans and health care providers defined in these rules and the divisions or programs that perform functions on behalf of a named health plan. Targeted case management, refugee services, and the child support recovery unit are examples of parts of the department that are not included in the covered entity.

441—9.1(17A,22) Definitions. As used in this chapter:

“Business associate” means a person or organization, other than a member of the department’s workforce, who meets one of the following criteria:

1. Performs, or assists in the performance of, a function or activity on behalf of the department which involves the use or disclosure of protected health information, including claims processing or administration, data analysis, research, utilization review, quality assurance, billing, benefit management, practice management, and repricing, or any other function or activity regulated by the rules on protected health information.
2. Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for the department. The provision of the service shall involve the disclosure of protected health information from the department or from another business associate of the department to the person or organization.

“Client” means a person who has applied for or received services or assistance from the department.

“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:

1. Records or information contained in records that the department is prohibited by law from making available for examination by members of the public, and
2. Records or information contained in records that is 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.

“Covered entity” means:

1. A health plan.
2. A health care clearinghouse.
3. A health care provider that transmits any health information in electronic form in connection with a transaction covered by the HIPAA regulations.

“Covered functions” means the functions performed by a covered entity which make the covered entity a health plan, health care clearinghouse, or health care provider.

“Custodian” means the department or a person who has been given authority by the department to act for the department in implementing Iowa Code chapter 22. For local offices, the custodian is the service area manager. For a child support recovery office, the custodian is the regional administrator.

For an institution, the custodian is the institution superintendent. For a central office unit, or for requests dealing with more than one service area, region, or institution, the custodian is the division administrator.

“*Data aggregation*” means the action by which a business associate combines protected health information of the department with protected health information of another covered entity to permit data analyses that relate to the health care operations of the respective covered entities.

“*Department*” means the Iowa department of human services.

“*Designated record set*” means a group of records maintained by or for the department that is:

1. The medical records about subjects that are maintained for facilities;
2. The enrollment, payment, and eligibility record systems maintained for Medicaid; or
3. The enrollment, payment, and eligibility record systems maintained for the HAWK-I program that are used, in whole or in part, by the HAWK-I program to make decisions about subjects.

For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for the department.

“*Disclosure*” means releasing, transferring, providing access to, or divulging in any other manner information outside the organization holding the information.

“*Facility*” or “*facilities*” means, with respect to HIPAA rules about health information, one or more of these department institutions: Cherokee Mental Health Institute, Clarinda Mental Health Institute, Glenwood Resource Center, Independence Mental Health Institute, Mount Pleasant Mental Health Institute, and Woodward Resource Center.

“*Health care*” means care, services, or supplies related to the health of a subject. “Health care” includes, but is not limited to, the following:

1. Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedures with respect to the physical or mental condition, or functional status, of a subject or affecting the structure or function of the body; and
2. Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

“*Health care clearinghouse*” means a public or private organization, including a billing service, repricing company, community health management information system or community health information system, and “value-added” networks and switches, that performs either of the following functions:

1. Processes or facilitates the processing of health information received from another organization in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.
2. Receives a standard transaction from another organization and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving organization.

“*Health care operations*” has the same definition as that stated in 45 CFR 164.501 as amended to August 14, 2002. For a covered entity in the department, “health care operations” has the following meaning:

1. For Medicaid, “health care operations” means any of the following activities of the department to the extent that the activities are related to covered functions:
 - Conducting quality assessments and evaluating outcomes.
 - Developing clinical guidelines.
 - Improving general health or reducing costs.
 - Developing protocols, including case management and care coordination models for MediPASS and pharmacy case management as well as for other service areas and client populations under the Medicaid program.
 - Informing clients of treatment alternatives and related functions.
 - Reviewing competence or qualifications or performance of health care professionals using the surveillance and utilization review subsystem.
 - Reviewing health plan performance from encounter data.
 - Premium rating and rate setting.

- Performing activities in reinsurance of risk with the health maintenance organizations.
- Reviewing medical level of care and prior authorizations.
- Obtaining legal services through the attorney general's office or the county attorney's office.
- Cooperating in audits and fraud detection by Iowa and federal auditors, the Iowa Medicaid enterprise, or the department of inspections and appeals.
 - Conducting business planning and development including formulary development by the drug utilization review commission and the department's research and statistics staff.
 - Managing activities, which include claiming of federal financial participation, recovering unknown third-party liability, recovering nursing care funds and other expenditures through estate recovery, Grouper programming for hospitals, lock-in activities, and federal reporting of paid claims.
 - Providing customer service, which includes income maintenance workers answering questions about lock-in providers, copayment for pregnant women, and claims payment problems; and the Iowa Medicaid enterprise provider services unit answering questions on claims payment.
 - Coordinating care and monitoring the effective delivery of child welfare services to ensure the safety and well-being of children, including reporting and providing testimony to the court of jurisdiction on the condition and service progress of a client receiving services from the department. These care coordination and monitoring activities include providing information concerning the client to attorneys representing the various parties in the court proceedings.

2. For the HAWK-I program, "health care operations" means any of the following activities of the department to the extent that the activities are related to covered functions:

- Conducting quality assessment and improvement activities, including evaluation of outcomes and development of clinical guidelines; population-based activities relating to improving health or reducing health care costs, protocol development and related functions that do not include treatment.
- Reviewing health plan performance.
- Premium rating and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits.
- Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs.
- Performing business planning and development functions, such as conducting cost-management and planning-related analyses relating to management and operations and the development or improvement of methods of payment or coverage policies.
- Performing business management and general administrative activities, including, but not limited to, management activities relating to implementation of and compliance with privacy requirements, customer service, and resolution of internal grievances.

3. For the facilities, "health care operations" means any of the following activities of the department to the extent that the activities are related to covered functions:

- Conducting quality assessment and improvement activities, including evaluation of outcomes and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from these activities; population-based activities relating to improving health or reducing health care costs; protocol development; case management and care coordination; contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment.
 - Reviewing the competence or qualifications of health care professionals.
 - Evaluating performance of practitioners, providers and health plans.
 - Conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers.
 - Training of non-health care professionals.
 - Performing accreditation, certification, licensing, or credentialing activities.
 - Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs.
 - Performing business planning and development functions, such as conducting cost-management and planning-related analyses related to managing and operating the organization,

including formulary development and administration, development or improvement of methods of payment or coverage policies.

- Performing business management and general administrative activities, including, but not limited to, management activities related to implementation of and compliance with the requirements of HIPAA; customer service, which includes the provision of data analyses for policyholders, plan sponsors, or other customers, provided that protected health information is not disclosed to the policyholder, plan sponsor, or customer; resolution of internal grievances; and activities consistent with the applicable requirements of subrule 9.10(29) on creating de-identified health information or a limited data set.

“Health care provider” means a provider of services, as defined in Section 1861(u) of the Social Security Act and 42 U.S.C. 1395x(u); a provider of medical or health services, as defined in Section 1861(s) of the Social Security Act and 42 U.S.C. 1395x(s); and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. In the department, “health care provider” means one of the department’s facilities.

“Health information” means any information, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of a subject; the provision of health care to a subject; or the past, present, or future payment for the provision of health care to a subject.

“Health maintenance organization (HMO)” means a public or private organization licensed as an HMO under the commerce department, insurance division, 191—Chapter 40.

“Health oversight agency” means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or organization acting under a grant of authority from or contract with a public agency, that is authorized by law to:

1. Oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance; or
2. Enforce civil rights laws for which health information is relevant.

The term “health oversight agency” includes the employees or agents of the public agency and its contractors or persons or organizations to which the agency has granted authority.

“Health plan” means an individual or group plan that provides or pays the cost of medical care, as defined at 45 CFR 160.103 as amended to August 14, 2002. In the department, “health plan” means Medicaid or HAWK-I.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996.

“Law enforcement official” means an officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to:

1. Investigate or conduct an official inquiry into a potential violation of law; or
2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

“Legal representative” is a person recognized by law as standing in the place or representing the interests of another for one or more purposes. For example, guardians, conservators, custodians, attorneys, parents of a minor, and executors, administrators, or next of kin of a deceased person are legal representatives for certain purposes.

“Mental health information” means oral, written, or otherwise recorded information which indicates the identity of a person receiving professional services (as defined in Iowa Code section 228.1(8)) and which relates to the diagnosis, course, or treatment of the person’s mental or emotional condition. Mental or emotional conditions include mental illness, mental retardation, degenerative neurological conditions and any other condition identified in professionally recognized diagnostic manuals for mental disorders.

“Open record” means a record other than a confidential record.

“Payment,” with respect to HIPAA rules about protected health information, has the same definition as that stated in 45 CFR 164.501 as amended to August 14, 2002. In the department, “payment” applies to subjects for whom health care coverage is provided under the Medicaid program or the HAWK-I program. “Payment” has the following meanings for these health plans:

1. For Medicaid, “payment” includes activities undertaken by this health plan to:
 - Determine or fulfill its responsibility for coverage and provision of benefits under the health plan.
 - Obtain or provide reimbursement for the provision of health care.
 - Determine eligibility, including spenddown for the medically needy program or obtaining premiums for the Medicaid for employed people with disabilities program, or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims.
 - Perform risk adjustment of amounts due based on enrollee health status and demographic characteristics.
 - Bill; manage claims; collect; obtain payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance; and conduct related health care data processing.
 - Review health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges.
 - Perform utilization review activities, including precertification and preauthorization of services and concurrent and retrospective review of services.
2. For the HAWK-I program, “payment” includes activities undertaken by this health plan to:
 - Obtain reimbursement or pay for providing health care services.
 - Obtain premiums or determine or fulfill its responsibility for coverage and providing benefits. Activities include, but are not limited to, determinations of eligibility for coverage, including coordination of benefits or the determination of cost-sharing amounts; billing and collection activities; review of health care services with respect to coverage under a health plan; and utilization review activities.

“*Personally identifiable information*” means information about or pertaining to the subject of a record which identifies the subject and which is contained in a record system. The incidental mention of another person’s name in a subject’s record (e.g., as employer, landlord, or reference) does not constitute personally identifiable information.

“*Personal representative*” means someone designated by another as standing in the other’s place or representing the other’s interests for one or more purposes. The term “personal representative” includes, but is not limited to, a legal representative. For disclosure of protected health information, the definition of “personal representative” is more restrictive, as described at rule 441—9.15(17A,22).

“*Plan sponsor*” has the same definition as that stated in Section 3(16)(B) of ERISA, 29 U.S.C. 1002(16)(B).

“*Protected health information*” means information that contains a subject’s medical information, including past, present, or future treatment and payment information. “Protected health information” is a composite of multiple fields that grouped together give detailed accumulative information about a subject’s health. When joined together in an accessible record set, the following three distinct areas of health-care-processing file information constitute protected health information:

1. Information that identifies the subject.
2. Medical information describing condition, treatment, or health care.
3. Health care provider information.

Identification information together with any information from one of the other two categories constitutes protected health information. When the information that identifies the subject is present in the record set, any information that ties health care data to the subject’s identification information constitutes protected health information.

“*Psychotherapy notes*” means notes that are recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the subject’s medical record. “Psychotherapy notes” excludes medication prescription and monitoring, counseling session start and stop times, the methods of therapy and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

“*Public health authority*” means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or organization acting under a grant of authority from or contract with a public agency that is responsible for public health matters as part of its official mandate. “Public health authority” includes the employees or agents of the public agency and its contractors or persons or organizations to which it has granted authority.

“*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 department.

“*Record system*” means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of a subject, number, symbol, or other unique identifier assigned to a subject.

“*Required by law*” means a mandate contained in federal law, federal regulation, state law, state administrative rule, case law, or court order that is enforceable in a court of law. For the purposes of this chapter, “required by law” includes statutes or regulations that require the production of information, such as statutes or regulations that require the information if payment is sought under a government program that provides public benefits.

“*Research*” means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

“*Subject*” means the person who is the subject of the record, whether living or deceased.

“*Substance abuse information*” means information which indicates the identity, diagnosis, prognosis, or treatment of any person in an alcohol or drug abuse program.

“*Transaction*” means the electronic transmission of information between two parties to carry out financial or administrative activities related to health care. The term includes the following defined HIPAA standard transactions:

- Health care claims or equivalent encounter information.
- Health care payment and remittance advice.
- Coordination of benefits.
- Health care claim status.
- Enrollment and disenrollment in a health plan.
- Eligibility for a health plan.
- Health plan premium payments.
- Referral certification and authorization.
- Other transactions that the Secretary of Health and Human Services may prescribe by regulation.

“*Treatment*,” with respect to HIPAA rules about protected health information, means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation among health care providers about a patient; and the referral of a patient from one health care provider to another.

“*Use*,” with respect to protected health information, means the sharing, application, utilization, examination, or analysis of the information within an organization that maintains the protected health information.

“*Workforce*” means employees, volunteers, trainees, and other people whose conduct, in the performance of work for the covered entity, is under the direct control of the covered entity, whether or not these people are paid by the covered entity.

441—9.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound department determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This department 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.

441—9.3(17A,22) Requests for access to records.

9.3(1) Location of record. A request for access to a record should be directed to the director or the particular department office where the record is kept.

a. If the location of the record is not known by the requester, the request shall be directed to the Office of Policy Analysis, Department of Human Services, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

b. If a request for access to a record is misdirected, department personnel will promptly forward the request to the appropriate person within the department.

9.3(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.

9.3(3) Request for access. Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

9.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. 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. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). 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.

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 441—9.4(17A,22) and other applicable provisions of law.

9.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from department files. Examination and copying of department records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

9.3(6) Copying. A reasonable number of copies of an open record may be made in the department office. If photocopy equipment is not available in the department 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.

9.3(7) Fees.

a. When charged. The department may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the department shall be prominently posted in department 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 department 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.

c. Supervisory fee. An hourly fee may be charged for actual department expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in department offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a department clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. 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.

e. Summary of health information. The department may charge a fee for the cost of preparing an explanation or summary of health information as provided in paragraph 9.9(1)“c.” The department and the subject requesting the information shall agree to the amount of any fee imposed before the department prepares the explanation or summary.

441—9.4(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 441—9.3(17A,22).

9.4(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.

9.4(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.

9.4(3) Notice to subject of record and opportunity to obtain injunction.

a. Except as provided in 441—subrule 175.41(2), after receiving a request for access to a confidential record and before releasing the record, the custodian may make reasonable efforts to promptly notify any person:

- (1) Who is a subject of that record,
- (2) Who is identified in that record, and
- (3) Whose address or telephone number is contained in the record.

b. To the extent such a delay is practicable and in the public interest, the custodian may give the notified subject a reasonable time to seek an injunction under Iowa Code section 22.8. The custodian shall inform the subject identified in the record of how much time the subject has to seek an injunction before the information will be released.

9.4(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 this requester.

9.4(5) Request granted. Except as provided in 441—subrule 175.41(2), when the custodian grants a request for access to a confidential record, the custodian shall notify the requester or the person who is to receive the information and include any limits on the examination and copying of the record.

9.4(6) Records requiring special procedures. Special procedures are required for access to:

a. Child abuse information. Access to child abuse information is obtained according to rules 441—175.41(235A) and 441—175.42(235A).

b. Dependent adult abuse information. Access to adult abuse information is governed by rule 441—176.9(235A).

441—9.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examinations. 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.

9.5(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.

9.5(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.

a. 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.

b. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit stating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts.

c. Requests to temporarily treat a record as a confidential record shall specify the precise period of time for which that treatment is requested.

d. A person filing such a request shall, if possible, provide 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 department by the person requesting 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.

9.5(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 department does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

9.5(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.

9.5(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.

9.5(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 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.

9.5(7) Rights to request privacy protection for protected health information. When the subject is requesting a restriction or confidential communication of protected health information, the department shall follow the provisions of this subrule, as applicable, in addition to the provisions of subrules 9.5(1) through 9.5(6).

a. Restriction of uses and disclosures.

(1) The subject may request that the department restrict uses or disclosures of the subject's protected health information:

1. To carry out treatment, payment, or health care operations; and
2. To persons involved in the subject's care or for notification purposes as permitted under subrule 9.7(3).

(2) The subject shall submit a request to the department on Form 470-3953, Request to Restrict Use or Disclosure of Health Information. If applicable, the subject shall provide verification that it is reasonable to anticipate the use or disclosure will endanger the subject.

(3) The department is not required to agree to a restriction. The department shall deny any restriction when the restriction would adversely affect the quality of the subject's care or services, the restriction would limit or prevent the department from making or obtaining payment for services, or federal or state law requires the use or disclosure. The department shall approve the request for restriction only when the use or disclosure would endanger the subject and none of the above reasons for denial apply.

(4) The department shall send the subject a written notice to accept or deny the restriction.

(5) If the department agrees to a restriction, it may not use or disclose protected health information in violation of the restriction. **EXCEPTION:** The department may use restricted protected health information or disclose the information to a health care provider when needed for the emergency treatment of the subject who requested the restriction. If restricted protected health information is disclosed to a health care provider for emergency treatment, the department shall request that the health care provider not further use or disclose the information.

(6) A restriction agreed to by the department under paragraph 9.5(7) "a" shall not prevent disclosures of protected health information to the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations. Also, a restriction shall not prevent uses or disclosures permitted or required for the categories listed in subparagraphs 9.14(5) "a"(1) through (11).

(7) The department may terminate its agreement to a restriction in writing if:

1. The subject agrees to or requests the termination in writing;
2. The subject orally agrees to the termination and the oral agreement is documented; or
3. The department informs the subject that it is ending its agreement to a restriction for protected health information created or received after it has so informed the subject.

b. Confidential communications. Subjects may ask to receive communications of protected health information by alternative means or at alternative locations. The department shall accommodate reasonable requests. For Medicaid and HAWK-I, the subject is required to clearly indicate the reason for requesting the confidential communication. Facilities shall not require the subject to explain the basis for the request as a condition of providing confidential communications.

(1) The subject shall request a confidential communication from the department using Form 470-3947, Request to Change How Health Information Is Provided.

(2) The department may require the subject to provide:

1. When appropriate, information as to how payment, if any, will be handled; and
2. An alternative address or other method of contact.

441—9.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.

9.6(1) All programs. Except as otherwise provided by law, a subject 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 subject. However, the subject is

not authorized to alter the original copy of the record or to expand the official record of any department proceeding.

a. The subject shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the office of policy analysis.

b. The request to review such a record or the written statement of additions, dissents, or objections must be dated and signed by the subject, and shall include the current address and telephone number of the subject or the subject's representative.

9.6(2) Additional procedures for protected health information.

a. Right to amend. A subject may request that the department amend protected health information or a record about the subject in a designated record set for as long as the protected health information is maintained in the designated record set. A subject shall submit a request to the department using Form 470-3950, Request to Amend Health Information. The subject shall provide a reason to support the requested amendment.

b. Timely action.

(1) The department shall act on a subject's request for an amendment no later than 60 days after receipt of the request.

(2) If the department is unable to act on the amendment within 60 days, the department may extend the due date one time, for a period not to exceed 30 days. In order to extend the due date, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department will complete its action on the request. The department shall provide this written statement within the 60-day period after receipt of the request.

c. Action on amendment. If the department grants the requested amendment, in whole or in part, the department shall comply with the following requirements.

(1) The department shall timely inform the subject that the amendment is accepted. The subject shall identify relevant persons with whom the amendment needs to be shared and agree to have the department share the amendment with these persons.

(2) The department shall make the appropriate amendment to the protected health information or record by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.

(3) The department shall make reasonable efforts to inform and provide the amendment to:

1. Persons identified by the subject as having received protected health information about the subject and as needing the amendment; and

2. Persons, including business associates, that the department knows have the subject's protected health information and that may have relied, or could foreseeably rely, on the information to the detriment of the subject.

d. Denial of amendment. The department may deny a subject's request for amendment, if the department determines that the protected health information or record that is the subject of the request:

(1) Was not created by the department, unless the subject provides a reasonable basis for the department to find that the originator of the protected health information is no longer available to act on the requested amendment;

(2) Is not part of the designated record set;

(3) Would not be available for inspection under rule 441—9.9(17A,22); or

(4) Is accurate and complete.

e. Action on denial of amendment. If the department denies the requested amendment, in whole or in part, the department shall provide the subject with a timely, written denial.

(1) The subject may submit to the department a written statement of disagreement with the denial of all or part of a requested amendment and the basis of the disagreement, in accordance with 45 CFR 164.526 as amended to August 14, 2002. The subject shall submit the statement of disagreement by filing an appeal request under subrule 9.14(7). The appeal request constitutes the statement of disagreement.

(2) The department shall prepare a written rebuttal to the subject's statement of disagreement, in accordance with 45 CFR 164.526 as amended to August 14, 2002. The appeal decision constitutes

the rebuttal statement. The department shall provide a copy of the appeal decision to the subject who submitted the appeal request.

f. Record keeping of disputed amendments. The department shall, as appropriate, identify the record or protected health information in the designated record set that is the subject of the disputed amendment. The department shall append or otherwise link the subject's request for an amendment, the department's denial of the request, and the subject's appeal and the final decision, if any, to the designated record set.

g. Future disclosures regarding disputed amendments.

(1) If an appeal has been submitted by the subject, the department shall include the material appended in accordance with paragraph 9.6(2) "f" or, at the election of the department, an accurate summary of the information, with any subsequent disclosure of the protected health information to which the disagreement relates.

(2) If the subject has not submitted an appeal, the department shall include the subject's request for amendment and its denial, or an accurate summary of the information, with any subsequent disclosure of the protected health information only if the subject has requested this action.

(3) When a subsequent disclosure is made using a standard transaction that does not permit the additional material to be included with the disclosure, the department may separately transmit the material required by subparagraph 9.6(2) "g"(1) or (2), as applicable, to the recipient of the standard transaction.

h. Actions on notices of amendment. When the department is informed by another covered entity of an amendment to a subject's protected health information, the department shall amend the protected health information in designated record sets as provided by subparagraph 9.6(2) "c"(2).

441—9.7(17A,22,228) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, 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 to be disclosed, the particular person or class of persons to whom the record may be disclosed, and the time period during which the record may be disclosed. 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.

No confidential information about clients of the department shall be released without the client's consent, except as provided in rule 441—9.10(17A,22). Release of information includes:

1. Granting access to or allowing the copying of a record,
2. Providing information either in writing or orally, or
3. Acknowledging information to be true or false.

9.7(1) Forms.

a. General. Department staff shall use Form 470-2115, Authorization for the Department to Release Information, for releases by the subject that do not involve health information requiring use of the authorization form described in paragraph 9.7(1) "c."

b. Obtaining information from a third party. The department is required to obtain information to establish eligibility, determine the amount of assistance, and provide services. Requests to third parties for this information involve release of confidential identifying information about clients. Except as provided in rule 441—9.9(17A,22), the department may make these requests only when the client has authorized the release on one of the following forms.

- (1) Form 470-0461, Authorization for Release of Information.
- (2) Form 470-1630, Household Member Questionnaire.
- (3) Form 470-1631, Bank or Credit Union Information.
- (4) Form 470-4670, Addendum for Application and Review Forms for Release of Information.
- (5) Form 470-1638, Request for School Verification.
- (6) Form 470-2844, Employer's Statement of Earnings.
- (7) Form 470-1640, Verification of Educational Financial Aid.
- (8) Form 470-3742, Financial Institution Verification.

(9) Form 470-3951, Authorization to Obtain or Release Health Care Information.

c. Health information.

(1) When consent or authorization for use or disclosure of health information is required, facilities and department staff responding to third-party requests for health information shall use Form 470-3951, Authorization to Obtain or Release Health Care Information, or a form from another source that meets HIPAA requirements.

The department shall not require a subject to sign a HIPAA authorization form as a condition of treatment, payment, enrollment in a health plan, or eligibility for benefits. The department as a health care provider may require a subject to sign a HIPAA authorization form for the use or disclosure of protected health information for research, as a condition of the subject's receiving research-related treatment.

A subject may revoke a HIPAA authorization provided under subparagraph 9.7(1) "c"(1) at any time, provided that the revocation is in writing using Form 470-3949, Request to End an Authorization, except to the extent that the department has taken action in reliance thereon.

(2) Except as provided in subparagraph 9.7(1) "c"(1), department staff shall release mental health or substance abuse information only with authorization on Form 470-0429, Consent to Obtain and Release Information, or a form from another source that meets requirements of law.

d. Photographs and recordings. The department uses Form 470-0060, Authorization to Take and Use Photographs, and Form 470-0064, Authorization to Take and Use Photographs of Minor or Ward, for permission to use photographs in department publications. The department shall obtain authorization from the subject or person responsible for the subject (such as a guardian, custodian, or personal representative) before taking photographs or making any type of recording for any purpose other than those specifically allowed by law or for internal use within an institution.

9.7(2) Exceptions to use of forms.

a. Counsel. Appearance of counsel before the department on behalf of the subject of a confidential record is deemed to constitute consent for the department to disclose records about the subject to the subject's attorney.

b. Public official. A letter from the subject to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the department shall be treated as an authorization to release information. The department shall release sufficient information about the subject to the official to resolve the matter.

c. Medical emergency. Department staff may authorize release of confidential information to medical personnel in a medical emergency if the subject is unable to give or withhold consent. As soon as possible after the release of information, the subject shall be advised of the release.

d. Abuse information. Consent to release information is not required to gather information for investigations of child abuse or dependent adult abuse.

9.7(3) Opportunity for subject to agree or object. This subrule describes when the department may use or disclose protected health information, without a written authorization, to persons involved in the subject's care and for notification purposes. However, the department shall give the subject an opportunity to agree or object, unless this requirement is waived as specified in paragraph 9.7(3) "e."

a. Involvement in the subject's care. The department may disclose protected health information that is directly relevant either to a subject's care or to payment related to the subject's care, provided payment is relevant to the person's involvement in the subject's care. The person involved must be:

- (1) A family member;
- (2) Another relative;
- (3) A close personal friend of the subject; or
- (4) Any other person identified by the subject.

b. Notification purposes. The department may use or disclose protected health information to notify, or assist in notifying, identifying or locating a family member, a personal representative of the subject, or another person responsible for the care of the subject of the subject's location, general condition or death. For disaster relief purposes, the use or disclosure shall be in accordance with paragraph 9.7(3) "f."

c. Uses and disclosures with the subject present. If the subject is present for, or available before, a use or disclosure permitted by this subrule and has the capacity to make health care decisions, the department may use or disclose the protected health information if the department:

- (1) Obtains the subject's agreement;
- (2) Provides the subject with the opportunity to object to the disclosure, and the subject does not express an objection; or
- (3) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the subject does not object to the disclosure.

d. Informing the subject. The department may orally inform the subject of and obtain the subject's oral agreement or objection to a use or disclosure permitted by this subrule.

e. Limited uses and disclosures when the subject is not present. When the subject is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the subject's incapacity or an emergency circumstance, the department may, in the exercise of professional judgment, determine that disclosure is in the best interest of the subject.

(1) When the department determines that disclosure is in the subject's best interest, the department may disclose only the protected health information that is directly relevant to the person's involvement with the subject's health care.

(2) The department may use professional judgment and its experience with common practice to make reasonable inferences of the subject's best interest in allowing a person to act on behalf of the subject to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

f. For disaster relief purposes. The department may use protected health information or disclose protected health information to a public or private organization authorized by law or by its charter to assist in disaster relief efforts for the purpose of coordinating with these organizations the uses or disclosures permitted by paragraph 9.7(3) "b." The requirements in paragraphs 9.7(3) "c" and "d" apply to these uses and disclosures to the extent that the department, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

[ARC 0420C, IAB 10/31/12, effective 1/1/13]

441—9.8(17A,22) Notice to suppliers of information. When the department requests a person to supply information about that person, the department shall notify the person of how the information will be used, which persons outside the department might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested.

9.8(1) 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.

9.8(2) The notice shall generally be given at the first contact with the department and need not be repeated. Where appropriate, the notice may be given to a person's legal or personal representative. Notice may be withheld in an emergency or where it would compromise the purpose of a department investigation.

9.8(3) In general, the department requests information to determine eligibility and benefit levels for assistance, to provide appropriate services or treatment, and to perform regulatory and administrative functions. Information is routinely shared outside the department when required by rules or law. Consequences of failure to provide information include ineligibility for public assistance, denial of licensure or regulatory approval, or inadequate service provision.

441—9.9(17A,22) Release to subject.

9.9(1) *Access by subjects to protected health information.*

a. Right of access. Except as otherwise provided in paragraphs 9.9(1) "f" and "g," a subject has a right of access to inspect or to obtain a copy of the protected health information about the subject that

is maintained in a designated record set. Subjects shall submit all requests for access to the department using Form 470-3952, Request for Access to Health Information.

If the department does not maintain the protected health information that is the topic of the subject's request for access, and the department knows where the requested information is maintained, the department shall inform the subject where to direct the request for access.

b. Timely action.

(1) The department shall act on a request for access no later than 30 days after receipt of the request unless the protected health information is not maintained or accessible to the department on site.

(2) If the requested information is not maintained or accessible to the department on site, the department shall take action no later than 60 days from the receipt of the request.

(3) If the department is unable to act within 30 days or 60 days as appropriate, the department may extend the time for the action by no more than 30 days. Within the applicable time limit, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department will complete its action on the request. The department shall have only one extension of time for action on a request for access.

c. Action on providing access. If the department grants the request, in whole or in part, the department shall inform the subject that the request is accepted and shall provide the access requested. Access includes inspecting the protected health information about the subject in designated record sets, obtaining a copy of the information, or both. If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the department need only produce the protected health information once in response to a request for access.

(1) The department shall provide the subject with access to the protected health information in the form or format requested by the subject, if the requested format is readily producible. If the requested format is not readily producible, the department shall provide the information in a readable hard-copy form or other format as agreed to by the department and the subject.

(2) The department may provide the subject with a summary of the protected health information requested instead of providing access to the protected health information. The department may provide an explanation of the protected health information to which access has been provided. The subject must agree in advance to a summary or explanation and to any fees imposed by the department for the summary or explanation.

d. Time and manner of access. The department shall provide the access as requested by the subject in a timely manner as described in paragraph 9.9(1) "b." The department shall arrange with the subject for a time and place to inspect or obtain a copy of the protected health information that is convenient for both the subject and the department, or shall mail the copy of the protected health information at the subject's request. The department may discuss the scope, format, and other aspects of the request for access with the subject as necessary to facilitate the timely provision of access.

e. Fees for access. If the subject requests a copy of the protected health information or agrees to a summary or explanation of the information, the department may impose a reasonable, cost-based fee, as set forth in subrule 9.3(7).

f. Mandatory reasons for denial of access. The department shall deny a subject access to protected health information when the requested information is:

(1) Psychotherapy notes;

(2) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; or

(3) Protected health information maintained by the department that is:

1. Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. Section 263a, to the extent the provision of access to the subject would be prohibited by law; or

2. Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR 493.3(a)(2).

g. Optional reasons for denial of access. The department may deny a subject access in the following circumstances.

(1) The department may temporarily suspend a subject's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment. The subject must have agreed to the denial of access when consenting to participate in the research that includes treatment. The suspension may last for as long as the research is in progress. The department shall inform the subject that the right of access will be reinstated upon completion of the research.

(2) The department may deny a subject's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. Section 552a, if the denial of access under the Privacy Act would meet the requirements of that law.

(3) The department may deny a subject's access if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

(4) State or federal law prohibits a subject's access to protected health information, such as the state law limitations described in subrule 9.9(2).

(5) The department may deny a subject access, provided that the subject is given a right to have the denials reviewed as required by paragraph 9.9(1) "i," in the following circumstances:

1. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the subject or another person;

2. The protected health information makes reference to another person (unless the other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to the other person; or

3. The request for access is made by the subject's personal representative, subject to the more restrictive definition of personal representative for protected health information, and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to the personal representative is reasonably likely to cause substantial harm to the subject or another person.

h. Action on denial of access. If the department denies access, in whole or in part, to protected health information, the department shall comply with the following requirements.

(1) The department shall, to the extent possible, give the subject access to any other protected health information requested, after excluding the protected health information to which the department has a reason to deny access.

(2) The department shall provide a timely, written denial to the subject, in accordance with paragraph 9.9(1) "b."

i. Review of denial of access. If access is denied for a reason permitted under subparagraph 9.9(1) "g"(5), a subject may submit a written request for a review of a denial. If the subject requests a review, the department shall promptly refer the request to a licensed health care professional who is designated by the department to act as a reviewing official and who did not participate in the original decision to deny.

(1) The designated reviewing official shall determine, within 30 days, whether or not to deny the access requested based on the standards in subparagraph 9.9(1) "g"(5).

(2) The department shall promptly provide written notice to the subject of the determination made by the designated reviewing official and shall take other action as required to carry out the designated reviewing official's determination.

9.9(2) Access by subjects to other confidential information. The department shall release confidential records to the subject of the record. However, when a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to another subject. The department need not release the following records to the subject:

a. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

b. The identity of a person reporting suspected abuse to the department need not be disclosed to the subject. (See 441—subrule 175.41(2) and Iowa Code section 235A.19.)

c. The identity of a person providing information to the department need not be disclosed directly or indirectly to the subject of the information when that information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).

d. Peace officers' investigative reports may be withheld from the subject, pursuant to Iowa Code section 22.7(5).

e. The department may withhold disclosure of confidential information when the department has reason to believe that disclosure of the information would cause substantial and irreparable harm and would not be in the public interest. The department may withhold disclosure to seek an injunction to restrain examination of the record according to procedures in Iowa Code section 22.8 or to notify the person who would be harmed to allow that person to seek an injunction.

f. The department may withhold information as otherwise authorized by law.

441—9.10(17A,22) Use and disclosure without consent of the subject. Open records are routinely disclosed without the consent of the subject. To the extent allowed by law, the department may also use and disclose confidential information without the consent of the subject or the subject's representative.

9.10(1) Internal use. Confidential information may be disclosed to employees and agents of the department as needed for the performance of their duties. The custodian of the record shall determine what constitutes legitimate need to use confidential records.

People affected by this rule include:

1. County-paid staff, field work students, and volunteers working under the direction of the department.

2. Council and commission members.

3. Policy review and advisory committees.

4. Consultants to the department.

9.10(2) Audits and health oversight activities.

a. *Audits.* Information concerning program expenditures and client eligibility is released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. Information is also released to auditors from federal agencies when those agencies provide program funds.

b. *Health oversight activities.* The department shall disclose protected health information to the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations.

(1) Except as specified in paragraph 9.10(2) "c," the department may also use protected health information, or disclose it to a health oversight agency, for other health oversight activities authorized by law. Health oversight activities include audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

1. The health care system;

2. Government benefits programs for which protected health information is relevant to client eligibility;

3. Organizations subject to government regulatory programs for which protected health information is necessary for determining compliance with program standards; or

4. Organizations subject to civil rights laws for which protected health information is necessary for determining compliance.

(2) If a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation shall be considered a health oversight activity for purposes of subrule 9.10(2).

c. *Exception to health oversight activities.* For the purpose of the disclosures permitted by paragraph 9.10(2) "b," a health oversight activity shall not include an investigation or other activity in which the subject is also the subject of the investigation or activity, unless the investigation or other activity directly relates to:

(1) The receipt of health care;

- (2) A claim for public health benefits; or
- (3) Qualification for or receipt of public benefits or services, when a patient's health is integral to the claim for public benefits or services.

9.10(3) Program review. Information concerning client eligibility and benefits is released to state or federal officials responsible for determining whether the department is operating a program lawfully. These officials include the ombudsman office under Iowa Code section 2C.9, the auditor of state under Iowa Code section 11.2, the Office of Inspector General in the federal Department of Health and Human Services, and the Centers for Medicare and Medicaid Services.

9.10(4) Contracts and agreements with agencies and persons.

a. The department may enter into contracts or agreements with public or private agencies, such as the department of inspections and appeals, and business associates, such as, but not limited to, the Iowa Medicaid enterprise units, in order to carry out the department's official duties. Information necessary to carry out these duties may be shared with these agencies. The department may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf, if the department obtains satisfactory assurance that the business associate will appropriately safeguard the information.

b. The department may enter into agreements to share information with agencies administering federal or federally assisted programs which provide assistance or services directly to persons on the basis of need. Only information collected in the family investment program, the child care assistance program, the food assistance program, the refugee resettlement program, or the child support recovery program may be shared under these agreements.

c. To meet federal income and eligibility verification requirements, the department has entered into agreements with the department of workforce development, the United States Internal Revenue Service, and the United States Social Security Administration.

The department obtains information regarding persons whose income or resources are considered in determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, child care assistance, food assistance, Medicaid, state supplementary assistance and foster care. Identifying information regarding clients of these programs is released to these agencies. The information received may be used for eligibility and benefit determinations.

d. To meet federal requirements under the Immigration Reform and Control Act of 1986 (IRCA) relating to the Systematic Alien Verification for Entitlements (SAVE) program, the department has entered into an agreement with the Bureau of Citizenship and Immigration Service (BCIS). Under the agreement, the department exchanges information necessary to verify alien status for the purpose of determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, food assistance, Medicaid, state supplementary assistance and foster care assistance. Identifying information regarding these subjects is released to the BCIS. The information received may be used for eligibility and benefit determinations.

e. The department has entered into an agreement with the department of workforce development to provide services to family investment program clients participating in the PROMISE JOBS program as described at 441—Chapter 93. Information necessary to carry out these duties shall be shared with the department of workforce development, as well as with its subcontractors.

The department has entered into an agreement with the department of human rights to provide services to family investment program clients participating in the family development and self-sufficiency program as described at 441—Chapter 165. Information necessary to carry out these duties shall be shared with the department of human rights, as well as with that agency's subcontractors.

f. State legislation requires that all emergency assistance households apply for and accept benefits for which they may qualify from the energy assistance, county general relief and veteran's affairs programs before approval for emergency assistance. To meet this requirement, the department may enter into agreements with the agencies that administer these programs under which they may provide services to emergency assistance households as described at 441—Chapter 58. Information necessary to carry out these duties shall be shared with these agencies.

g. The department has entered into an agreement with the department of education, vocational rehabilitation, disability determination services, to assist with Medicaid disability determinations.

h. The department has entered into an agreement with the department of education to share information that assists both schools and department clients in carrying out the annual verification process required by the United States Department of Agriculture, Food and Nutrition Service. That federal agency requires the department of education and local schools to verify eligibility of a percentage of the households approved for free-meal benefits under the school lunch program.

When a department office receives a written request from the local school, the department office responds in writing with the current family investment program and food assistance program status of each recipient of free meals listed in the request. Other client-specific information is made available only with written authorization from the client.

9.10(5) Release for judicial and administrative proceedings. Information is released to the court as required in Iowa Code sections 125.80, 125.84, 125.86, 229.8, 229.10, 229.13, 229.14, 229.15, 229.22, 232.48, 232.49, 232.52, 232.71B, 232.81, 232.97, 232.98, 232.102, 232.111, 232.117 and 235B.3.

a. The department may disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the department discloses only the protected health information expressly authorized by the order and the court makes the order knowing that the information is confidential.

b. When a court subpoenas information that the department is prohibited from releasing, the department shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

9.10(6) Fraud. Information concerning suspected fraud or misrepresentation to obtain department services or assistance is disclosed to the department of inspections and appeals and to law enforcement authorities.

9.10(7) Service referrals. Information concerning clients may be shared with purchase of service providers under contract to the department.

a. Information concerning the client's circumstances and need for service is shared with prospective providers to obtain placement for the client. If the client is not accepted for service, all written information released to the provider shall be returned to the department.

b. When the information needed by the provider is mental health information or substance abuse information, the subject's specific consent is required in subrule 9.3(4).

9.10(8) Medicaid billing. Only the following information shall be released to bona fide providers of medical services in the event that the provider is unable to obtain it from the subject and is unable to complete the Medicaid claim form without it:

- a. Patient identification number.
- b. Health coverage code as reflected on the subject's medical card.
- c. The subject's date of birth.
- d. The subject's eligibility status for the month that the service was provided.
- e. The amount of spenddown.
- f. The bills used to meet spenddown.

9.10(9) County billing. Information necessary for billing is released to county governments that pay part of the cost of care for intermediate care facility services for the mentally retarded under 441—subrule 82.14(2) or Medicaid waiver services under rule 441—83.70(249A) or 441—83.90(249A). This information includes client names, identifying numbers, provider names, number of days of care, amount of client payment, and amount of payment due.

9.10(10) Child support recovery. The child support recovery unit has access to information from most department records for the purpose of establishing and enforcing support obligations. Information about absent parents and recipients of child support services is released according to the provisions of Iowa Code chapters 234, 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, 598, 600B, and any other support chapter. Information is also released to consumer reporting agencies as specified in rule 441—98.116(252B).

9.10(11) *Refugee resettlement program.* Contacts with both sponsor and resettlement agencies are made as a part of the verification process to determine eligibility or the amount of assistance. When a refugee applies for cash or Medicaid, the refugee's name, address, and telephone number are given to the refugee's local resettlement agency.

9.10(12) *Abuse investigation.* The central abuse registry disseminates child abuse information and dependent adult abuse information as provided in Iowa Code sections 235A.15 and 235B.7, respectively. Reports of child abuse and dependent adult abuse investigations are submitted to the county attorney as required in Iowa Code sections 232.71B and 235B.3. Results of the investigation of a report by a mandatory reporter are communicated to the reporter as required in Iowa Code sections 235A.17(2) and 235A.15(2) "b"(5).

9.10(13) *Foster care.* Information concerning a child's need for foster care is shared with foster care review committees or foster care review boards and persons named in the case permanency plan.

9.10(14) *Adoption.* Adoptive home studies completed on families who wish to adopt a child are released to licensed child-placing agencies, to the United States Immigration and Naturalization Service, and to adoption exchanges. Information is released from adoption records as provided in Iowa Code sections 600.16 and 600.24.

9.10(15) *Disclosures to law enforcement.*

a. Disclosures by workforce members who are crime victims. The department is not considered to have violated the requirements of this chapter if a member of its workforce who is the victim of a criminal act discloses confidential information to a law enforcement official, provided that:

(1) The confidential information disclosed is about the suspected perpetrator of the criminal act and intended for identification and location purposes; and

(2) The confidential information disclosed is limited to the following information:

1. Name and address.

2. Date and place of birth.

3. Social security number.

4. ABO blood type and Rh factor.

5. Type of injury.

6. Date and time of treatment.

7. Date and time of death, if applicable.

8. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

b. Crime on premises. The department may disclose to a law enforcement official protected health information that the department believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the department.

c. Decedents. The department may disclose protected health information to a law enforcement official about a subject who has died when the death resulted from child abuse or neglect or the death occurred in a department facility.

d. Other. The department may disclose confidential information to a law enforcement official when otherwise required or allowed by this chapter, such as disclosures about victims of child abuse or neglect; disclosures to avert a threat to health or safety, or to report suspected fraud; disclosures required by due process of law, such as disclosures for judicial and administrative proceedings; or other disclosures required by law.

9.10(16) *Response to law enforcement.* The address of a current recipient of family investment program benefits may be released upon request to a federal, state or local law enforcement officer if the officer provides the name of the recipient, and the officer demonstrates that:

a. The recipient is a fugitive felon who is fleeing prosecution, custody or confinement after conviction under state or federal law, or who is a probation or parole violator under state or federal law, or

b. The recipient has information that is necessary for the officer to conduct the officer's official duties, and

c. The location or apprehension of the recipient is within the officer's official duties.

9.10(17) Research. Information that does not identify individual clients may be disclosed for research purposes with the consent of the division administrator responsible for the records. The division administrator shall investigate the credentials of the researcher.

a. Mental health information may be disclosed for purposes of scientific research as provided in Iowa Code section 228.5, subsection 3, and section 229.25. Requests to do research involving records of a department facility shall be approved by the designated authority.

b. Abuse registry information may be disclosed for research purposes as provided in rules 441—175.42(235A) and 441—176.12(235B) and authorized by Iowa Code sections 235A.15(2) “e”(1) and 235B.6(2) “e”(1).

c. For research relating to protected health information, the researcher shall provide the department with information about the nature of the research, the protocol, the type of information being requested, and any other relevant information that is available concerning the request. If the researcher feels that contact with the subject is needed, the researcher shall demonstrate to the department that the research cannot be conducted without contact with the subject. The researcher shall pay for the costs of obtaining authorizations needed to contact the subjects and for the cost of files and preparation needed for the research.

9.10(18) Threat to health or safety.

a. All programs. A client’s name, identification, location, and details of a client’s threatened or actual harm to department staff or property may be reported to law enforcement officials. Other information regarding the client’s relationship to the department shall not be released.

When a department staff person believes a client intends to harm someone, the staff person may warn the intended victim or police or both. Only the name, identification, and location of the client and the details of the client’s plan of harm shall be disclosed.

b. Protected health information. The department may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the department, in good faith, believes the use or disclosure:

(1) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

(2) Is necessary for law enforcement purposes as described in this chapter.

c. When the department uses or discloses protected health information pursuant to paragraph 9.10(18) “b,” the department is considered to have acted in good faith if the action is based on the department’s actual knowledge or on a credible representation by a person with apparent knowledge or authority.

9.10(19) Required by law.

a. Information is shared with other agencies without a contract or written agreement when federal law or regulations require it.

b. The department may use or disclose protected health information to the extent that use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of the law.

c. State law shall preempt rules in this chapter about protected health information when any one of the following conditions exists:

(1) Exception granted by Secretary of Health and Human Services. A determination is made by the Secretary of Health and Human Services under 45 CFR 160.204 as amended to August 14, 2002, that the provision of state law:

1. Is necessary:

- To prevent fraud and abuse related to the provision of or payment for health care;
- To ensure appropriate state regulation of insurance and health plans to the extent expressly authorized by statute or regulation;
- For state reporting on health care delivery or costs; or

- For purposes of serving a compelling need related to public health, safety, or welfare, and, if a requirement under this chapter is at issue, the Secretary of Health and Human Services determines that the intrusion into privacy is warranted when balanced against the need to be served; or

2. Has as its principal purpose, the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances, as defined in 21 U.S.C. 802, or that is deemed a controlled substance by state law.

(2) State law more stringent. The provision of state law relates to the privacy of protected health information and is more stringent than a requirement of this chapter, within the meaning of “more stringent” found at 45 CFR 160.202 as amended to August 14, 2002.

(3) Reporting requirements. The provision of state law, including state procedures established under the law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(4) Requirements related to audits, monitoring, evaluation, licensing, and certification. The provision of state law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities and persons.

9.10(20) Reserved.

9.10(21) *Treatment, payment, or health care operations.*

a. The department may use or disclose protected health information for treatment, payment, or health care operations, as described in this paragraph, except for psychotherapy notes, which are subject to the limits described in paragraph 9.10(21) “b.” The use or disclosure shall be consistent with other applicable requirements of this chapter.

(1) The department may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) The department may disclose protected health information for treatment activities of a health care provider.

(3) The department may disclose protected health information to another covered entity or a health care provider for the payment activities of the person or organization that receives the information.

(4) The department may disclose protected health information to another covered entity for health care operations activities of the covered entity that receives the information, if each covered entity either has or had a relationship with the person who is the subject of the protected health information being requested, the protected health information pertains to the relationship, and the disclosure is:

1. For a purpose listed in numbered paragraph “1” or “2” of the definition of health care operations in 45 CFR 164.501 as amended to August 14, 2002; or

2. For the purpose of health care fraud and abuse detection or compliance.

b. The department may use or disclose psychotherapy notes without an authorization for any one of the following reasons:

(1) To carry out the following treatment, payment, or health care operations:

1. Use by the originator of the psychotherapy notes for treatment.

2. Use or disclosure by the department for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling.

3. Use or disclosure by the department to defend itself in a legal action or other proceeding brought by the subject.

(2) When required by the Secretary of Health and Human Services to investigate or determine the department’s compliance with federal HIPAA regulations.

(3) For health oversight activities, as described at subrule 9.10(2), with respect to the oversight of the originator of the psychotherapy notes.

(4) When necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public as described at subrule 9.10(18).

(5) When required by law as described at subrule 9.10(19).

(6) To disclose protected health information in the designated record set to a coroner or medical examiner as described at subrule 9.10(24).

9.10(22) *Public health activities.* The department may disclose protected health information for the public health activities and purposes described in this subrule. This disclosure is in addition to any other disclosure to a public health authority allowed by this chapter, such as a disclosure to report child abuse or neglect. For the purposes of this subrule, a public health authority includes state and local health departments, the Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention.

a. The department may disclose protected health information to a public health authority that is authorized by law to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability.

(1) The information that may be disclosed includes, but is not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.

(2) At the direction of a public health authority, the department may also report this information to an official of a foreign government agency that is acting in collaboration with a public health authority.

b. The department may disclose protected health information to a person or organization that is subject to the jurisdiction of the FDA for public health purposes related to the quality, safety, or effectiveness of an FDA-regulated product or activity for which that person or organization has responsibility. These purposes include:

(1) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product).

(2) To track FDA-regulated products.

(3) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying subjects who have received products that have been recalled, withdrawn, or are the subject of lookback).

(4) To conduct postmarketing surveillance.

c. The department may disclose protected health information to a person who is at risk of contracting or spreading a disease or condition. The disclosure must be necessary to carry out public health interventions or investigations or to notify a person that the person has been exposed to a communicable disease to prevent or control the spread of the disease.

9.10(23) *Victims of domestic violence.* The department shall disclose confidential information about an individual whom the department reasonably believes to be a victim of domestic violence when required by state law.

9.10(24) *Disclosures to coroners, medical examiners, and funeral directors.*

a. Coroners and medical examiners. The department may disclose protected health information about a subject that is contained in the designated record set to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.

b. Funeral directors. The department may disclose protected health information about a subject that is contained in the designated record set to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the department may disclose the protected health information before, and in reasonable anticipation of, the subject's death.

9.10(25) *Disclosures for cadaveric organ, eye or tissue donation purposes.* The department may disclose protected health information about a subject that is contained in the designated record set to organ procurement organizations or other organizations engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation. The department shall make a disclosure only when the disclosure has been approved by the deceased subject's authorized legal representative and there is evidence that the decedent had given approval for organ, eye, or tissue donation procedures before the decedent's death.

9.10(26) *Specialized government functions.* Protected health information may be shared under the circumstances described at 45 CFR 164.512, paragraph "k," as amended to August 14, 2002, if

otherwise allowable under state law, such as sharing protected health information with the Social Security Administration in determining Medicaid eligibility for supplemental security income applicants and recipients.

9.10(27) *Whistle blowers.* The department is not considered to have violated the requirements of this chapter when a member of its workforce or a business associate discloses protected health information, provided that:

a. The workforce member or business associate has a good-faith belief that the department or a business associate has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or has provided care, services, or conditions that potentially endanger one or more patients, workers, or the public; and

b. The disclosure is made to one of the following:

(1) A health oversight agency or public health authority authorized by law to investigate or oversee conduct or conditions for the purpose of reporting the allegation of failure to meet professional standards or misconduct.

(2) An appropriate health care accreditation organization.

(3) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate.

9.10(28) *Secondary to a use or disclosure of protected health information.* The department may use or disclose protected health information that is secondary to a use or disclosure otherwise permitted or required by these rules, such as when a visitor in a facility overhears a doctor speaking to a subject about the subject's health.

9.10(29) *De-identified data or a limited data set.*

a. De-identified information. The department may use or disclose protected health information to create information that is de-identified under the conditions specified in 45 CFR 164.514, paragraphs "a" through "c," as amended to August 14, 2002.

b. Limited data set. The department may use or disclose a limited data set under the conditions specified at 45 CFR 164.514, paragraph "e," as amended to August 14, 2002, when the department enters into a data use agreement for research, public health, or health care operations.

[ARC 5417C, IAB 2/10/21, effective 4/1/21]

441—9.11(22) Availability of records. This rule lists the department records which are open to the public, those which are confidential, and those which are partially open and partially confidential.

Department records are listed by category according to the legal basis for confidential treatment (if any). A single record may contain information from several categories.

The department administers several federally funded programs and is authorized by Iowa Code section 22.9 to enforce confidentiality standards from federal law and regulation as required for receipt of the funds. Where federal authority is cited in this rule, the department has determined that the right to examine and copy public records under Iowa Code section 22.2 would cause the denial of funds, services, or essential information from the United States government that would otherwise be available to the department.

The chart indicates whether the records in this category contain personally identifiable information and indicates the legal authority for confidentiality and for the collection of personally identifiable information.

Abbreviations are used in the chart as follows:

<u>Code</u>	<u>Meaning</u>
O	The records are open for public inspection.
C	The records are confidential and are not open to public inspection.
O/C	The record is partly open and partly confidential.
PI	Personally identifiable information
NA	Not applicable

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Records of council, commission and statutory committees	O/C	Iowa Code 21.5(4)	No	NA
Pharmaceutical and therapeutics committee records (including information related to the prices manufacturers or wholesalers charge for pharmaceuticals)	O/C	42 U.S.C. §1396r(8)(b)(3)(D) and Iowa Code 550	No	NA
Rule making	O	NA	No	NA
Declaratory order records	O/C	Iowa Code 217.30	No	NA
Rules and policy manuals	O	NA	No	NA
State plans	O	NA	No	NA
Publications	O	NA	No	NA
Statistical reports	O	NA	No	NA
Financial and administrative records	O	NA	No	NA
Personnel records	O/C	Iowa Code 22.7(11)	Yes	Iowa Code 217.1
Contracts and interagency agreements	O	NA	No	NA
Grant records				
• Child abuse prevention	O	NA	No	NA
• Mental health/mental retardation general allocation	O	NA	No	NA
• Mental health/mental retardation special allocation	O	NA	No	NA
• Developmental disabilities basic	O	NA	No	NA
• Alcohol/drug abuse/mental health block	O	NA	No	
• National Institute of Mental Health	O	NA	No	
• Pregnancy prevention	O	NA	No	NA
• Juvenile community-based services	O	NA	No	NA
• Runaway prevention	O	NA	No	NA
Collection service center payment records	C	Iowa Code 252B.9(2); 42 U.S.C. §654a(d); 45 CFR §307.13	Yes	Iowa Code 252B.9, 252B.13A, 252B.16
Licensing, registration and approval				
• Juvenile detention and shelter care facilities	O/C	Iowa Code 217.30	No	NA
• Adoption investigators	O	NA	Yes	Iowa Code 600.2
• Supervised apartment living arrangement	O	NA	No	NA
• Mental health providers	O	NA	No	NA
• Family-life homes	O/C	Iowa Code 217.30	Yes	Iowa Code 234.6
• Foster care facilities	O/C	Iowa Code 237.9	Yes	Iowa Code 237
• Child care facilities	O/C	Iowa Code 237A.7	Yes	Iowa Code 237A
• Child-placing agencies	O/C	Iowa Code 238.24	No	NA
• Health care facilities	O/C	Iowa Code 135C.19	No	NA
Appeal records	O/C	Iowa Code 217.30	Yes	Iowa Code 217.1
Litigation files	O/C	Iowa Code 217.30, 22.7(4), 622.10	Yes	Iowa Code 217.1

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Service provider records				
• Purchase of service providers	O/C	Iowa Code 217.30	Yes	Iowa Code 234.6
• Medicaid providers	O/C	Iowa Code 217.30, 42 U.S.C. §1396a(7), 42 CFR 431.300 to 307 as amended to November 13, 1996	Yes	Iowa Code 249A.4
• Residential care facilities	O/C	Iowa Code 217.30	No	NA
All service or assistance client records	C	Iowa Code 217.30	Yes	Iowa Code 217.1
• Family investment program	C	Iowa Code 217.30; 42 U.S.C. §602(a)(1) and §1306a	Yes	Iowa Code 239B
• Child care assistance	C	Iowa Code 237A.13	Yes	Iowa Code 237A
• State Supplementary Assistance	C	Iowa Code 217.30	Yes	Iowa Code 249
• Medicaid	C	Iowa Code 217.30; 42 U.S.C. §1396a(7); 42 CFR 431.300 to 307 as amended to November 13, 1996	Yes	Iowa Code 249A.4
• HAWK-I	C	Iowa Code 514I; 42 CFR 457.1110 as amended to January 11, 2001	Yes	Iowa Code 514I.4
• Food assistance	C	Iowa Code 217.30; 7 U.S.C. §2020(e)8 and 7 CFR 272.1 (c) and (d) as amended to January 1, 1987	Yes	Iowa Code 234.6
• Foster care	C	Iowa Code 237.9	Yes	Iowa Code 237.3 to 237.5
• Title IV-E foster care and adoption assistance	C	Iowa Code 217.30; 42 U.S.C. §671(a)(8); 45 CFR 1355.30(1) as amended to November 23, 2001	Yes	Iowa Code 217.1, Iowa Code 600.17 to 600.22
• Refugee resettlement	C	Iowa Code 217.30; 45 CFR 400.27 as amended to March 22, 2000	Yes	Iowa Code 217.1
• Substance abuse	C	Iowa Code 125.37 and 125.93; 42 U.S.C. §29 dd. 3 and ee. 3; 42 CFR Part 2 as amended to October 1, 2002; 38 U.S.C. §4132	Yes	Iowa Code 125, 218, 219 and 234.6 and 249A.4
• State institution resident records	C	Iowa Code 218.22, 229.24 and 229.25	Yes	Iowa Code 218.1
Program records				
• Child support recovery	C	Iowa Code 252B.9 and 252G.5; 42 U.S.C. §654(26), 42 U.S.C. §654a(d); 45 CFR §303.21 and 307.13	Yes	Iowa Code 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, and 144.13, 144.26, 232.147, 234.39, 595.4, 598.22B, and 600.16A
• Child abuse	C	Iowa Code 235A.13, 235A.15, 235A.16, and 235A.17	Yes	Iowa Code 235A.14
• Dependent adult abuse	C	Iowa Code 235B.1, par 4(a)	Yes	Iowa Code 235B.1
• Adoption	C	Iowa Code 600.16 and 600.24	Yes	Iowa Code 600.8 and 600.16
Client records may contain information from restricted sources:				

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
• Federal tax returns	C	Iowa Code 422.20(2); 26 U.S.C. §6103	Yes	Iowa Code 217.1, 234.6(7), 239B, 249A, 252B
• Department of revenue	C	Iowa Code 421.17, 422.20(1)	Yes	Iowa Code 252B.5 and 252B.9
• Department of workforce development	C	Iowa Code 217.30; 42 U.S.C. §503(d) and (e)	Yes	Iowa Code 217.1, 234.6(7), 239B, 249A, 249C, 252B.9
• Income and eligibility verification system	C	Iowa Code 217.30; 42 U.S.C. §1230b-7	Yes	Iowa Code 217.1, 234.6(7), 239B, 249A
• Department of public safety	C	Iowa Code 692.2, 692.3, 692.8 and 692.18	Yes	Iowa Code 237.8, 237A.5, 252B.9
• United States Department of Health and Human Services	C	Iowa Code 217.30; 42 CFR Part 401.134(c) as amended to October 1, 2002	Yes	Iowa Code 217.1, 234.6(7), 239B, 249, 249A, 252B
• Peer review organization	C	Iowa Code 217.30; 42 U.S.C. §1320c-9	Yes	Iowa Code 249A.4
• Juvenile court	C	Iowa Code 232.48, 232.97 and 232.147 to 232.151	Yes	Iowa Code 232 and 234.6
Other information				
• Mental health information	C	Iowa Code 228.2(1)	Yes	Iowa Code 217, 219, 222, 229
• Information received by a licensed social worker	C	Iowa Code 154C.5	Yes	Iowa Code 217.1
• Debtors to the department	C	Iowa Code 537.7103(3)	Yes	Iowa Code 217.1
• Health care facility complaint and citation records	C	Iowa Code 135C.19	No	Iowa Code 249A.4, 135C.19
• Hospital records, medical records, and professional counselor records	C	Iowa Code 22.7(2)	Yes	Iowa Code 218, 219, 222, 229
• Privileged communication and work products of attorneys representing the department	C	Iowa Code 22.7(4), Iowa Code of Professional Responsibility for Lawyers, Canon 4	No	NA
• Identity of volunteer informant who does not consent to release	C	Iowa Code 22.7(18)	No	Iowa Code 217.1
• School records	C	Iowa Code 22.7(1)	Yes	Iowa Code 218.1 and 234.6
• Library circulation records	C	Iowa Code 22.7(13) and (14)	No	Iowa Code 217.1
• Sealed bids prior to public opening	C	Iowa Code 72.3	No	NA
• Protected health information	C	HIPAA	Yes	Iowa Code 218.1, 249A.4, 514I.4

[ARC 1262C, IAB 1/8/14, effective 3/1/14]

441—9.12(22,252G) Personally identifiable information. The confidentiality provisions affecting records described in this rule are addressed in rule 441—9.11(22).

9.12(1) Nature and extent. The personally identifiable information collected by the department in its administration of human services programs varies by the type of record. The nature and extent of personally identifiable information is described below:

a. Recipients of assistance. Several different types of department records contain personally identifiable information about recipients of assistance programs such as food assistance, Medicaid, the family investment program, child care assistance, state supplementary assistance, refugee cash and medical assistance, and commodity supplemental foods.

(1) Client case file. Local office case files contain identifying information, demographic information, household composition, and income and resource information about applicants for and recipients of assistance, as well as any other persons whose circumstances must be considered in

determining eligibility. Records may contain information about employment, disability, or social circumstances. Records identify the kind and amount of benefits received and what proof was obtained to verify the recipient's eligibility. Case files contain correspondence, appeal requests and decisions, and documentation of department actions.

(2) Local office administrative records. Client names and program data are kept in card files, appointment logs, worker case lists, and issuance records.

(3) Data processing systems. Client identifying information, eligibility data, and payment data are kept in the following systems. Some of these records are also kept on microfiche.

<u>System</u>	<u>Function</u>
Automated Benefit Calculation System	Determines eligibility for FIP, food assistance, Medicaid
Automated Child Abuse and Neglect System	Inactive child abuse/neglect system
Appeals Logging and Tracking System	Tracks client appeals
BCCT Program	Establishes Medicaid eligibility for breast and cervical cancer clients
Change Reporting System	Tracks client-reported changes and produces forms needed for client-reported changes
Diversion System	Tracks clients using diversion benefits
Electronic Payment Processing and Inventory Control System	Electronically issues food assistance
Eligibility Tracking System	Tracks clients' FIP eligibility and hardship status
Family and Children's Services System	Tracks foster care, adoption, family-centered and family preservation services
Food Stamps Case Reading Application	Food assistance accuracy tool used to record case reading information
Health Insurance Premium Payment System	Health insurance premium payment
Iowa Collection and Reporting System	Tracks child support recovery processes
Iowa Central Employee Registry	Child support new hire reporting system
Iowa Eligibility Verification System	Federal social security number verification and benefits
Individualized Services Information System	Used to establish facility eligibility, process data to and from ABC and Medicaid fiscal agent, establish waiver services, providers, and eligibility
Issuance History	Displays benefit issuances for FIP and food assistance
KACT System	Authorizes foster care service units
MEPD Premium Payment Program	Accounting system for billing and payment for Medicaid for employed people with disabilities program
Managed Health Care Program	Assigns managed health care providers to clients
Medicaid Management Information Systems	Process clients' Medicaid claims and assign Medicaid coverage to clients
Overpayment Recoupment System	Used to recover money from FIP, food assistance, Medicaid, child care assistance, PROMISE JOBS, and hawki clients
Public Information Exchange	Data exchange between states
PJCASE	Iowa workforce development interface with PROMISE JOBS

<u>System</u>	<u>Function</u>
Purchase of Social Services System	Purchased services (mostly child care and in-home health clients)
Presumptive Eligibility Program	Establishes Medicaid eligibility for presumptive eligibility clients
Quality Control System	Selects sample for quality control review of eligibility determination
RTS Claims Processing System	Processes rehabilitative treatment claims for federal match
State Data Exchange Display	State data exchange information for supplemental security income recipients
Social Security Buy-In System	Medicare premium buy-in
Social Services Reporting System	Services reporting system for direct and purchased services
Statewide Tracking of Assessment Reports	Tracks child abuse reports

(4) Quality control records. Files are developed containing data required to verify the correctness of department eligibility and benefit decisions for selected clients.

(5) Appeals. Records containing client eligibility and payment information are created by the department of inspections and appeals when a client (or, for Medicaid, a provider) requests a hearing on a department action.

(6) Fraud. When a client is suspected of fraud, the department of inspections and appeals generates an investigative record containing information pertinent to the circumstances of the case.

(7) Recoupment. When benefits have been overpaid, a record is established by the department of inspections and appeals concerning the circumstances of the overpayment and the client's repayment.

b. Recipients of social services. Several kinds of department records contain personally identifiable information about applicants for and recipients of direct or purchased social services.

(1) Client case records. Local offices create client case files containing identifying information and demographic information; income data; information substantiating the need for services, which may include medical, psychological or psychiatric reports; social history; the department evaluation of the client's situation; documentation of department actions; and provider reports. Records may contain court orders and reports.

(2) Local office administrative records. Client names and services data appear in records such as card files, case lists, and appointment logs.

(3) Data processing systems. Client identifying information, demographic data, and services eligibility data are stored in the service reporting system. The purchase of services system contains invoice and service payment data. The child and adult protection system contains information from abuse reports and investigations. Some of these records are also kept on microfiche.

(4) Appeals. Records containing client identifying information and eligibility information are created by the department of inspections and appeals when a client requests a hearing on a department action.

(5) Adoption records. The department keeps a master card file on all adoptions in Iowa as required in Iowa Code section 235.3, subsection 7. This record is also kept on microfilm.

The Iowa Adoption Exchange contains records on special needs children available for adoption and on families that have indicated an interest in adopting special needs children.

The department also keeps records on adoptions in which it has provided services. These files include the home study, information about the child, and legal documents. These records are also kept on microfiche.

(6) Abuse registry. Child and dependent adult abuse records contain names and information of the alleged victim and the victim's family, data on the reported abuse, details of injury, investigative data, name of alleged perpetrator, names of reporters, collateral contacts and findings.

(7) Interstate compact records. The department maintains records on placement of children across state lines. These records contain identifying information about the children and the conditions of their placement, as well as progress reports. Some of the records are kept on microfiche.

(8) Guardianship records. The department maintains records on all children under its guardianship. The records concern the children's characteristics and placements. Some of these records are kept on microfiche.

c. Institutions. Institution resident records may contain identifying and demographic information, medical and social histories, treatment records, treatment plans, educational information, admission procedures, financial accounts, county billings, residential unit notes, vocational information, economic data and information about personal effects. Some of this information is kept on microfiche.

Automated data processing systems associated with institutional client records include admission and discharge systems for the juvenile institutions and for the mental health and mental retardation institutions, institutional billing systems, client banking systems, and client data systems.

d. Child support recovery unit (CSRU) records. These records contain information such as client identifiers, demographic information, divorce decrees, child support orders, absent parent identifiers, employment history and physical characteristics of absent parents, payment history records, and termination of parental rights.

e. Collection services center. The collection services center maintains records of support orders issued or filed in Iowa that have been converted to the collection services center system. These records identify the person paying and the person receiving support, specify the support obligations, and contain a record of payments made. Most records are on an automated data processing system. Paper records may also be kept, including conversion documents, orders, and correspondence.

f. Contractor records for individual providers. Records of individual purchase of service and Medicaid providers contain information such as names of owners and employees, names of clients served, eligibility data, amounts of payment for clients, and kinds of services received by clients.

g. Regulatory files on individual providers. Files on persons who apply to be licensed, certified, registered, or approved by the department contain identifying information, a description of the person's operation or premises, and a department evaluation of the information collected. Files may contain data on criminal records and abuse registry records on the person and any employees. Files may contain information naming clients served (for example, in complaints or incident reports). Some of these records are also kept on microfilm.

h. Personnel files. The department maintains files containing information about employees, families and dependents, and applicants for paid or volunteer positions within the department. The files contain payroll records, biographical information, medical information pertaining to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding and information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

9.12(2) Data processing matching.

a. Internal. All data processing systems operated by the department which have comparable personally identifiable data elements permit the matching of personally identifiable information. (See subrule 9.12(1) for a description of these systems.) Matches which are routinely done include the following:

(1) Data from the service reporting system is matched with data from the purchase of service payment system for service eligibility and with the activity reporting system for cost allocation. Matches are also done with the state identification portion of the automated benefit calculation system.

(2) The automated benefit calculation system matches with the Medicaid eligibility system, the facility payment system, the child support collections system, the employment and training systems, the electronic payment processing and inventory control system, the eligibility tracking system, the Medicare buy-in system, the individualized services information system-waiver payment system, and the income eligibility and verification system.

(3) The Medicaid eligibility system matches information with the Medicaid management information system and the collection and recovery system.

b. External.

(1) The state data exchange matches information on department clients with records on recipients of supplemental security income.

(2) The Medicare buy-in system matches information with the Social Security Administration.

(3) The income and eligibility verification system matches information on department clients with income records from department of workforce development records on unemployment compensation and wages, tax records from the Internal Revenue Service, wage records and social security benefit records from the Social Security Administration, and public assistance records from other states.

(4) Data from the collections and reporting system is matched with state and federal tax records, and with client records on the automated benefit calculation system.

(5) Data on department clients is matched with the administering agency for the Workforce Investment Act and with private agencies working to help employers collect benefits under the work opportunity tax credit program.

(6) Reports on disqualified food stamp recipients from other states are received from the United States Department of Agriculture to ensure that recipients are not evading penalties by reapplying in Iowa.

(7) A list of recipients of benefits under the family investment program is released annually to the Internal Revenue Service for matching with records of dependents claimed.

(8) A list of applicants for and recipients of the family investment program (FIP), the Medicaid program, and the food assistance program is matched with records on Iowa motor vehicle registration files to assist in the identification of countable resources.

(9) The Medicaid management information system matches data on medical assistance recipients against data on insureds that is submitted by insurance carriers under rule 441—76.13(249A) in order to identify third-party payers for medical assistance recipients.

c. Centralized employee registry (CER) database. The CER receives data concerning employees and contractors who perform labor in Iowa. Information reported by Iowa employers about employees includes the employee's name, address, social security number, date of birth, beginning date of employment, whether health insurance is available, and when it may be available. Information reported by Iowa income payers about contractors is limited to the contractor's name, address, social security number, and date of birth, if known.

State agencies accessing the CER shall participate in proportionate cost sharing for accessing and obtaining information from the registry. Cost sharing shall include all costs of performing the match including costs for preparing the tapes and central processing unit time. Costs shall be specified in a 28E agreement with each agency. CER matches include the following data matches with:

(1) The child support collections and reporting system for the establishment and enforcement of child and medical support obligations.

(2) Other department of human services systems for the purpose of gathering additional information and verification for use in the determination of eligibility or calculation of benefits.

(3) The department of employment services for the determination of eligibility or calculation of unemployment benefits, and to monitor employer compliance with job insurance tax liability requirements.

(4) The department of workforce development to verify employment of participants in the PROMISE JOBS program.

(5) The department of revenue for the recoupment of debts to the state.

(6) The department of inspections and appeals for the recoupment of debts owed to the department of human services.

[ARC 5305C, IAB 12/2/20, effective 2/1/21; ARC 7711C, IAB 3/6/24, effective 4/10/24]

441—9.13(217) Distribution of informational materials.

9.13(1) Requirements for distribution. All material sent or distributed to clients, vendors, or medical providers shall:

a. Directly relate to the administration of the program.

- b. Have no political implications.
- c. Contain the names only of persons directly connected with the administration of the program.
- d. Identify them only in their official capacity with the agency.

9.13(2) *Distribution prohibited.* The department shall not distribute materials such as holiday greetings, general public announcements, voting information, and alien registration notices.

9.13(3) *Distribution permitted.* The department may distribute materials directly related to the health and welfare of clients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information.

441—9.14(17A,22) Special policies and procedures for protected health information.

9.14(1) *Minimum necessary.* When using or disclosing protected health information or when requesting protected health information from another covered entity, the department shall make reasonable efforts, as described in paragraphs 9.14(1)“a” through “e,” to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

a. This requirement does not apply in the following circumstances:

- (1) Disclosures to or requests by a health care provider for treatment.
- (2) Uses or disclosures made to the subject.
- (3) Uses or disclosures made pursuant to an authorization.
- (4) Disclosures made to the Secretary of Health and Human Services.
- (5) Uses or disclosures that are required by law.
- (6) Uses or disclosures that are required for compliance with this chapter.

b. The department shall take the following actions:

- (1) Identify those persons or classes of persons, as appropriate, in its workforce who need access to protected health information to carry out their duties.
- (2) For each person or class of persons, identify the category or categories of protected health information to which access is needed and any conditions appropriate to the access.
- (3) Make reasonable efforts to limit the access of these persons or classes.

c. For any type of disclosure that it makes on a routine and recurring basis, the department shall implement policies and procedures (which may be standard protocols) that limit the amount of the protected health information disclosed to that reasonably necessary to achieve the purpose of the disclosure.

For all other disclosures, the department shall develop criteria designed to limit the protected health information disclosed to the information reasonably necessary to accomplish the purpose for which disclosure is sought. The department shall review requests for disclosure on an individual basis in accordance with the criteria.

The department may rely, if reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when:

- (1) Making permitted disclosures to a public official, provided the public official indicates that the information requested is the minimum necessary for the stated purposes;
- (2) The information is requested by another covered entity; or
- (3) The information is requested for the purpose of providing professional services to the department by a professional who is a workforce member or business associate of the department if the professional indicates that the information requested is the minimum necessary for the stated purpose.

d. Minimum necessary requests.

(1) When requesting information from other covered entities, the department shall limit any request for protected health information to that which is reasonably necessary to accomplish the purpose for which the request is made.

(2) For a request that is made on a routine and recurring basis, the department shall implement policies and procedures (which may be standard protocols) that limit the protected health information requested to the amount reasonably necessary to accomplish the purpose for which the request is made.

(3) For all other requests, the department shall develop criteria designed to limit the request for protected health information to the information reasonably necessary to accomplish the purpose for which the request is made and to review requests for disclosure on an individual basis in accordance with the criteria.

e. For all uses, disclosures, or requests to which the minimum necessary requirements apply, the department shall not use, disclose or request an entire medical record, except when the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.

9.14(2) *Uses and disclosures for premium rating and related purposes.* If a health plan receives protected health information for the purpose of premium rating or other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and if the health insurance or health benefits are not placed with the health plan, the health plan shall not use or disclose the protected health information for any other purpose, except as may be required by law.

9.14(3) *Verification and documentation.*

a. Before any disclosure of protected health information, the department shall obtain verification or documentation as follows:

(1) Verify the identity of a person requesting protected health information and the person's authority to access protected health information, if the department does not know the identity or authority of the person. This requirement is waived for disclosures to persons involved in the subject's care or for notification purposes, as described at subrule 9.7(3).

(2) Obtain any oral or written documentation, including statements and representations, from the person requesting the protected health information when this is a condition of the disclosure under this chapter.

b. The following constitute appropriate verification or documentation, if reasonable under the circumstances:

(1) Documentation, statements, or representations. The department may rely on documentation, statements, or representations that, on their face, meet the applicable requirements.

(2) Identity of public officials. When disclosure of protected health information is requested by a public official or a person acting on behalf of the public official, the department may rely on any of the following to verify identity:

1. In-person presentation of an agency identification badge, other official credentials, or other proof of government status.

2. A written request on the appropriate government letterhead.

3. A written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes the person is acting on behalf of the public official.

(3) Authority of public officials. When the disclosure of protected health information is requested by a public official or a person acting on behalf of the public official, the department may rely on any of the following to verify authority:

1. A written statement of the legal authority under which the information is requested.

2. If a written statement would be impracticable, an oral statement of the legal authority.

3. An order issued by a judicial or administrative tribunal.

(4) Exercise of professional judgment. The requirements of this subrule are met if the department relies on the exercise of professional judgment in use or disclosure to persons involved in the subject's care or for notification purposes, in accordance with subrule 9.7(3), or acts on a good-faith belief in making a disclosure to avert a serious threat to health or safety, in accordance with subrule 9.10(18).

9.14(4) *Notice of privacy practices for protected health information.* A subject has a right to adequate notice of the uses and disclosures of protected health information that may be made by the department, and of the subject's rights and the department's legal duties with respect to protected health information.

9.14(5) Right to receive an accounting of disclosures. Within the limits described in this subrule, a subject has a right to receive an accounting of the disclosures of protected health information listed in paragraph 9.14(5)“a,” including disclosures to or by business associates of the department. A subject shall request an accounting using Form 470-3985, Request for a List of Disclosures.

a. Disclosures that may be included in an accounting. A subject’s right to receive an accounting of disclosures made by the department, or to or by business associates of the department, is limited to the following disclosures that do not require an authorization or an opportunity for the subject to agree or object:

- (1) For health oversight activities described at subrule 9.10(2).
- (2) For judicial and administrative proceedings described at subrule 9.10(5).
- (3) For law enforcement purposes described at subrule 9.10(15).
- (4) For averting a threat to health or safety described at subrule 9.10(18).
- (5) To meet requirements of law described at subrule 9.10(19).
- (6) For public health activities described at subrule 9.10(22).
- (7) For disclosures about suspected victims of domestic violence described at subrule 9.10(23).
- (8) For disclosures about suspected victims of abuse or neglect described in 441—Chapter 9.
- (9) To coroners, medical examiners, and funeral directors described at subrule 9.10(24).
- (10) For cadaveric organ, eye, or tissue donation described at subrule 9.10(25).
- (11) For specialized government functions described at subrule 9.10(26), except those made for national security or intelligence purposes.
- (12) By whistle blowers as described at subrule 9.10(27).

b. Content of the accounting. The department shall provide the subject who submits Form 470-3985, Request for a List of Disclosures, with a written accounting of disclosures that meets the following requirements.

(1) The accounting shall include disclosures of protected health information that occurred during the six years (or the shorter time requested by the subject) before the date of the request. However, disclosures that occurred before April 14, 2003, are not included in an accounting.

(2) Except for limitations regarding multiple disclosures to the same person or organization, the accounting shall include for each disclosure:

1. The date of the disclosure.
2. The name of the organization or person who received the protected health information and, if known, the address of the organization or person.
3. A brief description of the protected health information disclosed.
4. A brief statement of the purpose of the disclosure that reasonably informs the subject of the basis for the disclosure or, instead of the statement, a copy of a written request for a disclosure.

(3) If, during the period covered by the accounting, the department has made multiple disclosures of protected health information to a person or organization requesting a disclosure, the accounting may, with respect to the multiple disclosures, provide:

1. The information required by subparagraph 9.14(5)“b”(2), for the first disclosure during the accounting period;
2. The frequency, periodicity, or number of the disclosures made during the accounting period; and
3. The date of the last disclosure during the accounting period.

c. Time limits for providing the accounting. The department shall act on the subject’s request for an accounting no later than 60 days after receipt of a request, as follows:

- (1) The department shall provide the subject with the accounting requested; or
- (2) If the department is unable to provide the accounting within these 60 days, the department may extend the due date one time, for a period not to exceed 30 days. In order to extend the due date, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department shall provide the accounting. The department shall provide this written statement within the 60-day period after receipt of the request for an accounting.

d. Fee for accounting. The department shall provide to a subject one accounting without charge in any 12-month period. The department may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same subject within the 12-month period, as set forth in subrule 9.3(7), provided that the department:

- (1) Informs the subject in advance of the fee; and
- (2) Provides the subject with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

e. Suspension of right. The department shall temporarily suspend a subject's right to receive an accounting of disclosures made to a health oversight agency or law enforcement official, as permitted in this chapter, if the agency or official provides the department with a statement that the accounting would likely impede the agency's activities and specifies the time for which a suspension is required.

(1) If the agency or official statement is submitted in writing, the department shall suspend the right to receive accounting for the time specified by the agency or official.

(2) If the agency or official statement is made orally, the department shall:

1. Document the statement, including the identity of the agency or official making the statement;
2. Temporarily suspend the subject's right to an accounting of disclosures subject to the statement;

and

3. Limit the temporary suspension to no longer than 30 days from the date of the oral statement, unless the agency or official statement is submitted in writing during that time.

9.14(6) Complaint procedure. A person who believes the department is not complying with the rules on protected health information or with the applicable requirements of 45 CFR Part 160 as amended to August 14, 2002, or with the applicable standards, requirements, and implementation specifications of 45 CFR of Subpart E of Part 164 as amended to August 14, 2002, may file a complaint with the department's privacy office or with the Secretary of Health and Human Services.

a. Complaints to the department's privacy office shall be in writing and may be delivered personally or by mail to the DHS Privacy Office, 1305 E. Walnut Street, First Floor, Des Moines, Iowa 50319-0114. Complaints regarding facilities may be sent to the applicable facility.

b. Complaints to the Secretary of Health and Human Services shall be made using the procedures set forth in 45 CFR 160.306 as amended to August 14, 2002.

9.14(7) Appeal rights.

a. If the subject disputes a decision by the privacy officer, the department's designated licensed health care professional, or the facility administrator on any of the following requests, the subject may appeal the decision in accordance with 441—Chapter 7.

- (1) A request for restriction on use or disclosure of protected health information.
- (2) A request for confidential communication of protected health information.
- (3) A request for access to protected health information.
- (4) A request to amend protected health information.
- (5) A request for accounting of disclosures.

b. The privacy officer or facility shall assist the subject in making the appeal, if needed.

c. Appeals shall be:

(1) Mailed to the Appeals Section, Fifth Floor, Iowa Department of Human Services, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114; or

(2) Submitted electronically at dhs.iowa.gov/appeals.

9.14(8) Record retention. Notwithstanding any other department rule to the contrary, protected health information shall be retained for at least six years from the date of creation or the date when the information last was in effect, when required by 45 CFR 164.530, paragraph "j," as amended to August 14, 2002.

441—9.15(17A,22) Person who may exercise rights of the subject.

9.15(1) Adults. When the subject is an adult, including an emancipated minor, the subject's rights under this rule may also be exercised by the subject's legal or personal representative, except as provided in subrule 9.15(3).

9.15(2) Minors. Within the limits of subrule 9.15(3), when the subject is an unemancipated minor, the subject's rights under this rule shall be exercised only by the subject's legal representative, except as follows:

a. When the department otherwise deals with the minor as an adult, as in the case of minor parents under the family investment program.

b. When otherwise specifically provided by law. However, minor subjects shall be granted access to their own records upon request, subject to the limits in rule 441—9.9(17A,22).

9.15(3) Exceptions.

a. Scope of authority. Legal and personal representatives may act only within the scope of their authority. For protected health information, the designation must reflect the subject's ability to make health care decisions and receive protected health information. For example, court-appointed conservators shall have access to and authority to release only the following information:

- (1) Name and address of subject.
- (2) Amounts of assistance or type of services received.
- (3) Information about the economic circumstances of the subject.

b. Mental health information. Only an adult subject or a subject's legal representative may consent to the disclosure of mental health information. Records of involuntary hospitalization shall be released only as provided in Iowa Code section 229.24. Medical records of persons hospitalized under Iowa Code chapter 229 shall be released only as provided in Iowa Code section 229.25.

c. Substance abuse information. Only the subject may consent to the disclosure of substance abuse information, regardless of the subject's age or condition.

d. Failure to act in good faith. If the department has reason to believe that the legal or personal representative is not acting in good faith in the best interests of the subject, the department may refuse to release information on the authorization of the legal or personal representative.

e. Abuse, neglect, and endangerment situations. Notwithstanding a state law or any other requirement of this chapter, the department, in the exercise of professional judgment, may elect not to treat a person as a subject's personal representative if:

- (1) The department has reason to believe that the subject has been or may be subjected to domestic violence, abuse, or neglect by the person; or
- (2) The department has reason to believe that treating the person as a personal representative could endanger the subject.

f. Protected health information. A parent, guardian, or other person acting in place of a parent who does not represent the minor for protected health information may still access protected health information about the minor if required by law.

g. Deceased subjects. If, under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased subject or of the subject's estate, the department shall treat that person as a personal representative.

h. Other. If, under applicable law, the subject of a confidential record is precluded from having a copy of a record concerning the subject disclosed to a third party, the department shall not treat the third party as a personal representative.

441—9.16(22) Personally identifiable information—human rights programs. 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 441—9.1(17A,22). For each record system, this rule describes the legal authority for the collection or maintenance of that information; the means of storage of that information and indicates when applicable; if 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; and when the record system is confidential, indicates the statutory authority. The record systems maintained within the agency are:

9.16(1) Personnel records.

a. The agency maintains files containing information about employees, families and dependents, and applicants for staff positions within the agency. These files include, but are not limited to, payroll

records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports and other information concerning employees and related issues. Some of this information is confidential under Iowa Code section 22.7(11).

b. The legal authority for maintaining the records for state-funded programs is Iowa Code section 8A.106 and chapter 216A. The legal authority for maintaining the records for federally funded programs is the Omnibus Budget Reconciliation Act, P.L. 97-35; Freedom of Information Act, 5 U.S.C. 552a; Juvenile Justice and Delinquency Prevention Act, P.L. 93-415; Victims Compensation and Assistance Act, P.L. 98-473; and other federal statutes from which federal funds are granted.

c. The information is maintained on paper and some parts are on a data processing system that matches, collates or permits the comparison of some personally identifiable information within the state's automated data processing system.

d. Certain information contained within this record system is confidential under the authority of Iowa Code section 22.7(11).

9.16(2) Advocacy records.

a. The agency maintains files containing information pertaining to clients receiving advocacy or referral services to help alleviate or solve a problem. Such information may include, but is not limited to, names and addresses of clients, documents or other material relating to advocacy issues, social or economic conditions or circumstances of particular clients, department evaluations of information about clients, medical or psychiatric data provided to the department concerning a client, and legal data related to the client. These files may be indexed by advocacy files, client files, interpreting files or any direct service involving individual client assistance set forth in this rule or by statute.

b. The authority for maintaining these records is Iowa Code chapter 216A; the Omnibus Budget Reconciliation Act, P.L. 97-35; Juvenile Justice and Delinquency Prevention Act, P.L. 93-415; Victims Compensation and Assistance Act, P.L. 98-473; and other federal statutes from which federal funds are granted.

c. Information is maintained on paper, electronically, and in other available mediums.

d. Information contained within this record system is confidential under the authority of Iowa Code sections 22.7(18) and 216A.6.

9.16(3) Fiscal records.

a. The agency maintains files containing fiscal information for state-funded programs and federally funded grants or contracts that may contain personally identifiable information.

b. The authority for maintaining these records is Iowa Code chapter 216A and federal statutes from which federal funds are granted.

c. These records are stored on paper and on the state's automated data processing system that matches, collates or permits the comparison of some personally identifiable information.

d. Certain information contained within this record system is confidential under the authority of Iowa Code section 22.7(11).

9.16(4) General correspondence, mailing lists, and program or grant data.

a. The agency maintains correspondence files, grant notices and applications, conference or committee listings and reports, board and commission meeting minutes, mailing lists, program and grant information including surveys or specialized reports and activities that contain some personally identifiable information that may include names, addresses or other descriptive data.

b. The authority for maintaining these records is Iowa Code chapter 216A; the Omnibus Budget Reconciliation Act, as amended, P.L. 97-35; Juvenile Justice and Prevention Act, P.L. 93-415; Victims Compensation and Assistance Act, P.L. 98-473; and other federal statutes from which federal funds are granted.

c. The information is maintained on paper and in computer systems.

d. These records are generally open to the public unless otherwise authorized to be confidential by law.

9.16(5) Criminal and juvenile justice information obtained from other agencies.

a. The agency maintains files containing criminal and juvenile justice information obtained from other agencies to conduct research and evaluations, to provide data and analytical information to federal, state and local governments, and to assist other agencies in the use of criminal and juvenile justice data. These files may contain personally identifiable information.

b. The agency maintains these records pursuant to the authority of Iowa Code sections 216A.136 and 216A.138 and by interagency agreements.

c. The information is maintained on paper, some of which is also in computer files, or in computer files and not on paper, or on a data processing system. Some of these files and systems are capable of matching, collating or permitting the comparison of some personally identifiable information.

d. Certain criminal and juvenile justice information contained within these records and record systems is confidential under state or federal law or rule.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/14/23]

441—9.17(22) Personally identifiable information—child advocacy board. 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. For each record system, this rule describes the legal authority for the collection of that information, 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. The record systems maintained by the agency are:

1. Files are maintained by the child's name in the child advocacy board offices. Those files are kept in locked filing cabinets. (Iowa Code section 237.18(2) "a")

2. The foster care registry (Iowa Code section 237.17) is a computerized tracking system of the children reported to the child advocacy board. The information of each case is personally identifiable by name.

3. Personnel files for each employee of the child advocacy board. These may be confidential pursuant to Iowa Code section 22.7(11).

[ARC 1375C, IAB 3/19/14, effective 4/23/14; ARC 6676C, IAB 11/16/22, effective 12/21/22; Editorial change: IAC Supplement 6/14/23]

441—9.18(17A,22) Personally identifiable information—aging programs. 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 441—9.1(17A,22). For each record system, this rule describes the legal authority for collection of that information, 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. Some of the record systems described in the accompanying chart as "open" may contain confidential information under 17—subrule 19.13(2). The record systems maintained by the agency are:

Abbreviations are used in the chart as follows:

Code	Meaning
O/C	The record is partly open and partly confidential.
O	The records are open for public inspection.
C	The records are confidential and are not open to the public.
PI	Personally identifiable information.
NA	Not Applicable.

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Record of Commission and Statutory Committees	O/C	Iowa Code 21.5(4)	No	NA
Rule Making	O	NA	No	NA
Declaratory Rulings	O	NA	No	NA
Rules and Policy Manuals	O	NA	No	NA
State Plans	O	NA	No	NA
Publications	O	NA	No	NA
Statistical Reports	O	NA	No	NA
Financial and Administrative Records	O	NA	No	NA
Contracts and Interagency Agreements	O	NA	No	NA
Grant Records				
• Title III	O	NA	No	NA
• Title V	O	NA	No	NA
• Discretionary	O	NA	No	NA
• USDA	O	NA	No	NA
• Title IV	O	NA	No	NA
Program Records				
• Notice of Grant Awards	O	NA	No	NA
• Senior Community Service Employment	O/C	20 CFR 674.203b-3	Yes	20 CFR 674.203b-3
			name address age race eligibility info. area medical info. phone no.	
• Elder Abuse	O	NA	No	NA
• Retired Iowan	O	NA	No	NA
Employment				
• Elderlaw	O	NA	No	NA
• Retired Senior Volunteer	O	NA	No	NA
• Elderly Services	O	NA	No	NA
• Insurance Information	O	NA	No	NA
• Alzheimer's Disease	O	NA	No	NA
• JTPA	O	NA	No	NA
• Long-Term Care	O	NA	No	NA
Coordinating Unit				
• Housing	O	NA	Yes	Iowa Code 231.23
• Advocacy				
			name address	
• Training Information	O	NA	Yes	Iowa Code 231.23
			name address	
Care Review Committees	O	NA	Yes	Iowa Code 231.44

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Older Iowan Legislature	O	NA	name address county PSA phone no. training info.	Iowa Code 231.23
State Advisory Council	O	NA	name address district phone no.	Iowa Code 231.23
Ombudsman Complaints	C	Iowa Code 135C.37, 231.42	PSA Yes	Iowa Code 135C.37 231.42
Newsletter Mailing Lists, Conference Lists, Interested Individuals and Group Lists, Resource Lists	O	NA	name address county facility level of care lic. administrator patient pay status complainant complaint description cat. receiver of complaint investigator method & date verification scope of facility complaint	Iowa Code 231.23
			name address telephone no.	

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Centenarians Registry	O	NA	Yes name address area county facility phone no. birth date death date sex	Iowa Code 231.23

9.18(1) *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 them from the clerk of the appropriate court which maintains the official copy.

9.18(2) *Personnel files.* The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).
[ARC 8489B, IAB 1/27/10, effective 1/7/10; Editorial change: IAC Supplement 6/28/23]

441—9.19(17A,22) Availability of records—volunteer service commission. This rule lists the agency records which are open to the public, those which are confidential, and those which are partially open and partially confidential.

Agency records are listed by category, according to the legal basis for confidential treatment (if any). The commission administers federally funded programs to enforce confidentiality standards for federal law and regulations as are required for receipt of the funds. A single record may contain information from several categories.

The chart indicates whether the record contains personally identifiable information and indicates the legal authority for confidentiality and for the collection of personally identifiable information.

Abbreviations used in the chart are defined as follows:

Code	Meaning	Code	Meaning
O	Open for public inspection	O/C	Partially open and partially confidential
C	Confidential/Not open to the public	O/E	Partially open to members of the public and partially exempt from disclosure
E	Exempt from mandatory disclosure		
NA	Not Applicable		

Description of Record	Type of Record	Legal Authority For Confidentiality	Personally Identifiable Information
Records of Commission and Committees	O/E	Iowa Code 21.5	No
Rule Making	O	NA	No
Declaratory Rulings	O/C	Iowa Code 22.7	No
Policy Manuals	O	NA	No
General Correspondence	O/E/C	Iowa Code 22.7	Yes
Publications	O	NA	No
Financial and Administrative Records	O/E/C	Iowa Code 22.7	Yes
Contracts and Agreements	O/C	Iowa Code 22.7(3)	Yes
Appeal Records	O/C	Iowa Code 22.7	Yes
Litigation Files	O/E/C	Iowa Code 22.7	Yes
Privileged Communications and Products of Attorneys	E/C	Iowa Code 22.7	No

[Editorial change: IAC Supplement 6/14/23]

441—9.20(17A,22) Personally identifiable information—public health programs. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the department by personal identifiers in record systems as defined in rule 441—9.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. A data processing system does not match, collate, or permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system unless so indicated. The record systems maintained by the department are as follows:

9.20(1) Public health program records.

a. Records of reportable diseases and other diseases and health conditions collected pursuant to Iowa Code chapter 139A. These records are stored on paper, electronically, or both, depending on the specific type of record. Except for statistical reports, these records are confidential as outlined in 641—paragraph 175.13(2)“*a.*”

b. Records of reportable sexually transmitted diseases or infections collected pursuant to Iowa Code chapter 139A. These records are stored on paper, electronically, or both, depending on the specific type of record. Except for statistical reports, these records are confidential as outlined in 641—paragraph 175.13(2)“*b.*”

c. Records of the veterinary public health program collected pursuant to Iowa Code chapter 139A. These records are stored on paper. Certain medical information in these records may be confidential as outlined in 641—paragraph 175.13(2)“*a.*”

d. Records of the emergency medical services program collected pursuant to Iowa Code chapter 147A. These records are stored on paper, electronically, or both, depending on the specific type of record. Some of these records are confidential as outlined in 641—paragraph 175.13(2)“*a.*”

e. Records of the AIDS drug reimbursement program collected for purposes of implementing a federal grant program authorized by HR 1827. These records are stored on paper. Certain patient records are confidential as outlined in 641—paragraph 175.13(2)“*a.*”

f. Personnel records containing information about employees, families and dependents, and applicants for positions with the department. Some of this information is confidential under Iowa Code sections 22.7(11) and 22.7(18).

- g.* Records of the certificate of need program collected pursuant to Iowa Code sections 135.61 to 135.83. These records are stored on paper.
- h.* Annual hospital surveys collected pursuant to Iowa Code sections 135.74 and 135.75. These records are stored on paper and electronically.
- i.* Vital records collected pursuant to Iowa Code chapter 144, including records of births, deaths, fetal deaths, adoptions, marriages, divorces, annulments and related data and correspondence. These records are stored on paper, on microfiche, and electronically. These records are confidential as noted in 641—paragraph 175.13(2)“*b.*”
- j.* Licensing records of the professional licensing boards. These records are identified in rules filed by the individual licensing boards (see Professional Licensure Division, IAC 645). They contain information about individuals, some of which is confidential.
- k.* An electronic inventory of records maintained by the department, which indicates the type of information contained in the record, contact person for the record, how the record is stored, whether the record is confidential, and whether it contains personally identifiable information. This inventory is maintained by the information management bureau.
- l.* Fiscal records, including itemized vouchers collected from individuals pursuant to Iowa Code section 8A.514. These records are stored on paper and electronically.
- m.* Records of substance abuse programs of this division are identified in rules adopted by the board of health in 641—Chapter 155.
- n.* Records of the domestic abuse death review team collected pursuant to Iowa Code section 135.110. These records are stored on paper, electronically, or both. Except for statistical reports, these records are confidential as outlined in 641—paragraph 175.13(2)“*c.*”
- o.* Records which identify a person named in a report to the central registry for brain or spinal cord injuries collected pursuant to Iowa Code section 135.22. These records are stored on paper, electronically, or both. Except for statistical reports, these records are maintained as confidential pursuant to Iowa Code section 135.22 and rule 641—21.6(135).
- p.* Records which identify brain injury service program recipients collected pursuant to Iowa Code section 135.22B. These records are stored on paper, electronically, or both.
- q.* Records of the environmental health programs collected pursuant to Iowa Code section 135.11(1) and PL 96-510, Section 104(d)(1), 40 CFR 763 effective June 28, 1983, and 40 CFR 761 effective May 31, 1979, dealing with asbestos, PCB and other environmental health factors. These records are stored on paper, electronically, or both, depending on the specific type of record. Certain medical information in the work-related disease program file may be confidential as outlined in 641—paragraph 175.13(2)“*d.*” Certain asbestos and PCB inspection records are collected under contract with the federal Environmental Protection Agency, and requests for such records will be referred to that agency.
- r.* Records of the radiological health program collected pursuant to Iowa Code chapters 136B and 136C. These records are stored on paper, electronically, or both, depending on the specific record. Certain of these records are confidential as outlined in 641—paragraph 175.13(2)“*d.*”
- s.* Records of reportable diseases and other diseases and health conditions, including lead and other heavy metal poisonings, collected pursuant to Iowa Code chapter 139A. These records are stored on paper, electronically, or both, depending on the specific type of record. Except for statistical reports, these records are confidential as outlined in 641—paragraph 175.13(2)“*a.*”
- t.* Records of the childhood lead poisoning prevention program collected pursuant to Iowa Code sections 135.100 to 135.105. These records are stored on paper, electronically, or both. Certain of these records are confidential as outlined in 641—paragraph 175.13(2)“*d.*” Data processing systems will link certain client data in these programs with client data in the maternal and child health program, WIC program, and refugee health program.
- u.* Records of the maternal and child health programs collected pursuant to Iowa Code section 135.11(20). These records are stored on paper, electronically, or both, depending on the specific type of record. Data processing systems will link certain client data in these programs with client data in the WIC program.

v. Records of the nutrition and WIC (supplemental food program for women, infants and children) programs collected pursuant to Iowa Code section 135.11(1) and Chapter 17 of the federal Child Nutrition Act of 1966 as amended. These records are stored on paper, electronically, or both, depending on the specific type of record. Data processing systems will link certain client data in this program with client data in maternal and child health programs.

w. Records of the center for congenital and inherited disorders collected pursuant to Iowa Code chapter 136A. These records are stored on paper.

x. Records of the dental health programs collected pursuant to Iowa Code section 135.11(19), funded primarily by maternal and child health funds. These records are stored on paper or electronically, depending on the specific type of record.

y. Records of the newborn and infant hearing screening program collected pursuant to Iowa Code section 135.131. These records are stored on paper, electronically, or both, depending on the specific type of record. Information which identifies an individual patient is confidential as outlined in 641—paragraph 175.13(2) “e.”

z. Refugee health program records collected pursuant to Iowa Code section 135.11(1) and Section 412(c)(3) of the federal Immigration and Naturalization Act. These records are stored on paper, electronically, or both, depending on the specific type of record. Certain medical information in these records is confidential as outlined in 641—paragraph 175.13(2) “f.”

aa. Records of the bureau of chronic disease prevention and management collected pursuant to Iowa Code section 135.11(1), including the Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) program and the Breast and Cervical Cancer Early Detection Program (BCCEDP). Certain medical information in these records is confidential as outlined in 641—paragraph 175.13(2) “f.” The medical information from wellness programs and screening programs is stored on paper, electronically, or both, depending on the specific type of record. Data processing systems will link certain client data in these programs with client data in the University of Iowa’s health registries.

9.20(2) Reserved.

[Editorial change: IAC Supplement 6/28/23]

These rules are intended to implement Iowa Code sections 17A.3, 22.11, 217.6 and 217.30, Iowa Code chapters 228 and 252G, and the Health Insurance Portability and Accountability Act of 1996.

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CHILD ADVOCACY BOARD[489]

[Prior to 3/23/88, see Foster Care Review Board, State[445];
transferred to Inspections and Appeals Department “umbrella” pursuant to 1986 Iowa Acts, chapter 1245, section 549]
[Former Foster Care Review Board[489] renamed Child Advocacy Board[489] by 2002 Iowa Acts, chapter 1162]

CHAPTER 1 PURPOSE AND FUNCTION

1.1(237) Purpose

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CHAPTER 1
PURPOSE AND FUNCTION
[Prior to 3/23/88, see Foster Care Review Board[445] Ch 1]

489—1.1(237) Purpose. The child advocacy board is established by Iowa Code section 237.16 to carry out all duties described in Iowa Code section 237.18. The board is charged with the responsibility of establishing a foster care registry, establishing local review boards to review cases of children in foster care, establishing a training program for members of the state board, establishing procedures and protocols for administering the local foster care review board and court appointed special advocate program, receiving and administering funds received for the state board's programs and annually reporting findings and making recommendations to the governor, the general assembly, the department, child-placing agencies, and the state court administrator for dissemination to the supreme court and the chief judge of each judicial district.

1.1(1) Location. The child advocacy board is located in the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; telephone (866)448-4608. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on state holidays. The child advocacy board is created within the department of health and human services.

1.1(2) Definitions. The following definitions apply to the rules of the child advocacy board.

"Case permanency plan" means the same as defined in Iowa Code section 232.2(4), except the plan shall also include, but not be limited to:

1. Time frames to meet the stated permanency goal and short-term objectives.
2. The care and services that will be provided to the child, biological parents, the child's fictive kin, and foster parents.
3. The efforts to place the child with a relative or fictive kin.
4. The rationale for an out-of-state placement, and the efforts to prevent such placement, if the child has been placed out of state.

"Child receiving foster care" means a child defined in Iowa Code section 237.15(2) who is described by any of the following circumstances:

1. The child's foster care placement is the financial responsibility of the state pursuant to Iowa Code section 234.35.
2. The child is under the guardianship of the department.
3. The child has been involuntarily hospitalized for mental illness pursuant to Iowa Code chapter 229.
4. The child is at risk of being placed outside the child's home, the department or court is providing or planning to provide services to the child, and the department or court has requested the involvement of the state or local board.

"Court appointed special advocate" means a person duly certified by the child advocacy board created in Iowa Code section 237.16 for participation in the court appointed special advocate program and appointed by the court to carry out the duties pursuant to Iowa Code section 237.24 as enacted by 2022 Iowa Acts, House File 2507, section 65.

"Department" means the department of health and human services.

"Family" means the social unit consisting of the child and the biological or adoptive parent, stepparent, brother, sister, stepbrother, stepsister, and grandparent of the child.

"Fictive kin" means an adult person who is not a relative of a child but who has an emotionally positive significant relationship with the child or the child's family.

"Local board" means a local citizen foster care review board created pursuant to Iowa Code section 237.19.

"Person or court responsible for the child" means the department, including but not limited to the department of health and human services, agency, or individual who is the guardian of a child by court order issued by the juvenile or district court and has the responsibility of the care of the child, or the court having jurisdiction over the child.

“*State board*” means the child advocacy board created pursuant to Iowa Code section 237.16.
[ARC 3054C, IAB 5/10/17, effective 6/14/17; ARC 6676C, IAB 11/16/22, effective 12/21/22; ARC 7698C, IAB 3/6/24, effective 4/10/24]

This rule is intended to implement Iowa Code sections 17A.3, 237.15, and 237.16.

[Filed emergency 5/30/85—published 6/19/85, effective 5/30/85]

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[Filed ARC 3054C (Notice ARC 2974C, IAB 3/15/17), IAB 5/10/17, effective 6/14/17]

[Filed ARC 6676C (Notice ARC 6544C, IAB 9/21/22), IAB 11/16/22, effective 12/21/22]

[Filed ARC 7698C (Notice ARC 7065C, IAB 8/23/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 2
RULES AND OPERATION FOR THE STATE BOARD
[Prior to 3/23/88, see Foster Care Review Board[445] Ch 2]

489—2.1(237) Membership and term.

2.1(1) *Membership and terms.* The child advocacy board is created within the department of health and human services. The state board consists of nine members appointed by the governor, subject to confirmation by the senate and directly responsible to the governor. One member shall be an active court appointed special advocate volunteer, one member shall be an active member of a local citizen foster care review board, and one member shall be a judicial branch employee or judicial officer appointed from nominees submitted by the judicial branch. The appointment is for a term of four years that begins and ends as provided in Iowa Code section 69.19. Vacancies on the state board shall be filled in the same manner as original appointments are made. An employee of the department of health and human services, an employee of a child-placing agency, an employee of an agency with which the department of health and human services contracts for services for children under foster care, a foster parent providing foster care, or an employee of the district court is not eligible to serve on the state board. However, the judicial branch employee or judicial officer appointed from nominees submitted by the judicial branch in accordance with Iowa Code section 237.16(1) shall be eligible to serve on the state board.

2.1(2) *Officers.* The members of the state board shall annually select a chairperson, vice chairperson, and other officers the members deem necessary. The members may be entitled to receive reimbursement for actual and necessary expenses incurred in the performance of their duties, subject to available funding. Each member of the state board may also be eligible to receive compensation as provided in Iowa Code section 7E.6.

2.1(3) *Meetings.* The state board shall meet at least twice a year. Notice of a meeting is published at least seven days in advance of the meeting and will be provided to interested persons upon request. The notice shall contain the specific date, time and place of the meeting. The agenda will be made available to any interested person not less than seven days in advance of the meeting. All meetings will be open to the public, pursuant to Iowa Code chapter 21, unless a closed session is voted by a quorum. The operation of the state board meetings will be governed by the following rules of procedure.

a. A quorum shall consist of a majority of the members. When a quorum is present, a position is carried by an affirmative vote of a majority of the members present.

b. Minutes of state board meetings are prepared and are available at the board office for inspection during office hours. Copies may be obtained without charge by contacting the office.

c. At each meeting the state board shall set the time, date and place of the next meeting.

(1) Notice of the meeting shall be given pursuant to Iowa Code chapter 21.

(2) When the chairperson of the state board determines that a special or electronic meeting is required, the meeting shall be held in accordance with Iowa Code section 21.4 or 21.8.

(3) Persons wishing to appear before the state board shall submit the request to the state board office not less than ten days prior to the meeting. Presentations may be made at the discretion of the chairperson and only upon matters appearing on the agenda. Persons wishing to submit written material should do so at least ten days in advance of the scheduled meeting to ensure that state board members have adequate time to receive and evaluate the material.

(4) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. The presiding officer may request a person using such a device to discontinue its use when it is obstructing the meeting. If a person fails to comply with this request, the presiding officer shall order that person excluded from the meeting.

(5) The presiding officer may exclude any person from the meeting for repeated behavior that disrupts or obstructs the meeting.

(6) Cases not covered by these rules shall be governed by Robert's Rules of Order.

2.1(4) Powers and duties. The powers and duties of the state board are enumerated in Iowa Code section 237.18.

This rule is intended to implement Iowa Code sections 17A.3, 237.16, and 237.18.
[ARC 3055C, IAB 5/10/17, effective 6/14/17; ARC 6676C, IAB 11/16/22, effective 12/21/22; ARC 7698C, IAB 3/6/24, effective 4/10/24]

489—2.2(237) Administrator.

2.2(1) The director appoints an administrator for the child advocacy board. The administrator is responsible for the ongoing administration of the state and local boards' activities and of the court appointed special advocate program.

2.2(2) The administrator:

- a. Applies for and administers funds necessary for operations of the child advocacy board and the foster care review board and the court appointed special advocate program.
- b. Employs, discharges, trains, and supervises foster care review board and court appointed special advocate program employees.
- c. Develops and implements policies and procedures needed to implement requirements of federal law and regulations and state law and administrative rules.
- d. Develops and recommends administrative rules for promulgation by the state board as needed to govern the operation of the state board, the foster care review board program and the court appointed special advocate program.
- e. Ensures training is provided for state and local board members, court appointed special advocates and coaches and any other volunteers supporting the state board's programs.
- f. Ensures that relationships are developed and maintained between the local board and judges, juvenile court referees, local departments, juvenile court services, and advocacy groups.
- g. Coordinates efforts to ensure community awareness of state and local boards and the court appointed special advocate program.
- h. Works closely with allied agencies and associations to ensure that efforts relating to state and local boards and the court appointed special advocate program are coordinated and consistent.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18(5).
[ARC 3055C, IAB 5/10/17, effective 6/14/17; ARC 6676C, IAB 11/16/22, effective 12/21/22; ARC 7698C, IAB 3/6/24, effective 4/10/24]

489—2.3(237) Foster care registry. The state board shall establish a registry of the placements of all children receiving foster care. The agency responsible for placement shall notify the state board of each placement in accordance with written protocols adopted pursuant to Iowa Code section 237.16(4) as enacted by 2022 Iowa Acts, House File 2390, section 3. The notification shall include information identifying the child receiving foster care and placement information for that child.

This rule is intended to implement Iowa Code sections 17A.3 and 237.17.
[ARC 3055C, IAB 5/10/17, effective 6/14/17; ARC 6676C, IAB 11/16/22, effective 12/21/22]

489—2.4(237) Confidentiality of records—penalty. The state and local boards, court appointed special advocates and coaches and child advocacy employees shall adhere to the confidentiality requirements established in Iowa Code section 237.21.

This rule is intended to implement Iowa Code sections 17A.3 and 237.21.
[ARC 3055C, IAB 5/10/17, effective 6/14/17]

[Filed emergency 5/30/85—published 6/19/85, effective 5/30/85]

[Filed emergency 7/22/85—published 8/14/85, effective 8/14/85]

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[Filed ARC 6676C (Notice ARC 6544C, IAB 9/21/22), IAB 11/16/22, effective 12/21/22]

[Filed ARC 7698C (Notice ARC 7065C, IAB 8/23/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 3
LOCAL FOSTER CARE REVIEW BOARDS
[Prior to 3/23/88, see Foster Care Review Board[445] Ch 3]

489—3.1(237) Local boards. The child advocacy board shall establish local foster care boards throughout the state. The number of local boards needed and established shall be determined by the child advocacy board based on the number of children in foster care and available funding.

3.1(1) The child advocacy board is responsible for establishment of policy and procedures consistent with the Iowa Code. Local boards are required to comply with policies and procedures. If a local board does not agree with a policy or procedure, the local board may bring that issue to the child advocacy board for discussion and request a change by the board. If the child advocacy board upholds the policy, local boards must comply.

3.1(2) Day-to-day implementation of policy is delegated by the child advocacy board to administrative staff. Staff is responsible for bringing questions about policy issues to the child advocacy board for clarification or changes of policy.

3.1(3) Any written communication from a local review board or local board member, in the member's capacity as a board member, to state officials or media shall be sent to the child advocacy board office and reviewed by the administrator prior to its release.

This rule is intended to implement Iowa Code sections 17A.3 and 237.19.
[ARC 2322C, IAB 12/23/15, effective 1/27/16; ARC 6676C, IAB 11/16/22, effective 12/21/22]

489—3.2(237) Membership.

3.2(1) The child advocacy board delegates responsibility to the administrator to develop and for local board coordinators to implement an application, recruitment, screening and training process for appointments to vacated local board positions:

a. The process includes the coordinator's conducting a personal interview with the applicant, obtaining character references, and completing background checks on the applicant.

b. The process will include consultation between the coordinator and coordinator's direct supervisor.

3.2(2) A person employed by the department of health and human services or the judicial department, an employee of an agency with which the department of health and human services contracts for services for children under foster care, a foster parent providing foster care, or a child-placing agency shall not serve on a local board.

3.2(3) Vacancies on a local board shall be filled in the same manner as original appointments are made.

3.2(4) The term of a local board member's appointment shall not exceed four years. The child advocacy board shall fix the tenure of individual appointments so that no more than one-third of the membership's terms expire in a given year. A local board member may serve continuous successive terms.

3.2(5) The administrator shall develop a local board member evaluation process. The local board coordinator shall complete the evaluation process at least once for each local board member during the member's four-year term. The local board coordinator, in consultation with the coordinator's direct supervisor, shall consider the results of the evaluation when determining whether to approve reappointment of the local board member to a successive term. Prior to any reappointment, the member shall complete updated background checks and a progress evaluation.

3.2(6) A quorum is established when a majority of local review board members or alternates are present. A quorum shall be present before cases can be reviewed and recommendations are formulated.

This rule is intended to implement Iowa Code sections 17A.3 and 237.19.

[ARC 2322C, IAB 12/23/15, effective 1/27/16; ARC 6676C, IAB 11/16/22, effective 12/21/22; ARC 7698C, IAB 3/6/24, effective 4/10/24]

489—3.3(237) Removal of a local board member. Rescinded ARC 6676C, IAB 11/16/22, effective 12/21/22.

489—3.4(237) Duties of local board.

3.4(1) Local board reviews. At least every six months, the case of each child receiving foster care assigned to a local board shall be reviewed in accordance with the written protocols adopted pursuant to Iowa Code section 237.16(4) as enacted by 2022 Iowa Acts, House File 2390, section 3, to determine whether satisfactory progress is being made towards the goals of the case permanency plan pursuant to Iowa Code section 237.2. Whenever possible, reviews shall be conducted prior to court review of the cases.

a. Each review will consider the following:

(1) The past, current, and future status of the child and placement as shown through the case permanency plan and case progress reports submitted by the agency responsible for the placement of the child and other information the board may require.

(2) The efforts of the agency responsible for the placement of the child to locate and provide services to the child's biological or adoptive parents, legal guardians, or fictive kin providing the majority of the child's daily food, lodging, and support.

(3) The efforts of the agency responsible for the placement of the child to facilitate the return of the child to the home or to find an alternative permanent placement other than foster care if reunion with the parent or previous custodian is not feasible. The agency shall report to the board all factors which either favor or mitigate against a decision or alternative with regard to these matters.

b. The local board may request an investigation of any problems, solutions, or alternatives with regard to the best interest of the child or of the state.

c. Each review shall include any oral, written, or recorded statements submitted by any person notified pursuant to Iowa Code section 237.20(4).

d. A person who gives an oral statement has the right to representation by counsel at the review. An oral statement may, upon the request of an interested party or upon motion of the local board, be given in a private setting. Local board questions shall pertain to the permanency plan and shall not include issues that do not pertain to the permanency plan.

3.4(2) Findings and recommendations. The local board shall submit the findings and recommendations to the appropriate court and the department within 15 days after the review. The findings and recommendations shall include the proposed date of the next review by the local board. The report to the court shall include information regarding the permanency plan and the progress in attaining the permanency goals. The local board shall send a copy of the findings and recommendations to the persons specified in subrule 3.4(3) within 15 days following the review.

3.4(3) The local board shall notify the following persons at least ten days prior to the review of the case of a child receiving foster care:

a. The person, court, or agency responsible for the child.

b. The parent or parents of the child unless termination of parental rights has occurred pursuant to Iowa Code section 232.117 or chapter 600A.

c. The foster care provider of the child.

d. The child receiving foster care, if the child is 14 years of age or older. The child shall be informed of the review's purpose and procedure, and of the right to have a guardian ad litem present.

e. The guardian ad litem of the foster child. The guardian ad litem shall be eligible for compensation through Iowa Code section 232.141(2).

f. The department.

g. The county attorney.

h. The person providing services to the child.

i. The child's attorney.

j. Any intervenor.

The notice shall include a statement that the person notified has the right to representation by counsel at the review.

3.4(4) The local board shall encourage placement of the child in the most appropriate setting reflecting the provisions of Iowa Code chapter 232.

This rule is intended to implement Iowa Code sections 17A.3 and 237.20.
[ARC 2322C, IAB 12/23/15, effective 1/27/16; ARC 6676C, IAB 11/16/22, effective 12/21/22]

489—3.5(237) Local board coordinator. Rescinded ARC 6676C, IAB 11/16/22, effective 12/21/22.

489—3.6(237) Children eligible for review.

3.6(1) To be eligible for review, the child shall meet the requirements set forth in Iowa Code sections 234.1(2), 234.35 and 237.15.

3.6(2) If the child is not receiving foster care when the six-month review is scheduled, the review may be held if the child has received foster care for a minimum of two months during that six-month period.

3.6(3) If parental rights are terminated, the child's case will continue to be reviewed every six months until the child is placed in an adoptive home and the adoption is finalized.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.
[ARC 6676C, IAB 11/16/22, effective 12/21/22]

[Filed emergency 5/30/85—published 6/19/85, effective 5/30/85]

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[Filed ARC 6676C (Notice ARC 6544C, IAB 9/21/22), IAB 11/16/22, effective 12/21/22]

[Filed ARC 7698C (Notice ARC 7065C, IAB 8/23/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 4
COURT APPOINTED SPECIAL ADVOCATE PROGRAM

489—4.1(237) Purpose. The child advocacy board is required by Iowa Code section 237.18 to establish procedures and protocols for administering the court appointed special advocate program.

4.1(1) Definitions.

“Administrator” means the person selected by the director to lead, direct and manage the staff and programs established by the board.

“Certified,” when used as a descriptor of a court appointed special advocate, means that an applicant has been determined by the child advocacy board to have the required qualifications to become a court appointed special advocate and has completed the application requirements, background checks, screening and selection process and training established pursuant to the rules in this chapter.

“Coach” or *“CASA coach”* means a duly certified court appointed special advocate volunteer who has received additional training to assist the coordinator by overseeing facets of the court appointed special advocate’s case work.

“Coordinator” means the staff member of the child advocacy board who is responsible for planning and implementation of the court appointed special advocate program in a county or cluster of counties in the state.

“Court appointed special advocate” or *“CASA volunteer”* or *“CASA”* or *“advocate”* means a person who is duly certified by the child advocacy board for participation in the court appointed special advocate program and appointed by the court to represent the interest of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from the proceeding. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a court appointed special advocate with respect to a child pursuant to Iowa Code section 237.24 as enacted by 2022 Iowa Acts, House File 2390, section 15, shall include the following:

1. Conducting in-person interviews with the child every 30 days, if the child’s age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by counsel.
2. Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.
3. Interviewing any person providing medical, mental health, social, educational, or other services to the child.
4. Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the court appointed special advocate is appointed.
5. Attending any depositions, hearings, and trial proceedings in the matter in which the court appointed special advocate is appointed for the purpose of supporting the child and advocating for the child’s protection.
6. Assisting the transition committee in the development of a transition plan if the child’s case permanency plan calls for the development of a transition plan.
7. Submitting a written report to the juvenile court and to each of the parties identified in Iowa Code section 237.21(4) as amended by 2022 Iowa Acts, House File 2390, section 13, prior to each court hearing, unless otherwise ordered by the court. The report shall include, but not be limited to, the identified strengths and concerns of the child and the child’s family, along with recommendations about the child’s placement and best interest.

4.1(2) Program mission. CASA of Iowa trains and supports community volunteers to advocate for a safe and permanent home for children who have experienced abuse and neglect, and works collaboratively to ensure their voice is heard.

4.1(3) Program goal. The CASA program will provide certified advocates for every child who has experienced abuse or neglect and for whom an advocate is authorized by an Iowa court.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

[ARC 1375C, IAB 3/19/14, effective 4/23/14; ARC 6676C, IAB 11/16/22, effective 12/21/22; ARC 7698C, IAB 3/6/24, effective 4/10/24]

489—4.2(237) Program requirements.

4.2(1) Establishing additional procedures and protocols.

a. The state board is responsible for establishment of procedures and protocols consistent with the Iowa Code.

b. Responsibility is delegated by the state board to the administrator to establish and submit to the board for approval a program policy and procedures manual that provides detailed guidance to child advocacy board staff and volunteers on application of these rules and the statutes that govern the operation of the court appointed special advocate program.

c. Child advocacy board staff and volunteers are required to comply with the protocols and procedures established by the state board and the provisions of the policy and procedures manual established by the administrator and approved by the board.

d. Day-to-day implementation of program policy is delegated by the state board to administrative staff. Staff is responsible for bringing questions about policy issues to the state board for clarification or changes of state policy.

4.2(2) Operation requirements.

a. The state board delegates responsibility to the administrator to hire, train, and manage staff throughout the state to implement CASA programming. The administrator shall determine the number of court appointed special advocates or coaches an individual coordinator may supervise.

b. The state board delegates responsibility to the administrator to provide additional information or guidance in the program's policy and procedures manual regarding the analysis of applicant qualifications and requirements for the final selection of CASA volunteers and coaches.

c. The coordinator is responsible for recruiting, screening, selecting, training and supervising court appointed special advocates.

d. The CASA selection is made in a manner that provides the best match available between the knowledge, skills, abilities, and availability of the advocate and the needs of the child. The assignments shall be made in a manner that avoids conflicts of interest, risk to the child's or advocate's safety, and jeopardy to the program's integrity.

e. Upon selection of the CASA who will serve on an individual case, the court and all interested parties are notified of the selection.

f. The selected CASA continues to serve on the case until the assignment is terminated by the court.

4.2(3) CASA advocate qualifications. Potential coaches and advocates shall meet the following qualifications:

a. Possess a genuine interest in advocating for children and their rights and needs.

b. Have availability to complete mandatory duties.

c. Commit to serve on a case until terminated by the court.

d. Have the ability to interact with persons involved in the child welfare system.

e. Have the ability to communicate effectively both in verbal and written presentations.

f. Be at least 19 years of age or older.

g. Not be a person employed by the state board, the department of health and human services, the district court, or an agency with which the department of health and human services contracts for services for children.

h. Agree to use the child advocacy board's data management system for case work.

4.2(4) Application requirements for CASA volunteers. All CASA volunteer applicants shall complete the following requirements:

a. Submit a program application to the program office.

- b. Provide the names and addresses of at least three nonrelative personal references.
- c. Participate in at least one personal interview with the local coordinator.
- d. Complete mandatory CASA preservice training.
- e. Take a confidentiality oath, administered by the presiding juvenile court judge, or designee, for whom the CASA will be performing official duties.
- f. Authorize a release of information for the CASA program to conduct a complete criminal history check of the applicant's background, including, but not limited to, checking records in the court jurisdiction in which the applicant has resided, state criminal records, Federal Bureau of Investigation or other national criminal database, sex offender registry, child abuse registry, and social security number verification. Applicants who refuse to sign required background check releases will not be considered for the CASA program.
- g. Individuals with a negative background check finding may be approved to be a court appointed special advocate in accordance with the CASA of Iowa child abuse registry/criminal background check exemption policy.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.
[ARC 6676C, IAB 11/16/22, effective 12/21/22; ARC 7698C, IAB 3/6/24, effective 4/10/24]

489—4.3(237) Training. All child advocacy board staff and court appointed special advocate volunteers shall complete preservice and continuing education requirements.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.
[ARC 6676C, IAB 11/16/22, effective 12/21/22]

489—4.4(237) Adherence to national guidelines. The National Court Appointed Special Advocate/Guardian ad Litem Association for Children has established a national quality assurance system for CASA programs. The primary goal of the system is to strengthen CASA organizations and support their efforts to provide high-quality child advocacy and achieve the maximum level of excellence. CASA of Iowa shall continue to maintain compliance with the standards and, within the limits of available funding, shall deploy resources to maintain compliance in the future.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.
[ARC 1375C, IAB 3/19/14, effective 4/23/14; ARC 6676C, IAB 11/16/22, effective 12/21/22]

489—4.5(237) Children eligible for assignment of a court appointed special advocate. CASA of Iowa serves any child for whom the court appoints a court appointed special advocate as long as the resources to do so are available.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.
[ARC 1375C, IAB 3/19/14, effective 4/23/14; ARC 6676C, IAB 11/16/22, effective 12/21/22]

489—4.6(237) Annual program report. The child advocacy board shall issue an annual report to the general assembly, the governor and the supreme court. The report shall provide information about the number of volunteers providing service through the court appointed special advocate program, the number of children served by the program, and the benefits children and their families have obtained from the program.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.
[ARC 1375C, IAB 3/19/14, effective 4/23/14]

[Filed ARC 1375C (Notice ARC 1285C, IAB 1/8/14), IAB 3/19/14, effective 4/23/14]
[Filed ARC 6676C (Notice ARC 6544C, IAB 9/21/22), IAB 11/16/22, effective 12/21/22]
[Filed ARC 7698C (Notice ARC 7065C, IAB 8/23/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded **ARC 7698C**, IAB 3/6/24, effective 4/10/24

RACING AND GAMING COMMISSION[491]

[Prior to 11/19/86, Chs 1 to 10, see Racing Commission[693]; Renamed Racing and Gaming

Division [195] under the “umbrella” of Commerce, Department of [181], 11/19/86]

[Prior to 12/17/86, Chs 20 to 25, see Revenue Department[730] Chs 91 to 96]

[Transferred from Commerce Department[181] to the Department of Inspections and Appeals “umbrella”[481]
pursuant to 1987 Iowa Acts, chapter 234, section 421]

[Renamed Racing and Gaming Commission[491], 8/23/89; See 1989 Iowa Acts, ch 67 §1(2), and ch 231 §30(1), 31]

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CHAPTER 1
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[Prior to 11/19/86, Racing Commission[693]]

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[Prior to 8/9/00, see also 491—Chs 6, 20 and 21]

491—1.1(99D,99E,99F) Function. The racing and gaming commission was created by Iowa Code chapter 99D and is charged with the administration of the Iowa pari-mutuel wagering Act and excursion boat gambling Act, sports wagering, and internet fantasy sports contests. Iowa Code chapters 99D, 99E and 99F mandate that the commission shall have full jurisdiction over and shall supervise all race meetings, gambling operations, sports wagering, and internet fantasy sports contests governed by Iowa Code chapters 99D, 99E and 99F.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—1.2(99D,99F) Organization, meetings, and procedure.

1.2(1) Organization.

a. The racing and gaming commission is located at 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321; telephone 515.281.7352. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

b. The racing and gaming commission consists of five members. The membership shall elect a chairperson and vice-chairperson in July of each year. No chairperson shall serve more than four consecutive one-year full terms.

1.2(2) Meetings.

a. The commission meets periodically throughout the year and shall meet in July of each year. Notice of a meeting is published on the commission's website at irgc.iowa.gov/ at least five days in advance of the meeting or will be sent to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas are available to any interested persons not less than five days in advance of the meeting.

b. Persons wishing to appear before the commission should submit a written request to the commission office not less than ten working days prior to the meeting. The administrator or commission may place a time limit on presentations after taking into consideration the number of presentations requested.

c. Special or electronic meetings may be called by the chairperson only upon a finding of good cause and shall be held in strict accordance with Iowa Code section 21.4 or 21.8.

1.2(3) Procedure. All meetings shall be open to the public unless a closed session is voted by four members or all members present for the reasons specified in Iowa Code section 21.5. The operation of commission meetings shall be governed by the following rules of procedure:

a. A quorum shall consist of three members.

b. When a quorum is present, a position is carried by an affirmative vote of the majority of the entire membership of the commission.

c. A commissioner, who is present at a meeting of the commission when action is taken, shall be presumed to have assented to the action unless the commissioner's dissent was requested to be entered in the minutes. A roll-call vote on any motion may be recorded in the minutes. Reconsideration of any action may only be initiated by a commissioner who voted with the prevailing side. The motion to reconsider any action may be made and seconded before the conclusion of the meeting when the action was approved, or it may be made in writing and submitted to the commission office within two business days following the meeting. Only the mover has the option to request that the motion be held in abeyance, when the motion to reconsider is offered during the same meeting. Any commissioner is eligible to call up the motion to reconsider at the next meeting of the commission. The official minutes shall record the offering of any motion to reconsider, whether placed during the meeting or by timely written submission.

d. The presiding officer may exclude any person from the meeting for behavior that disrupts or obstructs the meeting.

e. Cases not covered by this rule shall be governed by the most recent edition of Robert's Rules of Order Newly Revised.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 1506C, IAB 6/25/14, effective 7/30/14; ARC 2927C, IAB 2/1/17, effective 3/8/17; Editorial change: IAC Supplement 3/6/24]

491—1.3(99D,99F) Administration of the commission. The commission shall appoint an administrator for the racing and gaming commission who is responsible for the day-to-day administration of the commission's activities.

491—1.4(17A,22,99D,99F) Open records. Except as provided in Iowa Code sections 17A.2(11) "f," 22.7, 99D.7(8), and 99F.4(6), all public records of the commission shall be available for public inspection during business hours. Requests to obtain records may be made by mail, telephone, or fax or in person. Minutes of commission meetings, forms, and other records routinely requested by the public may be obtained without charge or viewed on the commission's website. Other records requiring more than ten copies may be obtained upon payment of the actual cost for copying. This charge may be waived by the administrator.

491—1.5(17A,99D,99F) Forms. All forms utilized in the conduct of business with the racing and gaming commission shall be available from the commission upon request. These forms include but are not limited to:

1.5(1) Racing, gambling structure, or excursion gambling boat license application. This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the facility, and description of proposed operation. The form may include other information the commission deems necessary to make a decision on the license application. The qualified nonprofit corporation and the boat operator, if different than the qualified nonprofit corporation, shall pay a nonrefundable application fee in the amount of \$25,000 to offset the commission's cost for processing the application. Additionally, the applicant shall remit an investigative fee of \$30,000 to the department of public safety to do background investigations as required by the commission. The department of public safety shall bill the applicant/licensee for additional fees as appropriate and refund any unused portion of the investigative fee within 90 days after the denial or operation begins.

1.5(2) Renewal application for racing license. This form shall contain, at a minimum, the full name of the applicant, racing dates, simulcast proposal, feasibility of racing facility, distribution to qualified sponsoring organizations, table of organization, management agreement, articles of incorporation and bylaws, lease agreements, financial statements, information on the gambling treatment program, and description of racetrack operations. The form may include other information the commission deems necessary to make a decision on the license application.

1.5(3) Renewal application for excursion gambling boat or gambling structure license. This form shall contain, at a minimum, the full name of the applicant, annual fee, distribution to qualified sponsoring organizations, table of organization, internal controls, operating agreement, hours of operation, casino operations, Iowa resources, contracts, guarantee bond, notarized certification of truthfulness, and gambling treatment program. The form may include other information the commission deems necessary to make a decision on the license application. An annual fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew. For a gambling structure, the annual license fee shall be based on the capacity of the gambling structure. The fee shall be \$5 per person capacity and accompany this application.

1.5(4) Renewal application for racetrack enclosure license. This form shall contain, at a minimum, the full name of the applicant, annual fee, casino operations, internal controls, Iowa resources, guarantee bond, and notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application. A \$1,000 application fee must accompany this license application.

1.5(5) Occupational license application. This form shall contain, at a minimum, the applicant's full name, social security number, residence, date of birth, and other personal identifying information that the commission deems necessary. A fee set by the commission shall apply to this application. (Refer to 491—Chapter 6 for additional information.)

1.5(6) Season approvals. This form shall contain, at a minimum, a listing of the department heads and racing officials, minimum purse, purse supplements for Iowa-breds, grading system (greyhound racing only), schedule and wagering format, equipment, security plan, certification, and any other information the commission deems necessary for approval. This request must be submitted 45 days prior to the meet. Any changes to the items approved by the commission shall be requested in writing by the licensee and subject to the written approval of the administrator or commission representative before the change occurs.

1.5(7) Manufacturers and distributors license application. This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. A license fee of \$1,000 for a distributor's license and a license fee of \$250 for a manufacturer's license shall accompany this application. (Refer to 491—Chapter 11 for additional information.)

1.5(8) Advance deposit wagering license application. This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. A license fee of \$1,000 shall accompany this application. (Refer to 491—Chapter 8 for additional information.)

1.5(9) Asset/stock purchase form for commission approval. This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision.

1.5(10) Sports wagering for excursion gambling boat, gambling structure or racetrack enclosure application. This form shall contain, at a minimum, the full name of the applicant, disclosure of agreements involving sports wagering, a guarantee bond in an amount as determined by the commission, and a notarized certification of truthfulness. The applicant shall pay a nonrefundable application fee in the amount of \$45,000 to the commission.

1.5(11) Renewal application for sports wagering for excursion gambling boat, gambling structure or racetrack enclosure. This form shall contain, at a minimum, the full name of the applicant, a \$10,000 annual fee, disclosure of agreements involving sports wagering, sports wagering operations, internal controls, a guarantee bond in an amount as determined by the commission, a gambling treatment program, and a notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application.

1.5(12) Advance deposit sports wagering operator application. This form shall contain, at a minimum, the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, agreement with licensed facility or description of proposed operation, a gambling treatment program, and a notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application.

1.5(13) Internet fantasy sports contest application. This form shall contain, at a minimum, the full name of the applicant, board members, all ownership interests, balance sheets and profit-and-loss statements for the fiscal year immediately preceding the application, pending legal action, proof of satisfactory segregation of internet fantasy sports contest player contest funds as determined by the commission, a description of the proposed operation and a notarized certification of truthfulness. The

form may include other information the commission deems necessary to make a decision on the license application.

1.5(14) *Alternative simulcast license application.* This form shall contain, at a minimum, the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, agreement with licensed facility or description of proposed operation, and a notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application.

[ARC 1506C, IAB 6/25/14, effective 7/30/14; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6894C, IAB 2/22/23, effective 3/29/23]

491—1.6(99D,99F) Limitation on location and number of racetracks and excursion gambling boats. Rescinded IAB 9/29/04, effective 11/3/04.

491—1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates. The commission sets forth the following criteria which the commission will consider when deciding whether to issue a license to conduct racing or gaming or sports wagering in Iowa. The various criteria may not have the same importance in each instance, and other factors may present themselves in the consideration of an application for a license. The criteria are not listed in order of priority. After the initial consideration for issuing a license, applicable criteria need only be considered when an applicant has demonstrated a deficiency.

1.7(1) *Compliance.* The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99D.9 or 99F.4. The commission will also consider whether the proposed facility is in compliance with applicable state and local laws regarding fire, health, construction, zoning, and other similar matters.

1.7(2) *Gaming integrity.* The commission will consider whether the proposed operation would ensure that gaming and sports wagering are conducted with a high degree of integrity in Iowa and that the officers, directors, partners, or shareholders of the operation are of good repute and moral character. The commission shall decide what weight and effect evidence about an officer, director, partner, or shareholder should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. For the purposes of this chapter, the term “directors” shall also include managers of limited liability companies and the term “shareholders” shall also include members of limited liability companies.

1.7(3) *Economic impact and development.* The commission will consider:

a. The amount of revenue to be provided by the proposed facility to the state and local communities through direct taxation on the facility’s operation and indirect revenues from tourism, ancillary businesses, creation of new industry, and taxes on employees and patrons. The commission may engage an independent firm proficient in market feasibility studies in the industry for specific analysis of any application to determine the potential market of any proposed facility as well as the impact on existing licensees.

b. The level of financial and other support the proposed operation will provide to the community in order to improve the quality of life of the residents of the community.

c. The viability and overall net benefit of the proposed operation to the state gaming industry, taking into consideration:

(1) Investment versus projected adjusted gross revenue.

(2) Impact on existing operators’ adjusted gross revenue versus existing operators’ ratio of adjusted gross revenue to investment.

(3) Ratio of equity to total investment and whether the proposed project is adequately and properly financed.

(4) Percent of projected adjusted gross revenue from underserved markets.

(5) Percent of projected adjusted gross revenue from existing Iowa operators.

(6) Stability and reliability of out-of-state market(s).

d. The benefits to Iowa tourism.

e. The number and quality of employment opportunities for Iowans.

- f.* The development and sale of Iowa products.
- g.* The number and types of developments and amenities associated with the proposed operation in addition to the gaming floor.

1.7(4) *Efficient and safe operation.* The commission will consider whether the proposed facility is planned in a manner that promotes efficient and safe operation of all aspects of the facility including providing adequate security for employees and patrons. Adequate employment to serve patrons' needs, facility scope and design, parking facilities, access to cashier windows, concessions, and restrooms will be considered.

1.7(5) *Community support.* The commission will consider support for the proposed project within the community in which a proposed facility is to be located.

1.7(6) *Nurture of the racing industry.* The commission will consider whether the proposed racetrack operation would serve to nurture, promote, develop, and improve the racing industry in Iowa and provide high-quality racing in Iowa. The commission will also consider if the proposed racetrack operation will maximize purses and is beneficial to Iowa breeders.

1.7(7) *Other factors.* The commission will consider such other factors as may arise in the circumstances presented by a particular application.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—1.8(17A,99D,99F) Granting of a waiver. For purposes of this rule, a waiver means action by the commission that suspends in whole or in part the requirements or provisions of a rule as applied to an identified entity on the basis of the particular circumstances of that entity.

1.8(1) *Scope of rule.* This rule outlines generally applicable standards and a uniform process for the granting of a waiver from rules adopted by the commission in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

1.8(2) *Applicability of rule.* The commission may grant a waiver from a rule only if the commission has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The commission may not waive requirements created or duties imposed by statute.

1.8(3) *Criteria for waiver.* In response to a petition completed pursuant to subrule 1.8(5), the commission may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the commission finds, based on clear and convincing evidence, all of the following:

- a.* The application of the rule would impose an undue hardship on the entity for whom the waiver is requested;
- b.* The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any entity;
- c.* The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d.* Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

1.8(4) *Filing of petition.* A petition for a waiver must be submitted in writing to the commission as follows:

- a. License application.* If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.
- b. Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.
- c. Other.* If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the administrator.

1.8(5) *Content of petition.* A petition for waiver shall include the following information where applicable and known to the requester:

- a. The name, address, and telephone number of the person or entity for whom a waiver is being requested, and the case number of any related contested case.
- b. A description and citation of the specific rule from which a waiver is requested.
- c. The specific waiver requested, including the precise scope and duration.
- d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 1.8(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.
- e. A history of any prior contacts between the commission and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.
- f. Any information known to the requester regarding the commission'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.
- h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a waiver.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver.

1.8(6) Additional information. Prior to issuing an order granting or denying a waiver, the commission 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 commission may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the administrator, a committee of the commission, or a quorum of the commission.

1.8(7) Notice. The commission shall acknowledge a petition upon receipt. The commission 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 commission may give notice to other persons.

To accomplish this notice provision, the commission 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 commission attesting that notice has been provided.

1.8(8) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the commission so provides by rule or order or is required to do so by statute.

1.8(9) Ruling. An order granting or denying a waiver 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, reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

1.8(10) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the commission, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the commission based on the unique, individual circumstances set out in the petition.

1.8(11) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the commission should exercise its discretion to grant a waiver from a commission rule.

1.8(12) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

1.8(13) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

1.8(14) Conditions. The commission may place any condition on a waiver that the commission finds desirable to protect the public health, safety, and welfare.

1.8(15) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for the waiver continue to exist.

1.8(16) Time for ruling. The commission shall grant or deny a petition for a waiver 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 commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

1.8(17) When deemed denied. Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission. However, the commission shall remain responsible for issuing an order denying a waiver.

1.8(18) Service of order. Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

1.8(19) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the commission is authorized or required to keep confidential. The commission may accordingly redact confidential information from petitions or orders prior to public inspection.

1.8(20) Submission of waiver information. All orders granting or denying a waiver petition shall be submitted to the legislative services agency through the Internet site established pursuant to Iowa Code section 17A.9A for such submissions within 60 days of the granting or denial of the petition.

1.8(21) Summary reports. Rescinded IAB 2/22/23, effective 3/29/23.

1.8(22) Cancellation of a waiver. A waiver issued by the commission pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the commission issues an order finding any of the following:

- a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
- b. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
- c. The subject of the waiver order has failed to comply with all conditions contained in the order.

1.8(23) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

1.8(24) Defense. After the commission issues an order granting a waiver, 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.

1.8(25) Judicial review. Judicial review of the commission's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

[ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6894C, IAB 2/22/23, effective 3/29/23]

These rules are intended to implement Iowa Code section 17A.9A and Iowa Code chapters 99D and 99F.

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 [Filed ARC 2927C (Notice ARC 2801C, IAB 11/9/16), IAB 2/1/17, effective 3/8/17]
 [Filed Emergency ARC 4618C, IAB 8/28/19, effective 7/31/19]
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 [Filed ARC 5422C (Notice ARC 5269C, IAB 11/18/20), IAB 2/10/21, effective 3/17/21]
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 [Editorial change: IAC Supplement 3/6/24]

[◊] Two or more ARCs

¹ Effective date of Item 1, subrule 1.6(4), delayed by the Administrative Rules Review Committee at its meeting held September 8, 1998, until the adjournment of the 1999 Session of the General Assembly.

² Effective date of 1.8 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000.

CHAPTER 2
RULEMAKING AND DECLARATORY ORDERS

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—2.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

491—2.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the racing and gaming commission (commission) 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 rulemaking by the commission by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

[Editorial change: IAC Supplement 3/6/24]

491—2.3(17A) Public rulemaking docket.

2.3(1) Docket maintained. The commission shall maintain a current public rulemaking docket.

2.3(2) Anticipated rulemaking. The rulemaking docket shall list each anticipated rulemaking proceeding. A rulemaking proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the commission. For each anticipated rulemaking proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the commission for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of commission personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the commission of that possible rule. The commission may also include in the docket other subjects upon which public comment is desired.

2.3(3) Pending rulemaking proceedings. The rulemaking docket shall list each pending rulemaking proceeding. A rulemaking 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 becoming effective. For each rulemaking 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, and whether such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any commission determinations with respect thereto;
- h. Any known timetable for commission decisions or other action in the proceedings;
- 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; and
- l. Where the rulemaking record may be inspected.

[Editorial change: IAC Supplement 3/6/24]

491—2.4(17A) Notice of proposed rulemaking.

2.4(1) Contents. At least 35 days before the adoption of a rule the commission 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; and
- 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 commission 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 commission for the resolution of each of those issues.

2.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 2.12(2) of this chapter.

2.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the commission a written request indicating the name and address to which such notices should be sent. The commission will attach the proposed rules to the agenda for the commission meeting in which the rules will be addressed. If the individual desiring a copy of the rules did not receive the rules with the copy of the agenda either through the mail or on the commission web page within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the commission shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the commission for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover 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.

[Editorial change: IAC Supplement 3/6/24]

491—2.5(17A) Public participation.

2.5(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, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Racing and Gaming Commission, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

2.5(2) *Oral proceedings.* The commission may, at any time, schedule an oral proceeding on a proposed rule. The commission 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 commission by the administrative rules review committee, a governmental subdivision, an 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 an 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.

2.5(3) *Conduct of oral proceedings.*

a. *Applicability.* This subrule applies only to those oral rulemaking 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. The commission, a member of the commission, or another person designated by the commission who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the commission does not preside, the presiding officer shall prepare a memorandum for consideration by the commission summarizing the contents of the presentations made at the oral proceeding unless the commission determines that such a memorandum is unnecessary because the commission 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 such a proceeding are encouraged to notify the commission 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 may 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 commission 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. Such submissions become the property of the commission.

(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 rulemaking proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any questions.

(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.

2.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the commission may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

2.5(5) Accessibility. The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the commission at 515.281.7352 in advance to arrange access or other needed services.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; Editorial change: IAC Supplement 3/6/24]

491—2.6(17A) Regulatory analysis.

2.6(1) Qualified requesters for regulatory analysis—business impact. The commission shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(1) after a proper request from:

a. The administrative rules review committee,

b. The administrative rules coordinator.

2.6(2) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the commission shall adhere to the time lines described in Iowa Code section 17A.4A(4).

2.6(3) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the commission. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

2.6(4) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(2), (3) and (5).

2.6(5) *Publication of a concise summary.* The commission shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

2.6(6) *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 sections 17A.4A(1), (2)“a” and “b,” and (3) unless a written request expressly waives one or more of the items listed in the section.

491—2.7(17A,25B) Fiscal impact statement.

2.7(1) A proposed 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.

2.7(2) If the commission determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the commission shall, at the same time, issue a corrected fiscal impact statement and publish the correct fiscal impact statement in the Iowa Administrative Bulletin.

491—2.8(17A) Time and manner of rule adoption.

2.8(1) *Time of adoption.* The commission 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 commission shall adopt a rule pursuant to the rulemaking proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

2.8(2) *Consideration of public comment.* Before the adoption of a rule, the commission shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rulemaking proceeding.

2.8(3) *Reliance on commission expertise.* Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

[Editorial change: IAC Supplement 3/6/24]

491—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

2.9(1) The commission 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 and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.

2.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question, the commission shall consider the following factors:

- a. The extent to which the person who will be affected by the rule should have understood that the rulemaking 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.

2.9(3) The commission shall commence a rulemaking proceeding within 60 days of its receipt of a petition for rulemaking 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 commission finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rulemaking 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.

2.9(4) Concurrent rulemaking proceedings. Nothing in this rule disturbs the discretion of the commission to initiate, concurrently, several different rulemaking proceedings on the same subject with several different published Notices of Intended Action.

[Editorial change: IAC Supplement 3/6/24]

491—2.10(17A) Exemption from public rulemaking procedures.

2.10(1) *Omission of notice and comment.* To the extent the commission for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the commission 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 commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.10(2) *Public proceedings on rules adopted without them.* The commission may, at any time, commence a standard rulemaking proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 2.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the commission shall commence a standard rulemaking proceeding for any rule specified in the petition that was adopted in reliance upon subrule 2.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rulemaking proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rulemaking proceeding commenced pursuant to this subrule, the commission may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 2.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

[Editorial change: IAC Supplement 3/6/24]

491—2.11(17A) Concise statement of reasons.

2.11(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 commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Racing and Gaming Commission, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

2.11(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 such change;
- c. The principal reasons urged in the rulemaking proceeding for and against the rule, and the commission's reasons for overruling the arguments made against the rule.

2.11(3) *Time of issuance.* After a proper request, the commission 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.
[ARC 0734C, IAB 5/15/13, effective 6/19/13; Editorial change: IAC Supplement 3/6/24]

491—2.12(17A) Contents, style, and form of rule.

2.12(1) *Contents.* Each rule adopted by the commission shall contain the text of the rule and, in addition:

- a. The date the commission adopted the rule;
- b. A brief explanation of the principal reasons for the rulemaking action if such reasons are required by Iowa Code section 17A.4(1) “b” or the commission in its discretion decides to include such 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 such reasons are required by Iowa Code section 17A.4(1) “b” or the commission in its discretion decides to include such reasons; and
- g. The effective date of the rule.

2.12(2) *Incorporation by reference.* The commission 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 commission finds that the incorporation of its text in the commission proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the commission proposed or adopted rule shall fully 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 commission may incorporate such matter by reference in a proposed or adopted rule only if the commission 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 the commission, 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 commission shall retain permanently a copy of any materials incorporated by reference in a rule of the commission.

If the commission adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

2.12(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 commission 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 commission. The commission will provide a copy of that full text at the actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the commission shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

2.12(4) *Style and form.* In preparing its rules, the commission shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

[Editorial change: IAC Supplement 3/6/24]

491—2.13(17A) Agency rulemaking record.

2.13(1) *Requirement.* The commission shall maintain an official rulemaking record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rulemaking record and materials incorporated by reference must be available for public inspection.

2.13(2) *Contents.* The commission rulemaking record shall contain:

a. Copies of 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 commission submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the commission's public rulemaking 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 commission, 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 commission and considered by the administrator, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent that the commission is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the commission 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 section 17A.4(4), and any commission response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

2.13(3) *Effect of record.* Except as otherwise required by a provision of law, the commission rulemaking record required by this rule need not constitute the exclusive basis for commission action on that rule.

2.13(4) *Maintenance of record.* The commission shall maintain the rulemaking record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 2.13(2) "g," "h," "i," or "j."

[Editorial change: IAC Supplement 3/6/24]

491—2.14(17A) Filing of rules. The commission shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule, if applicable. 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 note

or statement is issued. In filing a rule, the commission shall use the standard form prescribed by the administrative rules coordinator.

491—2.15(17A) Effectiveness of rules prior to publication.

2.15(1) *Grounds.* The commission 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 commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.15(2) *Special notice.* When the commission 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 commission 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 commission 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 commission 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 subrule 2.15(2).

491—2.16(17A) General statements of policy.

2.16(1) *Compilation, indexing, public inspection.* The commission shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)“a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

2.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the commission to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 2.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

491—2.17(17A) Review by commission of rules.

2.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the commission to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the commission 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 commission may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

2.17(2) In conducting the formal review, the commission shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the commission’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 petitions for waiver of the rule received by the commission or granted by the commission. 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 commission’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

491—2.18(17A) Petition for rulemaking. Any interested person or agency may file a petition for rulemaking with the commission. The petition for rulemaking shall be filed in the Racing and Gaming Commission Office, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. The petition shall either be mailed certified, return receipt requested, or may be delivered in person. An additional copy may be provided if the petitioner wishes to retain a file-stamped copy of the petition. The petition may be either typewritten or legibly printed in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321

Petition by (Name of Petitioner)
for the (adoption, amendment,
or repeal) of rules relating to
(state subject matter).



PETITION FOR
RULEMAKING

The petition must provide the following information:

1. A statement of the specific rulemaking 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 commission’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.

Petitioner’s signature

2.18(1) *Petition signed.* The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

2.18(2) *Deny petition.* The commission may deny a petition because it does not substantially conform to the required form.

2.18(3) *Procedure after petition is filed.* Upon filing of the petition, the administrator shall inspect the petition to ensure substantial compliance with the recommended form. If the petition does not contain the text or substance of the proposed amendment or fails to include copies of any cited statute, rule, or evidence, the administrator may reject the petition and return it to the petitioner along with the reasons for the rejection. Petitioner may then correct the reasons for rejection and refile the petition. A petition in substantial compliance with the recommended form shall be filed and stamped, and copies promptly sent to the commission members for further study.

2.18(4) *Commission action.* Within 60 days of the filing of a petition, the commission shall meet to consider the petition and shall either grant the petition and commence rulemaking, or deny the petition and notify the petitioner in writing of the grounds for the denial.

2.18(5) Copies to administrative rules review committee. Petitions for rulemaking and the disposition of such petitions shall be provided to the administrative rules review committee.
[ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 5422C, IAB 2/10/21, effective 3/17/21; Editorial change: IAC Supplement 3/6/24]

491—2.19(17A) General. Any interested person may solicit oral or written advice from the administrator concerning the application or interpretation of any statute or administrative rule dealing with the commission. However, unless the request is made pursuant to Iowa Code section 17A.9, petition for declaratory order, any such advice is not binding upon the commission. Petitioners for a declaratory order must have a real and direct interest in a specific fact situation that may affect their legal rights, duties or responsibilities under statutes or regulations administered by the commission.

491—2.20(17A) Petition for declaratory order. Any person may file a petition with the commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission, at 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321

Petition by (Name of Petitioner)
for a Declaratory Order on
(Cite provisions of law involved).



PETITION FOR
DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 491—2.26(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.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; Editorial change: IAC Supplement 3/6/24]

491—2.21(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons not served by the petitioner pursuant to rule 2.25(17A) to whom notice is required by any provision of law or who have requested notice of petitions for declaratory orders. The commission may also give notice to any other persons.

491—2.22(17A,99D,99F) Intervention.

2.22(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 30 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

2.22(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the commission.

2.22(3) A petition for intervention shall be filed at the Racing and Gaming Commission Office, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. Such a petition is deemed filed when it is received by that office. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321

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. A citation and the relevant language of any additional statutes, rules, or orders and any other, additional, relevant law.
3. The answers to the original summary of the reasons urged by the intervenor in support of those answers.
4. Reasons for requesting intervention and disclosure of the intervenor’s interest in the outcome.
5. 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.
6. The names and addresses of any additional persons, or a description of any class of persons, known by intervenor to be affected by, or interested in, the questions presented.
7. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; Editorial change: IAC Supplement 3/6/24]

491—2.23(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The commission may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

491—2.24(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Racing and Gaming Commission, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; Editorial change: IAC Supplement 3/6/24]

491—2.25(17A) Service and filing of petitions and other papers.

2.25(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in

the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

2.25(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Racing and Gaming Commission Office, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; Editorial change: IAC Supplement 3/6/24]

491—2.26(17A) Consideration. Upon request by petitioner, the commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

491—2.27(17A) Action on petition.

2.27(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

2.27(2) The date of issuance of an order or of a refusal to issue an order is defined as the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

491—2.28(17A) Refusal to issue order.

2.28(1) The commission 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 commission to issue an order.
3. The commission does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rulemaking, contested case, or other commission 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 commission 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 commission to determine whether a statute is unconstitutional on its face.

2.28(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final commission action on the petition.

2.28(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

[Editorial change: IAC Supplement 3/6/24]

491—2.29(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

491—2.30(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.

491—2.31(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 commission, 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 commission. The issuance of a declaratory order constitutes final commission action on the petition.

These rules are intended to implement Iowa Code chapters 17A, 99D and 99F.

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[Editorial change: IAC Supplement 3/6/24]

CHAPTER 3
FAIR INFORMATION PRACTICES

The racing and gaming commission adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to fair information practices which are printed in the first volume of the Iowa Administrative Code.

491—3.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of the words “(official or body issuing these rules)”, insert “racing and gaming commission”.

491—3.3(17A,22) Requests for access to records.

3.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “Administrator”. In lieu of the words “(insert agency name and address)”, insert “Racing and Gaming Commission, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321”.

3.3(2) Office hours. In lieu of the words “(insert customary office hours, and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m. Monday through Friday except legal holidays”.

3.3(7) Fees.

c. Supervisory fee. In lieu of the words “(specify time period)”, insert “30 minutes”.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; Editorial change: IAC Supplement 3/6/24]

491—3.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words “(designate office)”, insert “racing and gaming commission”.

491—3.9(17A,22) Disclosures without the consent of the subject.

3.9(1) Open records are routinely disclosed without the consent of the subject.

3.9(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 491—3.10(17A, 22) or in the notice for a particular record system.

b. To a recipient who has provided the agency 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 agency 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 under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

491—3.10(17A,22) Routine use. *“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.

3.10(1) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer, 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. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

d. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

e. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

f. Information transferred to any originating agency when racing and gaming commission has completed the authorized audit, investigation, or inspection.

g. Information reported pursuant to Iowa Code sections 99E.8 and 99F.12 to any sports team or governing body having jurisdiction over sports teams.

3.10(2) Reserved.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—3.11(17A,22) Consensual disclosure of confidential records.

3.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 491—3.7(17A,22).

3.11(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 agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

3.11(3) *Sharing information.* Notwithstanding any statutory confidentiality provision, the agency may share information with the child support recovery unit and the centralized collection unit of the department of revenue through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J, 272D or 598.

[ARC 5075C, IAB 7/1/20, effective 8/5/20]

491—3.12(17A,22) Release to subject.

3.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 491—3.6(17A,22). The commission need not release the following records to the subject:

a. The identity of a person providing information to the agency 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) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or otherwise privileged.

c. Investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

3.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the commission may take reasonable steps to protect confidential information relating to another subject.

491—3.13(17A,22) Availability of records.

3.13(1) Agency records are open for public inspection and copying unless otherwise provided by rule or law.

3.13(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. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)
 - c. Exempt records under Iowa Code section 22.7.
 - d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))
 - e. 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.”
 - f. Those portions of commission staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by commission staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (Iowa Code sections 17A.2 and 17A.3)
 - g. 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, the rules of evidence, the Code of Professional Responsibility, and case law.
 - h. Criminal investigative reports. (Iowa Code section 22.7(5))
 - i. Information gathered during an investigation during pendency of the investigation or information requested for inspection by the commission or a representative of the commission. (Iowa Code sections 99D.7(9), 99D.19(3), 99E.3(2), 99E.8(2), 99F.4(6), 99F.12(2), and 99F.12(4))
 - j. Personnel files and employee records. Information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).
 - k. Security plans, surveillance system plans and records, network audits, internal controls, and compliance records of the licensees that are made available to the commission that would enable law violators to avoid detection and give a clearly improper advantage to persons who are in an adverse position to the agency. (Iowa Code sections 17A.2, 17A.3, 22.7(18), 99D.19(3), 99E.8(4), 99F.12(2) “b” and 99F.12(4))
 - l. Promotional play receipts records and marketing expenses. (Iowa Code sections 99D.19(3), 99E.8(4) and 99F.12(4))
 - m. Patron and customer records. (Iowa Code sections 99D.19(3), 99E.8(4) and 99F.12(4))
 - n. Supplemental schedules to the certified audit that are obtained by the commission in connection with the annual audit under Iowa Code sections 99D.20, 99E.9 and 99F.13. (Iowa Code sections 99D.19(3) and 99F.12(4))
 - o. Names, social security numbers and any other personally identifiable information regarding persons who have voluntarily excluded themselves and are a part of the interactive Internet site maintained by the commission. (Iowa Code sections 99D.7(23) and 99F.4(22) as amended by 2018 Iowa Acts, House File 2349)
- [ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4378C, IAB 3/27/19, effective 5/1/19; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—3.14(17A,22) Personally identifiable information. The commission maintains systems of records which contain personally identifiable information.

3.14(1) Board of stewards or gaming board hearings and contested case records. Records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the board of stewards or gaming board hearing or contested case records as well as summary lists of enforcement activities.

Records are collected by authority of Iowa Code chapters 99D, 99E and 99F. None of the information stored in a data processing system is compared with information in any other data processing system.

3.14(2) Occupational licensing. Records associated with occupational licensing conducted under Iowa Code chapters 99D, 99E and 99F are maintained by this commission. The licensing system of records includes numerous files and crossfiles which include but are not limited to: computer storage of licensing records and photos, fingerprint cards, and license applications. The records associated with occupational licenses, which contain personally identifiable information, are open for public inspection only upon the approval of the administrator or the administrator's designee. The information stored in a data processing system is not compared with information in any other data processing system.

3.14(3) List of contested cases and stewards' hearings. The commission may utilize a listing of contested case and stewards' hearings furnished by a national organization and provide individually identifiable information to that organization. The list is used for purposes delineated in Iowa Code chapter 99D.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

These rules are intended to implement Iowa Code section 22.11 and chapters 99D and 17A.

[Filed emergency 9/1/88—published 9/21/88, effective 9/1/88]

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[Filed 9/7/04, Notice 7/7/04—published 9/29/04, effective 11/3/04]

[Filed ARC 0734C (Notice ARC 0604C, IAB 2/20/13), IAB 5/15/13, effective 6/19/13]

[Filed ARC 3608C (Notice ARC 3434C, IAB 11/8/17), IAB 1/31/18, effective 3/7/18]

[Filed ARC 4378C (Notice ARC 4107C, IAB 11/7/18), IAB 3/27/19, effective 5/1/19]

[Filed Emergency ARC 4618C, IAB 8/28/19, effective 7/31/19]

[Filed ARC 5016C (Amended Notice ARC 4807C, IAB 12/18/19; Notice ARC 4617C, IAB 8/28/19), IAB 4/8/20, effective 5/13/20]

[Filed ARC 5075C (Notice ARC 5026C, IAB 4/8/20), IAB 7/1/20, effective 8/5/20]

[Editorial change: IAC Supplement 3/6/24]

CHAPTER 4
CONTESTED CASES AND OTHER PROCEEDINGS

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the racing and gaming commission. The chapter shall also apply to gaming boards' and board of stewards' proceedings and gaming representatives' or administrator's designees' actions.
[ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—4.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Board of stewards*” means a board established by the administrator to review conduct by occupational and pari-mutuel licensees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

“*Commission*” means the racing and gaming commission.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Gaming board*” means a board established by the administrator to review conduct by occupational, excursion gambling boat, gambling structure, sports wagering, fantasy sports contest and gambling game licensees that may constitute violations of the rules and statutes relating to gaming. The administrator may serve as a board of one.

“*Gaming representative*” means an employee of the commission assigned by the administrator to a licensed pari-mutuel racetrack, excursion gambling boat, or gambling structure to perform the supervisory and regulatory duties of the commission.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the administrative law judge presiding over a contested case hearing or the commission in cases heard by the commission.

“*Proposed decision*” means the administrative law judge's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commission did not preside.

“*Steward*” means a racing official appointed or approved by the commission to perform the supervisory and regulatory duties relating to pari-mutuel racing.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6895C, IAB 2/22/23, effective 3/29/23]

491—4.3(17A) Time requirements.

4.3(1) In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays are prescribed in Iowa Code section 4.1(34).

4.3(2) All documents or papers required to be filed with the commission shall be delivered to any commission office within such time limits as prescribed by law or by rules or orders of the commission. No papers shall be considered filed until actually received by the commission.

4.3(3) 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.

AND BOARD OF STEWARDS

491—4.4(99D,99E,99F) Gaming representatives and administrator's designees—licensing and regulatory duties.

4.4(1) The gaming representative shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

a. Each decision denying a license for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

b. Rescinded IAB 2/5/03, effective 3/12/03.

c. Rescinded IAB 9/29/04, effective 11/3/04.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.4(2) The gaming representative or the administrator's designee shall monitor, supervise, and regulate the activities of occupational, pari-mutuel racetrack, sports wagering, fantasy sports contest, gambling game, excursion gambling boat, and gambling structure licensees. A gaming representative or the administrator's designee may investigate any questionable conduct by a licensee for any violation of the rules or statutes. A gaming representative or the administrator's designee may refer an investigation to the gaming board upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

a. A referral to the gaming board shall be in writing. The referral shall make reference to rules or statutory provisions at issue and provide a factual basis supporting the violation.

b. The gaming representative or the administrator's designee making the referral to the gaming board, or a designee of the gaming board, shall appear before the gaming board at the hearing to provide any information requested by the board.

4.4(3) A gaming representative or the administrator's designee shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the gaming representative or the administrator's designee determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D, 99E or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the gaming representative shall take one of the following courses of action:

a. If the license was summarily suspended and the charges are dismissed or the licensee is acquitted of the charges, the gaming representative shall reinstate the license.

b. If the licensee is convicted of the charges, the gaming representative shall deny the license.

c. If the licensee is convicted of a lesser charge, it is at the discretion of the gaming representative whether to reinstate or deny the license pursuant to 491—Chapter 6.

4.4(4) The gaming representative shall revoke the license of a person reported to the commission as having refused drug testing or as having a confirmed positive drug test result for a controlled substance, for a drug test conducted pursuant to Iowa Code section 730.5 or 99F.4(20).

4.4(5) A gaming representative may eject and exclude any person from the premises of a pari-mutuel racetrack, excursion gambling boat, or gambling structure for any reason justified by the rules or statutes. The gaming representative may provide notice of ejection or exclusion orally or in writing. The gaming representative may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The gaming representative may exclude the person for a certain or an indefinite period of time.

4.4(6) The gaming representative may forbid any person from continuing to engage in an activity the representative feels is detrimental to racing or gaming until resolved.

4.4(7) The gaming representative or the administrator's designee shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

4.4(8) A gaming representative may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—4.5(99D,99E,99F) Gaming board—duties. The gaming board conducts informal hearings whenever the board has reasonable cause to believe that a licensee, an occupational licensee, or other persons have committed an act or engaged in conduct which is in violation of statute or commission rules. The hearings precede a contested case hearing and are investigative in nature. The following procedures will apply:

4.5(1) The gaming board shall consist of three gaming representatives, as assigned by the administrator. The administrator has the discretion to create more than one gaming board, to set terms for gaming board members, to assign alternates, and to make any decisions necessary for the efficient and effective operation of the gaming board. A gaming representative who has made a referral to the gaming board shall not sit on the board that makes a decision on the referral.

4.5(2) The administrator may designate an employee to act as gaming board coordinator. The gaming board coordinator shall have the power to assist and advise the gaming board through all aspects of the gaming board hearing process. The gaming board coordinator may review any referral from gaming representatives prior to setting the matter for hearing before the gaming board. The gaming board coordinator, in consultation with the administrator or the administrator's designee, may return the referral to the initiating gaming representative if the information provided appears insufficient to establish a violation. The gaming board coordinator shall otherwise assist the gaming board in setting the matter for hearing.

4.5(3) The gaming board, upon receipt of a referral, may review the referral prior to the hearing. The gaming board may return a referral to the initiating gaming representative or the administrator's designee on its own motion prior to hearing if the information provided appears insufficient to establish a violation.

4.5(4) Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder, at which all board members or their appointed representatives shall be present in person or by teleconference. The license holder may request a continuance for good cause in writing not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

4.5(5) The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing and shall specify by number the statutes or rules allegedly violated. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

4.5(6) The gaming board has complete and total authority to decide all issues concerning the process of the hearing. The gaming board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The gaming board has the right to request witnesses or additional documents that have not been submitted by the initiating gaming representative. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the gaming board.

4.5(7) It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

4.5(8) Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a licensed facility is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

4.5(9) The gaming board has the power to interpret the rules and to decide all questions not specifically covered by them. The board has the power to determine all questions arising with reference to the conduct of gaming and sports wagering and fantasy sports contests and the authority to decide any question or dispute relating to racing, gaming, sports wagering or fantasy sports contests in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

4.5(10) The gaming board shall enter a written decision after each hearing. The decision shall find whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The gaming board has the authority to impose any penalty as set forth in these rules.

4.5(11) Rescinded IAB 9/29/04, effective 11/3/04.

4.5(12) Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.5(13) Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with a gaming representative or the administrator's designee. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the gaming board. Stipulations are considered final agency action and cannot be appealed.

[ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—4.6(99D,99F) Stewards—licensing and regulatory duties.

4.6(1) The stewards shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

a. Each decision denying an application for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

b. Rescinded IAB 2/5/03, effective 3/12/03.

c. An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.6(2) The stewards shall monitor, supervise, and regulate the activities of occupational and pari-mutuel racetrack licensees. A steward may investigate any questionable conduct by a licensee for any violation of the rules or statutes. Any steward may refer an investigation to the board of stewards upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

4.6(3) A steward shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the steward determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the stewards shall take one of the following courses of action:

a. If the license was summarily suspended and the charges are dismissed or the licensee is acquitted of the charges, the stewards shall reinstate the license.

b. If the licensee is convicted of the charges, the stewards shall deny the license.

c. If the licensee is convicted of a lesser charge, it is at the discretion of the stewards whether to reinstate or deny the license pursuant to 491—Chapter 6.

4.6(4) The stewards may summarily suspend an occupational license in accordance with rule 491—4.47(17A).

4.6(5) Hearings before the board of stewards intended to implement Iowa Code section 99D.7(13) shall be conducted under the following parameters:

a. Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder. The license holder may request a continuance in writing for good cause not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

b. The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing and shall specify by number the statutes or rules allegedly violated. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

c. The board has complete and total authority to decide the process of the hearing. The administrator may designate an employee to assist and advise the board of stewards through all aspects of the hearing process. The board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The board may request additional documents or witnesses before making a decision. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the board.

d. It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

e. Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

f. The board of stewards has the power to interpret the rules and to decide all questions not specifically covered by them. The board of stewards has the power to determine all questions arising with reference to the conduct of racing, and the authority to decide any question or dispute relating to racing in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

g. The board of stewards shall enter a written decision after each hearing. The decision shall state whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The board of stewards has the authority to impose any penalty, as set forth in these rules.

h. Rescinded IAB 9/29/04, effective 11/3/04.

i. Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.6(6) A steward may eject and exclude any person from the premises of a pari-mutuel racetrack, excursion gambling boat, or gambling structure for any reason justified by the rules or statutes. The steward may provide notice of ejection or exclusion orally or in writing. The steward may define the

scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The steward may exclude the person for a certain or indefinite period of time.

4.6(7) The stewards shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

4.6(8) Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with the stewards. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the board of stewards. Stipulations are considered final agency action and cannot be appealed.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—4.7(99D,99E,99F) Penalties (gaming board and board of stewards). All penalties imposed will be promptly reported to the commission and facility or other licensed entity in writing. The board may impose one or more of the following penalties: eject and exclude an individual from a facility; revoke a license; suspend a license for up to five years from the date of the original suspension; place a license on probation; deny a license; impose a fine; or order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board of stewards may impose a fine of up to \$1,000, and the gaming board may impose a fine of up to \$3,000. The board may set the dates for which the suspension must be served. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by a state racing or gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission.

4.7(1) Fines shall be paid within ten calendar days of receipt of the ruling, by the end of business hours, at any commission office. Nonpayment or late payment of a fine may result in an immediate license suspension. All fines are to be paid by the individual assessed the fine.

4.7(2) If the fine is appealed to the board, the appeals process will not stay the fine. The fine will be due as defined in subrule 4.7(1).

4.7(3) If the party is successful in the appeal, the amount of the fine will be refunded to the party as soon as possible after the date the decision is rendered.

4.7(4) Refunds due under subrule 4.7(3) will be mailed to the party's current address on record.

4.7(5) When a racing animal or the holder of an occupational license is suspended by the board at one location, the suspension shall immediately become effective at all other facilities under the jurisdiction of the commission.

[ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 1456C, IAB 5/14/14, effective 6/18/14; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6895C, IAB 2/22/23, effective 3/29/23]

491—4.8(99D,99E,99F) Effect of another jurisdiction's order. The commission or board may take appropriate action against a license holder or other person who has been excluded from a track or gaming establishment in another jurisdiction to exclude that person from any track or gaming establishment under the commission's jurisdiction. Proceedings shall be conducted in the same manner as prescribed by these rules for determining misconduct on Iowa tracks or in gaming establishments and shall be subject to the same appeal procedures.

The commission and stewards shall have discretion to honor rulings from other jurisdictions regarding license suspension or revocation or the eligibility of contestants. Whenever the commission decides to honor an order from another jurisdiction, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended or revoked.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—4.9(99D,99E,99F) Service of administrative actions. Any administrative action taken against an applicant or occupational licensee shall be served on the applicant or occupational licensee by personal service or by certified mail with return receipt requested to the last-known address on the application.

4.9(1) If the applicant or licensee is represented by legal counsel, a copy of the written decision shall also be provided to legal counsel by regular mail. However, the applicant or licensee must still be served in accordance with this rule.

4.9(2) If the administrative action involves an alleged medication violation that could result in disqualification of a contestant, the stewards shall provide by regular mail notice of the hearing and all subsequent rulings to the owner of the contestant.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—4.10(99D,99E,99F) Appeals of administrative actions. A license applicant or an occupational licensee may appeal a denial, suspension or ruling. An appeal must be made in writing to the office of the gaming representative or the commission office in Des Moines. An appeal may also be filed by facsimile, electronic mail, or any other method as determined by the administrator. The appeal must be received within 72 hours of service of the decision and is not considered filed until received by the commission. For any appeal of a decision rendered pursuant to 491—paragraph 10.4(4)“d”(3)“1,” the appeal must be received within 72 hours of any such decision and the standard of review will be abuse of discretion. The appeal must contain numbered paragraphs and set forth the name of the person seeking review; the decision to be reviewed; separate assignments of error; clear and concise statement of relevant facts; reference to applicable statutes, rules or other authority; prayer setting forth relief sought; and signature, name, address, and telephone number of the person seeking review or that person’s representative; or shall be on a form prescribed by the commission. If a licensee is granted a stay of a suspension pursuant to 491—4.45(17A) and the ruling is upheld in a contested case proceeding, the board of stewards may reassign the dates of suspension so that the suspension dates are served in the state of Iowa.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; see Delay note at end of chapter; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—4.11 to 4.19 Reserved.

DIVISION II CONTESTED CASES

491—4.20(17A) Requests for contested case proceedings not covered in Division I. Any person or entity claiming an entitlement to a contested case proceeding, which is not otherwise covered by the procedures set forth in Division I, shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the commission action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific commission action which is disputed and, if the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

491—4.21(17A) Notice of hearing.

4.21(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.21(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

- e.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission or the state and of parties' counsel where known;
 - f.* Reference to the procedural rules governing conduct of the contested case proceeding;
 - g.* Reference to the procedural rules governing informal settlement;
 - h.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections, appeals, and licensing); and
 - i.* Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) "a" and rule 491—4.22(17A), that the presiding officer be an administrative law judge.
- [Editorial change: IAC Supplement 11/1/23]

491—4.22(17A) Presiding officer. Contested case hearings may be heard directly by the commission. The commission, or the administrator, shall decide whether it will hear the appeal or whether the appeal will be heard by an administrative law judge who shall serve as the presiding officer. When the appeal is heard by an administrative law judge, the administrative law judge is authorized to issue a proposed decision.

4.22(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the commission chair, members of the commission or commission employees.

4.22(2) The administrator may deny the request only upon a finding that one or more of the following apply:

- a.* Neither the administrator nor any officer of the commission under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- f.* The request was not timely filed.
- g.* The request is not consistent with a specified statute.

4.22(3) The administrator shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

4.22(4) An administrative law judge assigned to act as presiding officer in a contested case shall have a Juris Doctor degree unless waived by the agency.

4.22(5) Except as provided otherwise by rules 491—4.41(17A) and 491—4.42(17A), all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commission. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.22(6) Unless otherwise provided by law, the commission, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 6895C, IAB 2/22/23, effective 3/29/23; Editorial change: IAC Supplement 11/1/23]

491—4.23(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the commission in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

491—4.24(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine

the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

491—4.25(17A) Disqualification.

4.25(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.25(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other commission functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 4.25(3) and 4.39(9).

4.25(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.

4.25(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.25(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 491—4.41(17A) and seek a stay under rule 491—4.45(17A).

491—4.26(17A) Consolidation—severance.

4.26(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues

involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.26(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

491—4.27(17A) Pleadings.

4.27(1) Pleadings, other than the notice of appeal, will not be required in appeals from a licensing decision by a gaming representative, gaming board, or board of stewards. However, pleadings may be required in other contested cases or as ordered by the presiding officer.

4.27(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.27(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

4.27(4) Amendment. Any notice of appeal, notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

491—4.28(17A) Service and filing of pleadings and other papers.

4.28(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.28(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.

4.28(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the commission at 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

4.28(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the commission office at 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.28(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

[ARC 0734C, IAB 5/15/13, effective 6/19/13; Editorial change: IAC Supplement 3/6/24]

491—4.29(17A) Discovery.

4.29(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.29(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 4.29(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.29(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

491—4.30(17A) Subpoenas.

4.30(1) Issuance.

a. A commission subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.30(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

491—4.31(17A) Motions.

4.31(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.

4.31(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.31(3) The presiding officer may schedule oral argument on any motion.

4.31(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the commission or an order of the presiding officer.

4.31(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.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion

shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 491—4.44(17A) and appeal pursuant to rule 491—4.43(17A).

491—4.32(17A) Prehearing conference.

4.32(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the commission to all parties. For good cause the presiding officer may permit variances from this rule.

4.32(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.32(3) In addition to the requirements of subrule 4.32(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations on the admissibility of exhibits;
- c.* Identify matters that the parties intend to request be officially noticed;
- d.* Enter into stipulations for waiver of any provision of law; and
- e.* Consider any additional matters that will expedite the hearing.

4.32(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

491—4.33(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.33(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The commission may waive notice of such requests for a particular case or an entire class of cases.

4.33(2) In determining whether to grant a continuance, the presiding officer may consider:

- a.* Prior continuances;
- b.* The interests of all parties;
- c.* The likelihood of informal settlement;
- d.* The existence of an emergency;
- e.* Any objection;
- f.* Any applicable time requirements;

- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

491—4.34(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

491—4.35(17A) Intervention.

4.35(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.35(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.35(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.

4.35(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

491—4.36(17A) Hearing procedures.

4.36(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.36(2) All objections shall be timely made and stated on the record.

4.36(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.36(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.36(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.36(6) Witnesses may be sequestered during the hearing.

4.36(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

491—4.37(17A) Evidence.

4.37(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.

4.37(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.37(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.

4.37(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.37(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.37(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.

491—4.38(17A) Default.

4.38(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.38(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.38(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final commission 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 491—4.43(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

4.38(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

4.38(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have

ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

4.38(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

4.38(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 491—4.41(17A).

4.38(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

4.38(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

4.38(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 491—4.45(17A).

491—4.39(17A) Ex parte communication.

4.39(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the commission or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.25(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

4.39(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

4.39(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.39(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 communication shall be provided in compliance with rule 491—4.28(17A) and may be supplemented by telephone, facsimile, email or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.39(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.39(6) The administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 4.25(1) or other law and they comply with subrule 4.39(1).

4.39(7) Communications with the presiding officer involving scheduling or procedural matters uncontested 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 491—4.33(17A).

4.39(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.39(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, 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.

4.39(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension, or revocation of the privilege to practice before the commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

491—4.40(17A) Recording costs. Upon request, the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

491—4.41(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

491—4.42(17A) Final decision.

4.42(1) When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

4.42(2) When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the commission within the time provided in rule 491—4.43(17A).

4.42(3) The commission has the authority to deny, suspend, or revoke any license applied for or issued by the commission or to fine a licensee or a holder of an occupational license.

491—4.43(17A) Appeals and review.

4.43(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commission within 10 days after issuance of the proposed decision.

4.43(2) Review. The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

4.43(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the 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 appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

4.43(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.43(5) Scheduling. The commission shall issue a schedule for consideration of the appeal.

4.43(6) Briefs and arguments. Unless otherwise ordered, briefs, if any, must be filed within five days of meeting.

491—4.44(17A) Applications for rehearing.

4.44(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

4.44(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.43(4), the applicant requests an opportunity to submit additional evidence.

4.44(3) Time of filing. The application shall be filed with the commission within 20 days after issuance of the final decision.

4.44(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the commission shall serve copies on all parties.

4.44(5) Disposition. Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

491—4.45(17A) Stays of commission actions.

4.45(1) When available.

a. Any party to a contested case proceeding may petition the commission for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the commission. The petition for a stay shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The administrator may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the commission for a stay or other temporary remedies pending judicial review, of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay or other temporary remedy.

4.45(2) When granted. In determining whether to grant a stay, the presiding officer or administrator shall consider the factors listed in Iowa Code section 17A.19(5).

4.45(3) Vacation. A stay may be vacated by the issuing authority upon application by the commission or any other party. When a stay has been vacated, the commission or the commission's designee shall implement the original order or sanction which had been stayed. The commission or the

commission's designee shall have full authority to determine how the original order or sanction is to be implemented.

491—4.46(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

491—4.47(17A) Emergency adjudicative proceedings.

4.47(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the commission, gaming representatives, or stewards may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the commission by emergency adjudicative order. Before the issuing of an emergency adjudicative order the commission shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the commission is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the commission is necessary to avoid the immediate danger.

4.47(2) Issuance.

a. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the commission;
- (3) Certified mail to the last address on file with the commission;
- (4) First-class mail to the last address on file with the commission; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that commission orders be sent by fax and has provided a fax number for that purpose.

b. To the degree practicable, the commission shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

4.47(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.47(4) Completion of proceedings. Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

491—4.48(17A) Contested case hearings before the commission. The commission may initiate a hearing upon its own motion, pursuant to any matter within its jurisdiction.

These rules are intended to implement Iowa Code chapters 17A, 99D and 99F.

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PUBLIC HEALTH DEPARTMENT[641]

Rules of divisions under this department “umbrella” include Professional Licensure[645], Dental Board[650], Medical Board[653],
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641—176.7(135,17A) Public notice of available funds. The department shall post all competitive selection documents on the department of management's IowaGrants Web site at www.IowaGrants.gov for the duration of the application period.

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REVENUE DEPARTMENT[701]

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PROPERTY ASSESSMENT APPEAL BOARD
[Prior to 11/2/22, see Revenue Department[701] Ch 126]

701—115.1(421,441) Applicability and definitions.

115.1(1) *Applicability and scope.* The rules in this chapter govern the proceedings for appeals filed under Iowa Code section 441.37A before the property assessment appeal board. In cases filed under Iowa Code section 427.1(40), Iowa Code section 441.42, or other applicable provision, the board may use these rules and issue other necessary orders consistent with law.

115.1(2) *Definitions.* For the purpose of these rules, the following definitions apply:

“*Appellant*” means the party filing the appeal with the board.

“*Appellee*” means the party responding to the appeal.

“*Board*” means the property assessment appeal board created by Iowa Code section 421.1A.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) or 17A.10A.

“*Custodian*” means the board or a person lawfully delegated authority by the board to act for the board in implementing Iowa Code chapter 22.

“*Decision*” means the board’s findings of fact, conclusions of law, decision, and order in a contested case.

“*Electronic filing*” means the electronic transmission of a document to the electronic filing system together with the production and transmission of a notice of electronic filing.

“*Electronic filing system*” means the system established by the board for the filing of papers and service of the same to opposing parties.

“*Electronic record*” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

“*Electronic service*” means the electronic transmission of a notification to the registered users who are entitled to receive notice of the filing.

“*Local board of review*” means the board of review as defined by Iowa Code section 441.31.

“*Nonelectronic filing*” means a process by which a paper document or other nonelectronic item is filed with the board.

“*Notice of electronic filing*” means an email notification generated by the electronic filing system when a document is electronically filed.

“*Party*” means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*PDF*” means an electronic document filed in a portable document format that is readable by the free Adobe® Acrobat® Reader.

“*Public access terminal*” means a computer located at the board’s office where the public may view, print, and electronically file documents.

“*Registered user*” means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

“*Signature*” means a registered user’s username and password accompanied by one of the following:

1. “Digitized signature” means an embeddable image of a person’s handwritten signature;
2. “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or
3. “Nonelectronic signature” means a handwritten signature applied to an original document.

“*Written consideration*” means the board’s consideration of an appeal without a hearing.

115.1(3) *Waiver of procedures.* A party may seek waiver from a rule adopted by the board following Iowa Code section 17A.9A.

115.1(4) *Time requirements.* Time is computed as provided in Iowa Code section 4.1(34). For good cause, the board 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 board will afford all parties an opportunity to be heard or file written arguments.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.2(421,441) Appeal and answer.

115.2(1) *Appeal and jurisdiction.* The deadline for filing an appeal is as stated in Iowa Code section 441.37A. The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery. An appeal filed using the electronic filing system must be filed by 11:59 p.m. on the last day for filing.

115.2(2) *Form of appeal.* The appeal should include:

- a. The appellant's name, mailing address, email address, and telephone number;
- b. The address of the property being appealed and its parcel number;
- c. The grounds for appeal;
- d. A short and plain statement of the claim;
- e. The relief sought; and
- f. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, email address, and telephone number.

115.2(3) *Amendment of appeal.* The appellant may amend the appeal once as a matter of course within 20 days after it is filed to add or modify the grounds for appeal. Otherwise, the appellant may only amend the appeal by leave of the board or by written consent of the adverse party.

115.2(4) *Scope of review.*

a. *Grounds for appeal.* The board considers grounds for appeal as listed in Iowa Code sections 441.37(1) "a"(1)(a) through (e) and 441.37(2) "a" in the manner described in Iowa Code section 441.37A(1) "b." The board may order the appellant to clarify the grounds on which the appellant seeks relief.

b. *Burden of proof.* The burden of proof is as stated in Iowa Code section 441.21(3).

115.2(5) *Notice to local board of review.* The board will serve, through the electronic filing system, a copy of the appellant's appeal to the local board of review.

115.2(6) *Answer by local board of review.* Using the form provided by the board or a conforming document, the local board of review's attorney or representative shall file an answer within 30 days after service of the notice of appeal, unless the time period is shortened or extended by the board. The answer should include:

- a. The subject property's current assessed value;
- b. A statement regarding the timeliness of the protest to the local board of review and the timeliness of the appeal to the board;
- c. How the local board of review will participate in the hearing; and
- d. The local board of review's attorney or designated representative's name, mailing address, email address, and telephone number.

115.2(7) *Docketing.* Appeals are assigned docket numbers. The board will maintain electronic records of the appeal name, the docket number, and all filings made in the appeal.

115.2(8) *Consolidation and severance.*

a. *Consolidation.* The board may consolidate any or all matters at issue in two or more appeals where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues involved; and
- (3) Consolidation would not adversely affect the rights of any of the parties to those appeals.

b. *Severance.* The board may, for good cause shown, order any appeals or portions thereof severed.

115.2(9) *Appearances.* Any party may appear and be heard on its own behalf, or by its attorney or designated representative. Attorneys and designated representatives both shall file a notice of appearance with the board for each appeal. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges the representative has read and will abide by the board's rules.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.3(421,441) Nonelectronic service and filing of documents.

115.3(1) *Applicability.* This rule applies to all nonelectronic filings made with the board by parties not voluntarily using the electronic filing system. Electronic filing and service of documents using the board's electronic filing system are governed by rule 701—115.4(421,441).

115.3(2) *Service and filing of paper documents.* All motions, pleadings, briefs, and other papers shall be served upon each of the parties of record contemporaneously with their filing with the board.

a. Service on parties. All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or emailed to the opposing party per mutual agreement.

b. Filing with the board. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; or mailed by first-class mail, so long as there is proof of mailing. A registered user of the board's electronic filing system may electronically file documents with the board pursuant to rule 701—115.4(421,441).

c. Proof of mailing. Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board 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).
(Date) (Signature)

115.3(3) *Board-generated documents.* The board will mail copies of all board-generated documents to any party not served by the board's electronic filing system.

115.3(4) *Conversion of filed paper documents.* The board will convert all filed paper documents to an electronic record in the electronic filing system.

115.3(5) *Form of paper documents.* Each document delivered to the board should be printed on one side and have no tabs, staples, or permanent clips. It may be organized with paper clips, clamps, or another type of temporary fastener or be contained in a file folder.

115.3(6) *Return of copies by mail.* If a party requests a paper document be returned by mail, the party must provide a postage-paid, self-addressed envelope large enough to accommodate the returned document.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.4(421,441) Electronic filing system.

115.4(1) *Electronic filing and applicability.*

a. Electronic filing. The board will maintain an electronic filing system, which is the preferred method for filing documents with the board.

b. Applicability. This rule applies to electronic filing and service of documents using the board's electronic filing system. Nonelectronic filing and service are governed by rule 701—115.3(421,441).

(1) The board may order the conversion of any appeal to an electronic file. Upon such an order, all future filings must be made using the board's electronic filing system in compliance with this rule, unless a filing is subject to the exception in paragraph 115.4(1) "c."

(2) In all other cases, a party or parties to a proceeding may voluntarily choose to use the electronic filing system in compliance with this rule.

c. Exceptions. Any item not capable of electronic filing shall be filed in a nonelectronic format pursuant to rule 701—115.3(421,441).

115.4(2) *Registration.*

a. Registration required. Every individual filing, viewing, or downloading appeal documents must register as a registered user of the electronic filing system.

b. How to register. An individual must complete the registration process online at efile-paab.iowa.gov, consent to the user agreement, and obtain a username and password for the electronic filing system.

c. Changing passwords. Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user should change the password immediately. The board may require password changes periodically.

d. Changes in a registered user's contact information. If a registered user's email address, mailing address, or telephone number changes, the registered user should promptly change the information in the electronic filing system. The registered user should promptly notify any nonregistered party of changes in contact information in every active proceeding in which the registered user is a party.

e. Duties of a registered user. Each registered user will ensure the user's email account information is current, the account is monitored regularly, and email notices sent to the account are timely opened.

f. Canceling registration. Withdrawal from participation in the electronic filing system cancels the registered user's profile but does not authorize nonelectronic filing of documents and is not a withdrawal from a proceeding.

g. Use of username and password. A registered user is responsible for all documents filed with the registered user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

h. Username and password security. If a username or password is lost, misappropriated, misused, or compromised, the registered user will notify the board promptly.

i. Denial of access. The board may refuse to allow an individual to electronically file or download information in the electronic filing system due to misuse, fraud or other good cause.

115.4(3) Signatures.

a. Registered user. A username and password accompanied by a digitized, electronic, or nonelectronic signature serve as the registered user's signature on all electronically filed documents.

b. Documents requiring oaths, affirmations or verifications. Any document filed requiring a signature under oath or affirmation or with verification may be signed electronically or nonelectronically but shall be filed electronically.

c. Format. Any filing requiring a signature must be signed, with either a nonelectronic signature, an electronic signature, or a digitized signature.

d. Multiple signatures. By filing a document containing multiple signatures, the registered user confirms the content of the document is acceptable to all persons signing the document and all such persons consent to having their signatures appear on the document.

115.4(4) Format and redaction of electronic documents. Except proposed orders, all electronically filed documents must be filed as a PDF. Before filing any document, the registered user shall ensure the document is certified as confidential or that the confidential information is omitted or redacted.

115.4(5) Exhibits and other attachments. Any attachments to a filing, such as an exhibit, shall be uploaded and electronically attached to the filing. Each exhibit should be filed as a separate PDF. Exhibits should be labeled as required by paragraph 115.7(3) "d."

115.4(6) Filing and service using electronic filing.

a. What constitutes filing. The electronic transmission of a document to the electronic filing system following the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes the filing of the document.

b. Electronic file stamp. Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

c. Email or fax. Emailing or faxing a document to the board will not generate a notice of electronic filing and does not constitute electronic filing of the document unless otherwise authorized by the board.

d. Public access terminal. A public access terminal is available at the reception desk on the first floor of the Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319.

e. Service of filings. When a document is electronically filed, the electronic filing system will produce and transmit a notice of electronic filing to all parties who are registered users. The notice of electronic filing shall constitute service of the filing on registered users. No other service is required on registered users unless ordered by the board. The filing party is responsible for ensuring service, pursuant to paragraph 115.3(2)“a,” on any party that is not a registered user. Notices of electronic filing will continue to be sent to registered users appearing or intervening in a proceeding until the users have filed a withdrawal of appearance.

f. Proof of service of nonelectronic filings. Parties filing a document nonelectronically pursuant to paragraph 115.3(2)“c” and rule 701—115.3(421,441) shall electronically file a notice of nonelectronic filing along with proof of service.

g. Electronic filing and service of board-generated documents. All board-generated documents issued in an appeal governed by this chapter will be electronically filed and served. The board will only mail paper copies of documents as provided in subrule 115.3(3).

115.4(7) Filing by the board on behalf of a party.

a. Board staff may file a motion on behalf of a party to an appeal pursuant to this subrule.

b. When a party contacts board staff via telephone or other means and indicates the party’s desire to file a motion specified in paragraph 115.4(7)“c,” board staff may file the motion in the electronic filing system on behalf of the party. The motion will be consistent with the instructions and information provided by the party and shall only be filed with the permission of the party. Board staff will not file any motions on behalf of a party if any opposing party requires nonelectronic service under subrule 115.3(2).

c. Only the following motions may be filed by board staff on behalf of a party:

- (1) Motion to participate in a hearing in person, by telephone, or by video;
- (2) Motion for hearing;
- (3) Motion for continuance;
- (4) Motion to withdraw appeal.

d. Upon filing of the motion, board staff will provide a courtesy copy of the filing to the party.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.5(421,441) Motions and settlements.

115.5(1) Authority of board to issue procedural orders. The board may issue preliminary orders regarding procedural matters.

115.5(2) Motions. No technical form for motions is required. All prehearing motions should be in writing, filed with the board and contain the reasons and grounds supporting the motion. The board will act upon such motions as justice may require. Motions based on matters that do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than ten days from the date the motion is filed unless the time period is extended or shortened by the board. The board may schedule oral argument on any motion.

a. Filing of motions. Motions pertaining to the hearing, except motions discussed in paragraph 115.5(2)“b,” must be filed and served at least ten days before the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board.

b. Motions for summary judgment and motions to dismiss for lack of jurisdiction.

(1) Motions for summary judgment and motions to dismiss for lack of jurisdiction should comply with the requirements of Iowa Rule of Civil Procedure 1.981. Notwithstanding the time for filing motions in Iowa Rule of Civil Procedure 1.981, motions should be filed within ten days of issuance of a notice of hearing or written consideration. Responses should follow the provisions of Iowa Rule of Civil Procedure 1.981. Motions will be disposed of according to the requirements of that rule unless such requirements are inconsistent with this chapter or any other provision of law governing in contested cases.

(2) Reserved.

c. Motions to withdraw. An appellant may withdraw the appeal. A withdrawal of an appeal must be in writing and signed by the appellant or the appellant’s designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal.

Within 20 days of the board's granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

d. Motions for refund. If the board reduces an assessment following a contested case hearing, the appellant shall be notified in the board's final agency action of the appellant's right to elect to be refunded for taxes already paid by filing a motion with the board. Such a motion shall be filed within ten days of the board's final agency action. If the appellant does not timely file a motion for refund, any change in taxes resulting from the assessment reduction shall be credited toward future tax payments.

115.5(3) Settlements. Parties to an appeal may propose to settle all or some of the issues in the appeal at any time before the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed with the board. The settlement filed with the board shall indicate whether the assessment modification will result in a tax refund or a credit toward future tax payments. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.6(421,441) Hearing scheduling and discovery plan.

115.6(1) When required. For appeals involving properties assessed at \$3 million or more, the parties shall file a hearing scheduling and discovery plan within 60 days of the notice provided in subrule 115.2(5). In any other appeal, the parties may jointly file a hearing scheduling and discovery plan or the board may, on its own motion or the motion of any party, require parties to file a hearing scheduling and discovery plan. The dates established in a hearing scheduling and discovery plan under this rule shall supersede any dates set forth in this chapter.

115.6(2) Prehearing conference. A party may request a prehearing conference to resolve any disputed issue pertaining to the plan.

115.6(3) Modification. The parties may jointly agree to modify the plan. If one party seeks to modify the plan, the party must show good cause for the modification.

115.6(4) Failure to comply. A party that does not comply with a plan must show good cause for not complying and that the other party is not substantially prejudiced by the noncompliance. Failing to comply with a plan may result in sanctions, including but not limited to the exclusion of evidence or dismissal of the appeal.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.7(421,441) Discovery and evidence.

115.7(1) Discovery procedure. The scope of discovery described in Iowa Rule of Civil Procedure 1.503 applies to board appeals. When considering relevancy, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 102, and other applicable law. The following discovery procedures in the Iowa Rules of Civil Procedure are available to the parties in an appeal: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in the Iowa Rules of Civil Procedure govern, unless lengthened or shortened by the board.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions apply to any depositions taken in an appeal. Any party taking a deposition in an appeal is responsible for any deposition costs. Deposition costs include but are not limited to reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Subject to the limitations in paragraph 115.7(1) "h," Iowa Rule of Civil Procedure 1.509 applies to any interrogatories propounded.

c. Subject to the limitations in paragraph 115.7(1) "h," Iowa Rule of Civil Procedure 1.512 applies to any requests for production of documents, electronically stored information, and things; and entry upon land for inspection and other purposes.

d. Iowa Rule of Civil Procedure 1.510 applies to any requests for admission. Iowa Rule of Civil Procedure 1.511, regarding the effect of an admission, applies.

e. The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to appeals before the board.

f. Iowa Rule of Civil Procedure 1.508 applies to discovery of any experts identified by a party.

g. Discovery shall be served on all parties but should not be filed with the board. Parties should file a notice with the board when a notice of deposition or a discovery request or response is served on another party. The notice filed with the board should include the date, the manner of service, and the names and addresses of the persons served. Other discovery materials should not be filed unless ordered by the board.

h. In addition to the limits on discovery requests in Iowa Rules of Civil Procedure 1.509 and 1.512, the following limits apply to appeals of property assessed for less than \$1 million:

(1) A party shall not serve on any other party more than 15 interrogatories, including all discrete subparts.

(2) A party shall not serve on any other party more than ten requests for production of documents, electronically stored information, and things.

A party to the appeal may file a motion with the board requesting leave to serve additional discovery requests. The motion must include the proposed interrogatories or requests for production of documents and the reasons establishing good cause for their use.

115.7(2) *Discovery motions.* Before filing any motion related to discovery, parties must make a good-faith effort to resolve discovery disputes without the involvement of the board. Any motion related to discovery should state the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties may respond within ten days of the filing of the motion unless the time is shortened by order of the board. The board may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

115.7(3) *Evidence.*

a. Admissibility. The board will rule on admissibility of evidence and may take official notice of facts in accordance with applicable legal requirements. Evidence obtained in discovery may be used in the appeal if that evidence would otherwise be admissible.

b. Stipulations. Stipulation of facts by the parties is encouraged. The board may make a decision based on stipulated facts.

c. Scope of admissible evidence. Admission of evidence is governed by Iowa Code section 17A.14. Upon an objection pursuant to paragraph 115.7(3)“*e*,” evidence may be excluded. Hearsay evidence is admissible.

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit before the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days before the hearing, unless the time period is extended or shortened by the board or the parties have filed a hearing scheduling and discovery plan under rule 701—115.6(421,441). Upon an objection pursuant to paragraph 115.7(3)“*e*,” late-filed exhibits may be excluded. Rebuttal evidence need not be exchanged or served on the opposing party before the hearing. All exhibits and briefs admitted into evidence will be appropriately marked and be made part of the record. The appellant should mark each exhibit with consecutive numbers. The appellee should mark each exhibit with consecutive letters.

The local board of review must file the following exhibits:

(1) The appealed property’s property record card after implementation of the final decision of the board of review, including the cost report showing the property listing, costs, and multipliers.

(2) The final decision of the local board of review.

(3) The appellant’s petition to the local board of review.

e. Objections. Any party may object to specific evidence or request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds for the objection. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The board may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. 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 board, 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.

g. Judicial notice of property record cards. Without additional notice, the board may take judicial notice of the property record card or cost report of the subject property if electronically available to the public through the assessor's website. At its discretion, the board may take judicial notice of property record cards or cost reports of comparable properties identified by the parties as provided under Iowa Code section 17A.14(4) if electronically available to the public through the assessor's website. Where such information is not publicly available or the public information lacks the formulas and methods used to determine the actual value, including all listing data, costs, and multipliers, the board may order a party to file the full property record card. If the board takes judicial notice or orders the filing of any property record card or cost report, such card or report shall become part of the appeal record.

115.7(4) Subpoenas.

a. Issuance.

(1) Pursuant to Iowa Code section 17A.13(1), a subpoena shall be issued to a party on request unless otherwise excluded pursuant to this subrule. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

(3) The board will refuse to issue a subpoena when there is reasonable ground to believe the subpoena is requested for the purpose of harassment; may seek irrelevant information as provided under Iowa Code section 441.21, 701—Chapter 102, or other applicable law; or is untimely. If the board refuses to issue a subpoena, the board shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing before the board regarding the refusal by filing with the board and serving on all parties a written request for hearing.

b. Motion to quash or modify. Upon motion, the board may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure or pursuant to this subrule.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.8(421,441) Hearings before the board.

115.8(1) Prehearing conference. An informal conference of parties may be ordered at the discretion of the board or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board.

115.8(2) Notice of hearing. The notice of hearing will contain information required by Iowa Code section 17A.12.

115.8(3) Waiver of 30-day notice. The parties may jointly waive the 30-day written notice requirement for a hearing in Iowa Code section 441.37A by submitting a mutually agreed upon hearing date approved by the board.

115.8(4) Continuance. A motion to continue the hearing or written consideration shall be in writing and, except in the case of unanticipated emergencies, filed not later than seven days before the hearing or written consideration. The motion should state the specific reason for the request and indicate whether the opposing party was contacted and agrees to a continuance. An emergency oral continuance may be obtained from the board. In determining whether to grant a continuance, the board 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, including the existence of a hearing scheduling and discovery plan.

115.8(5) *Hearing procedures.* Hearings and any preliminary proceedings may be conducted in person, by telephone, or by video, or the appeal may proceed as a written consideration.

a. Representation. Parties have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative. A partnership, corporation, or association may be represented by any member, officer, director, or duly authorized agent.

b. Participation in hearing. Parties have the right to introduce evidence relevant to the grounds on appeal. Subject to terms and conditions prescribed by the board, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument. The hearing will proceed as provided by Iowa Code sections 17A.12 and 17A.14.

115.8(6) *Dismissal.* If a party fails to appear, the appeal may be dismissed under Iowa Code section 441.37A(2)“a.”

115.8(7) *Hearing recordings.* Any party may request a copy of the hearing recording and pay a fee associated with preparing the copy. Any party may provide a certified court reporter at the party’s own expense.

115.8(8) *Ex parte communications with board members.* Ex parte communications are prohibited in appeals before the board following the provisions of Iowa Code section 17A.17.

115.8(9) *Disqualification of board member.* A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification under Iowa Code sections 17A.11(2) through 17A.11(4) and 17A.17(8).

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.9(421,441) Posthearing motions.

115.9(1) *Motion to reopen records.* On its own motion or on the motion of a party, the board may reopen the record for the reception of further evidence. A motion to reopen the record may be made any time before the issuance of a final decision. A motion to reopen the record filed after issuance of the final decision will not be considered. In ruling on a motion to reopen the record from a party filed before issuance of the final decision, the board may consider:

- a. Whether the information sought to be admitted is material;
- b. The timeliness of the motion;
- c. Whether the information sought to be admitted was available as of the date for hearing or written consideration and whether there is good cause for failing to present it;
- d. The prejudice on the other party; and
- e. Any and all other factors deemed relevant by the board.

115.9(2) *Rehearing and reconsideration.*

a. Application for rehearing or reconsideration. Any party may file an application for rehearing or reconsideration of the final decision under Iowa Code section 17A.16. The board’s consideration of the application shall be limited to the admitted exhibits and testimony offered at the hearing. No new evidence will be accepted or considered.

b. Contents of application. Applications for rehearing or reconsideration shall comply with Iowa Code section 17A.16. If a claim of error of fact is asserted, the application should clearly specify the factual error and cite to admitted exhibits or testimony in support of the claim. If a claim of error of law is asserted, the application should clearly specify the legal error and cite statutes, case law, administrative rules, or other sources of law in support of the claim.

c. Notice to other parties. The applicant shall serve a copy of the application on all parties to the contested case in accordance with rules 701—115.3(421,441) and 701—115.4(421,441). If the application does not contain a certificate of service, the board shall serve copies on all parties.

d. Resistance to applications for rehearing or reconsideration. A resistance to an application for rehearing or reconsideration must be filed within ten days of the date the application was filed with the board, unless otherwise ordered by the board.

e. Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.10(17A,441) Judicial review.

115.10(1) Appeals of board decisions.

a. A party may seek judicial review of a decision rendered by the board under Iowa Code sections 441.37B and 17A.19.

b. The party or parties seeking judicial review shall bear the costs of preparing the transcription of the board hearing, if a transcription is required by the reviewing court.

115.10(2) Stays of agency actions. The board may grant a stay during the pendency of judicial review under Iowa Code section 17A.19(5). In determining whether to grant a stay, the board shall consider the factors listed in Iowa Code section 17A.19(5) “c.” A stay may be vacated by the board upon application of any other party.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

701—115.11(22,421) Records access.

115.11(1) Location of record. A request for access to a record should be directed to the custodian.

115.11(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

115.11(3) Request for access. Requests for access to open records may be made in writing, in person, by email, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, email, and telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

115.11(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. 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. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). 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. The custodian of a record may deny access by members of the public to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), that it is a confidential record, or that its disclosure is prohibited by a court or board 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 applicable provisions of law. Open records are routinely disclosed without the consent of the parties.

115.11(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. Records shall be protected from damage and disorganization.

115.11(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, the custodian shall permit examination of the record and shall arrange to have copies promptly made elsewhere.

115.11(7) Fees.

a. When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board are available from the custodian. Copies of records may be made by or

for members of the public on board photocopy machines or from electronic storage systems at cost as determined and made available 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.

c. Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall provide the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. 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.

115.11(8) Retention of board records. The board will follow the records retention schedule for administrative case files established by the state records commission.

[ARC 7713C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapters 17A and 22 and 2017 Iowa Acts, House File 478.

[Filed ARC 2108C (Notice ARC 2047C, IAB 6/24/15), IAB 8/19/15, effective 9/23/15]

[Filed ARC 2545C (Notice ARC 2464C, IAB 3/16/16), IAB 5/25/16, effective 6/29/16]

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CHAPTER 202
FILING RETURNS AND PAYMENT OF TAX
[Prior to 7/13/22, see 701—Chapter 12]

701—202.1(423) Sales and use tax return filing.

202.1(1) *In general.* A retailer owing \$1,200 or more in sales or use tax per calendar year shall file a sales and use tax return once per month. This monthly return is due on or before the last day of the month following the end of the month in which the tax was collected. A retailer owing less than \$1,200 in sales or use tax per calendar year shall file a sales and use tax return at least once per annual year, due on or before January 31 for the prior calendar year. A retailer otherwise expected to file a return annually may file a return on a monthly basis if the retailer prefers to do so. Every return shall be signed and dated.

202.1(2) *New retailers.* A retailer who has never held an Iowa sales or use tax permit and has never collected or accrued sales or use tax in Iowa shall indicate at the time the retailer registers for its permit whether it expects to file a return monthly or annually.

202.1(3) *Changes to filing frequency.* A retailer registered to file an annual sales and use tax return should update its return filing frequency as needed. The department may adjust a retailer's filing frequency if the retailer has remitted \$1,200 or more in its first year of operation in Iowa and the department has notified the retailer that it meets or exceeds the filing threshold.

202.1(4) *Calculating the \$1,200 filing frequency threshold.* The threshold for determining whether a retailer should file a monthly or an annual sales and use tax return shall be calculated by adding sales and use taxes due in a calendar year. Other excise taxes should not be included in the calculation, even though they may be reported on the sales and use tax return.

202.1(5) *Electronic filing requirement and exception.* Retailers required to file a monthly sales and use tax return shall file the return through GovConnectIowa. A retailer who is unable to file a return electronically may request permission from the director to file a paper return. A retailer requesting such permission shall provide proof of its inability to file electronically.

202.1(6) *Simplified electronic return due date.*

a. A retailer registered to collect Iowa tax through the Streamlined Sales Tax Registration System as a Model 1 seller shall file a simplified electronic return on or before the twentieth day of each month following the end of the month in which the tax was collected.

b. Any other retailer using the simplified electronic return shall file the return on or before the last day of the month following the end of the month in which the tax was collected.

This rule is intended to implement Iowa Code section 423.31.

[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.2(423) Reporting sales or use taxes. A taxpayer with a reporting obligation for either sales tax or use tax but not both shall affirmatively indicate on the sales and use tax return that the taxpayer has no tax to report for the appropriate tax type. A taxpayer does this by making the appropriate indication on an electronic return or by entering a zero on the taxable amount line in the tax section of a paper return for which the taxpayer does not have tax to report. A taxpayer who fails to do so will be treated as not reporting for that tax type.

This rule is intended to implement Iowa Code section 423.31.

[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.3(423) Sales and use tax remittance. Sales or use tax owed by a retailer shall accompany the sales and use tax return for the period in which the tax became due. Retailers filing a monthly sales and use tax return electronically shall remit tax electronically. Retailers filing a paper return may remit tax by mail, payable to the Iowa Department of Revenue. Remittances transmitted electronically are considered to have been made on the date the remittance is completed in GovConnectIowa.

This rule is intended to implement Iowa Code section 423.31.

[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.4(423) Due dates, weekends, and holidays. Due dates that fall on a Saturday, Sunday, or holiday shall be treated in accordance with Iowa Code section 421.9A. Iowa Code section 421.9A contains a definition of “holiday.”

This rule is intended to implement Iowa Code section 421.9A.
[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.5(423) Consolidated returns. Two types of permit holders have the option of filing a consolidated return. The first is a permit holder with multiple locations from which taxable sales are made, and the second is certain affiliated corporations.

202.5(1) Permit holders with multiple locations. A permit holder procuring more than one permit may file a separate return for each permit, or if a request to consolidate pursuant to Iowa Code section 423.31(4) has been approved by the department, the permit holder may file one consolidated return reporting sales made at all locations for which a permit is held.

202.5(2) Affiliated corporations. Any group consisting of a parent corporation and its affiliates, which is entitled to file a consolidated return for federal income tax purposes and which makes retail sales of tangible personal property, specified digital products, or taxable services, may make an application to the director for permission to file a consolidated Iowa sales tax return. The application shall:

- a. Be in writing.
- b. Be signed by an officer of the parent company.
- c. Contain the business name, address, federal identification number, and Iowa sales and use tax permit number of every corporation seeking the right to file a consolidated return.
- d. State the initial tax period for which the right to file a consolidated return is sought.
- e. Be filed no later than 90 days prior to the beginning of the identified initial tax period.
- f. Contain any additional relevant information that the director may, in individual instances, require.

202.5(3) Requirements common to returns filed under this rule. The following provisions apply to permit holders filing consolidated returns pursuant to either subrule 202.5(1) or 202.5(2):

- a. *Proper form.* Taxpayers shall file consolidated returns through GovConnectIowa.
- b. *Working papers.* All working papers used in the preparation of the information required to complete the returns must be available for examination by the department.
- c. *Offsetting collections among affiliates.* Undercollections of sales tax at one or more locations or by one or more affiliates shall not be offset by overcollections at other locations or by other affiliates.

This rule is intended to implement Iowa Code section 423.31.
[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.6(423) Direct pay permits and negotiated rate agreements.

202.6(1) Direct pay permits in general. Qualified purchasers, users, and consumers of tangible personal property, specified digital products, or taxable services pursuant to Iowa Code chapter 423 may remit tax owed directly to the department instead of having the tax collected and remitted by the seller. A qualified purchaser, user, or consumer shall not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department or personnel authorized by the director.

a. *Qualifications for a direct pay permit.* To qualify for a direct pay permit, an applicant will meet all of the following criteria:

- (1) Be a purchaser, user, or consumer of tangible personal property, specified digital products, or taxable services.
- (2) Have an accrual of sales and use tax liability of more than \$8,000 in a month. A purchaser, user, or consumer may have more than one business location and can combine the sales and use tax liabilities on consumed goods of all locations to meet the requirement of \$8,000 in sales and use tax liability in a month to qualify if the records are located in a centralized location. If a purchaser, user, or consumer is combining more than one location, only one direct pay tax return for all of the combined locations needs to be filed with the department. However, local option sales tax should not be included in the tax base

for determining qualification for a direct pay permit. If a purchaser, user, or consumer has more than one location, but not all locations wish to remit under a direct pay permit, the purchaser, user, or consumer will need to indicate which locations will be utilizing the direct pay permit at the time of application.

(3) Remit tax and file returns pursuant to Iowa Code section 423.31. Paragraph 202.6(1)“d” contains further details.

b. Nonqualifying purchases or uses. The granting of a direct pay permit is not allowed for any of the imposed taxes listed in Iowa Code section 423.36(9)“b.”

c. Application and permit information. To obtain a direct pay permit, a purchaser, user, or consumer will fully and properly complete an application form prescribed by the director and provide certification that the purchaser, user, or consumer has paid sales and use tax to the department or vendors over the last two years prior to application, an average of \$8,000 in a month. Upon approval, the director or personnel authorized by the director will issue a direct pay permit to qualifying applicants. The direct pay permit will contain direct pay permit identifying information, including a direct pay permit identification number. The direct pay permit should be retained by the permit holder. When purchasing from a vendor, a permit holder should give the vendor a certificate of exemption containing the information as set forth in rule 701—288.3(423).

d. Remittance and reporting. Direct pay permit holders shall remit and report sales, use, and local option sales tax on a monthly basis. Remittance of tax due under a direct pay permit will begin with the first month after the direct pay permit is issued to the holder. The tax to be paid under a direct pay permit shall be remitted directly to the department by electronic funds transfer (EFT) only. A permit holder need not have remitted by EFT prior to obtaining a direct pay permit to qualify for such a permit. However, a permit holder must remit taxes due by EFT for transactions entered into on or after the date the permit is issued. All local option sales tax due must be reported and remitted at the same time as the sales and use taxes due under the direct pay permit for the corresponding tax period. However, local option sales tax should not be included in the tax base for determining qualification for a direct pay permit or frequency of remittance. Reports should be filed with the department on a monthly basis. The director may, when necessary and advisable in order to secure the collection of tax due, require an applicant for a direct pay permit or a permit holder to file with the director a qualified surety bond as set forth in Iowa Code section 423.35. A permit holder who fails to report or remit any tax when due is subject to the penalty and interest provisions set forth in Iowa Code section 421.27.

e. Permit revocation and nontransferability. A direct pay permit may be used indefinitely unless it is revoked by the department. A direct pay permit is not transferable and cannot be assigned to a third party. The department may revoke a direct pay permit at any time the permit holder fails to meet the requirements for a direct pay permit, misuses the direct pay permit, or fails to comply with the provisions in Iowa Code section 423.36(9). If a direct pay permit is revoked, it is the responsibility of the prior holder of the permit to inform all vendors of the revocation so the vendors may begin to collect tax at the time of purchase. A prior permit holder is responsible for any tax, penalty, and interest due for failure to notify a vendor of revocation of a direct pay permit.

f. Record-keeping requirements. The parties involved in transactions involving a direct pay permit shall have the following record-keeping duties:

(1) Permit holder. The holder of a direct pay permit will retain possession of the direct pay permit and keep a record of all transactions made pursuant to the direct pay permit in compliance with rule 701—11.4(423).

(2) Vendor. A vendor will retain a valid exemption certificate under rule 701—288.3(423) that is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule 701—11.4(423). A vendor’s liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule 701—288.3(423).

202.6(2) Negotiated rate agreements.

a. In general. Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a

direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in paragraph 202.6(1) "b," and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

b. Required information. All negotiated rate agreements shall contain the following information or an explanation for its omission:

- (1) The name of the taxpayer who has entered into the agreement with the department.
- (2) The name and title of each person signing the agreement and the name, telephone or fax number, and email or physical address of at least one person to be contacted if questions regarding the agreement arise.
- (3) The period during which the agreement is in effect, the renewal or extension rights (if any) of each party, and the effective date of the agreement.
- (4) The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items that will be excluded from the agreement, and any circumstances that will result in a changed rate or rates or changed composition of classes to which rates are applicable.
- (5) Actions or circumstances that render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.
- (6) Rights, if any, of the parties to resort to mediation or arbitration.
- (7) An explanation of the department's right to audit aspects of the agreement, including any right to audit remaining after the agreement's termination.
- (8) The conditions by which the agreement may be terminated and the effective date of the termination.
- (9) The methodology used to determine the negotiated rate and any schedules needed to verify percentages.
- (10) Any other matter deemed necessary to the parties' mutual understanding of the agreement.

This rule is intended to implement Iowa Code section 423.36.

[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.7(423) Regular permit holders responsible for collection of tax. A permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the permit holder shall be required to have a form, either in possession or in the vehicle, that authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 423.14 and 423.36.

[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.8(423) Sale of business.

202.8(1) Final return due. A retailer selling the business shall file a return within the succeeding month and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser, and the tax becomes delinquent one month after the sale.

202.8(2) Record retention. A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. 701—subrule 285.28(2) provides for possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code section 423.33.

[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.9(423) Bankruptcy, insolvency, or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 423.31.
[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.10(423) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return that includes the sales price from sales from all machines or devices operated by the retailer in Iowa during the tax period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the sales price.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.
[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.11(423) Claim for refund of tax.

202.11(1) Eligibility for refund; filing claims. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare and file the claim on Form IA 843, Refund Return, with the department, stating in detail the reasons and facts and, if necessary, provide supporting documents for which the claim for refund is based.

202.11(2) Denial of refund claim—appeal. If the claim for refund is denied, and the person wishes to appeal the denial, the department will consider an appeal to be timely if filed no later than 60 days following the date of denial. Rule 701—7.9(17A) contains more information on appeals.

202.11(3) Request for abeyance. When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 423.47. The claim must be filed requesting that it be held in abeyance pending the outcome of any action that will have a direct effect on the tax, penalty, or interest involved. Nonexclusive examples of such action are court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE 1: X, an Iowa sales tax permit holder, is audited by the department for the period from July 1, 2014, to June 30, 2017. A \$10,000 tax, penalty, and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 2023.

X, on October 1, 2023, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 2017. The claim will be totally denied as beyond the three-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 2017, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of its audit liability if the decision in Y's case was also applicable to X.

EXAMPLE 2: X is audited by the department for the period from July 1, 2015, to June 30, 2018, and assessed July 31, 2018. X pays the assessment on December 31, 2018. No protest was filed, and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 2020, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision that makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 2017, through June 30, 2018, will be allowed since this is the only portion within the three-year statute of limitations set forth in Iowa Code section 423.47. If the claim had been filed on or before December 31, 2019, then the entire audit period could have been considered for refund since the claim would have been filed within one year of payment.

202.11(4) Refund of use tax. A taxpayer will need to file an amended return in order to claim a refund of use tax. A taxpayer cannot use Form IA 843, Refund Return, to claim this refund.

This rule is intended to implement Iowa Code sections 423.45 and 423.47.
[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.12(423) Immediate successor liability for unpaid tax. To ensure all sales or use tax due is paid, Iowa Code section 423.33(2) applies to a retailer selling the retailer's business or stock of goods or ceasing the retailer's business and the immediate successor. For the purpose of this rule, "retailer" includes all persons liable for tax under Iowa Code sections 421.26 and 423.33.

202.12(1) Immediate successors having a duty to withhold.

a. An immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price to pay the delinquent tax, penalty, or interest, if necessary. "Immediate successor" includes but is not limited to the following examples:

(1) An entity resulting from the action of a sole proprietor who organizes a business in which the sole proprietor is the only or the controlling stakeholder.

(2) A sole proprietorship established from an entity of which the sole proprietor was the exclusive, majority, or controlling stakeholder.

b. Reserved.

202.12(2) More than one immediate successor. If a retailer sells a business or stock of goods to two or more persons, the following requirements apply:

a. Sale to two or more persons. If a retailer sells a substantial portion of the business or the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person or persons are immediate successors that are jointly and severally liable.

b. Purchase of differing places of business. If one retailer owns two or more places of business, each having a separate sales tax permit, each location having its own permit is a separate business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

202.12(3) Sale of a retailer's business. Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty for the sale of any type of tangible personal property or specified digital products constitutes the selling of the retailer's business, and the person to whom the business is sold is an immediate successor and liable for tax.

EXAMPLE: A is a furniture dealer. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property and specified digital products used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department \$7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

202.12(4) Good faith. An immediate successor to a licensee's, retailer's, or seller's business or stock of goods has purchased the licensee's, retailer's, or seller's business or stock of goods in good faith that no delinquent tax, interest, or penalty was due and unpaid if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists.

a. The department has provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid. Immediate successors shall not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor may request a certified statement from the department on forms provided by the department.

(1) Prior to issuing a certified statement, the department may contact both the immediate successor and the licensee, retailer, or seller regarding the request for a certified statement from the department.

(2) A certified statement provided by the department will be recognized by the department as valid as of the issuance of the statement.

(3) A certified statement provided by the department is the preferred evidence that a purchase of a business or stock of goods was made in good faith and that no delinquent tax, interest, or penalty was due and paid.

b. The immediate successor has taken in good faith a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid as of the date of purchase.

(1) A “certified statement” from a licensee, retailer, or seller is a statement the truth of which is attested to before a notary public. A certified statement from a licensee, retailer, or seller will not be recognized by the department as valid unless it includes all of the following:

1. The name of the business being purchased or a description of the stock of goods being purchased.

2. The names of the licensee, retailer, or seller and the prospective purchaser(s).

3. The tax identification numbers of both the licensee, retailer, or seller and prospective purchaser(s). Entities shall include a federal employer identification number (FEIN). Individuals shall include a social security number (SSN) or individual tax identification number (ITIN).

4. An attestation signed by the licensee, retailer, or seller attesting that no delinquent tax, interest, or penalty of the retailer is unpaid as of the date of the closing of the sale.

(2) A certified statement has been taken from a licensee, retailer, or seller “in good faith” if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer’s statement was false or no reason to question the truth of the retailer’s statement.

This rule is intended to implement Iowa Code sections 421.28 and 423.33.
[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.13(423) Officers and partners—personal liability for unpaid tax. If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person’s liability for failure to pay tax.

202.13(1) *Personal liability—how determined.* There are various criteria that can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

a. The duties of officers as outlined in the corporate bylaws.

b. The duties that various officers have assumed in practice.

c. Which officers are empowered to sign checks for the corporation.

d. Which officers hire and fire employees.

e. Which officers control the financial affairs of the corporation.

(1) An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation’s bills should or should not be paid and when bills that had been selected for payment will be paid.

(2) “Final control” means a significant control over which bills should or should not be paid, rather than exclusive control.

(3) The observations in paragraph 202.13(1) “*e*” are applicable to partnerships as well as corporations.

202.13(2) “*Accounts receivable*” described. Officers and partners are not responsible for sales tax due and owing on accounts receivable. An “account receivable” is a contractual obligation owing upon an open account. An “open account” is one that is neither finally settled nor finally closed but is still running and open to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an account receivable. The amount due has been finally settled

and is not open to future adjustment. The usual consumer installment contract is a “note receivable” rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

This rule is intended to implement Iowa Code section 421.26.
[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.14(423) Sales tax or use tax paid to another state.

202.14(1) *Equal or greater tax paid to another state.* When a person has already paid to any other state of the United States a state sales, use, or occupational tax on specifically identified tangible personal property or taxable services on its sale or use, prior to bringing the property into Iowa, and the tax is equal to or greater than the current rate of tax imposed by the Iowa use tax law, no additional use tax is due to the state of Iowa by such person.

202.14(2) *Less tax paid to another state.* If the amount of tax already paid by such person to any other state of the United States on specifically identified tangible personal property or taxable services prior to bringing the property into Iowa is less than the current rate of tax imposed by Iowa law, use tax shall be due to the state of Iowa on the difference in tax paid to the foreign state and the tax due under the Iowa law.

202.14(3) *Claiming exemption for tax paid.* When a person claims exemption from payment of use tax on the grounds that the tax has already been paid to any other state of the United States with respect to the sale or use of the property or service in question prior to bringing the property into Iowa, the burden of proof is upon that person to show the department, county treasurer, or motor vehicle division of the Iowa department of transportation, by document, that the tax has been paid.

202.14(4) *Credit not allowed against Iowa tax.* Credits shall not be allowed for sales, use, or occupational tax already paid in any state of the United States against the Iowa use tax relating to the acquisition cost of property being brought into this state when such tax already paid was paid on the sales price of lease or rental payments of tangible personal property used in another state.

This rule is intended to implement Iowa Code section 423.22.
[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.15(423) Registered retailers selling tangible personal property on a conditional sale contract basis. A retailer shall report and remit to the department the full amount of tax computed on the full sale price on the return for the tax period during which the sale was made.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.
[ARC 7714C, IAB 3/6/24, effective 4/10/24]

701—202.16(423) Registered vendors repossessing goods sold on a conditional sale contract basis. A registered retailer repossessing tangible personal property that has been sold on a conditional sale contract basis and remitting use tax to the department on the full purchase price may take a deduction on the retailer’s sales and use tax return for the tax period in which the goods were repossessed, in an amount equal to the credit allowed to the purchaser for the goods returned, if the retailer has returned use tax to the purchaser on the unpaid balance.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.
[ARC 7714C, IAB 3/6/24, effective 4/10/24]

[Filed Emergency ARC 6398C, IAB 7/13/22, effective 7/1/22]

[Editorial change: IAC Supplement 10/18/23]

[Filed ARC 7714C (Notice ARC 7354C, IAB 12/27/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 216
EVENTS, AMUSEMENTS, AND OTHER RELATED ACTIVITIES

701—216.1(423) Athletic events. The sales price from the sale of tickets or admissions to athletic events occurring in the state of Iowa and sponsored by educational institutions, without regard to the use of the proceeds from such sales, is subject to tax, except when the events are sponsored by elementary and secondary educational institutions.

This rule is intended to implement Iowa Code section 423.2(3).
[ARC 7715C, IAB 3/6/24, effective 4/10/24]

701—216.2(423) Dance schools and dance studios.

216.2(1) In general. The sales price from the services sold by dance schools or dance studios is subject to sales tax. This includes all activities, such as acrobatics, exercise, baton-twirling, tumbling, or modeling taught in dance schools or dance studios.

216.2(2) Definitions. For purposes of this rule:

“*Dance school*” means any institution established primarily for the purpose of teaching one or more types of dancing.

“*Dance studio*” means any room or groups of rooms in which any one or more types of dancing are taught.

This rule is intended to implement Iowa Code section 423.2(6) “m.”
[ARC 7715C, IAB 3/6/24, effective 4/10/24]

701—216.3(423) Golf and country clubs and all commercial recreation. All fees, dues or charges paid to golf and country clubs are subject to tax. “Country clubs” include all clubs or clubhouses providing golf and other athletic sports for members. Persons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the sales price of which is subject to tax. “Recreation” includes all activities pursued for pleasure, including sports, games and activities that promote physical fitness, but does not include admissions otherwise taxed under Iowa Code section 423.2.

216.3(1) Dance schools are the only schools the services of which are taxable under Iowa Code section 423.2(6). Rule 701—216.2(423) contains information on dance schools and dance studios. The sales price from any school providing training services in any activity pursued for pleasure or recreation shall not be subject to tax, unless the school is a dance school.

216.3(2) If a person provides both facilities for recreation and instruction in recreational activities, charges for instruction in the recreational activities shall not be subject to tax if all of the following circumstances exist:

a. The instruction charges are contracted for separately, separately billed, and reasonable in amount when compared to the taxable charges of providing facilities for recreation.

EXAMPLE: An ice skating rink offers three membership plans. The first membership plan provides only instruction in the activity of ice skating. The second plan allows for the use of the rink’s facilities, but provides for no instruction in ice skating. The third plan allows the customer to participate in a certain number of ice skating classes and also allows use of the rink’s facilities without instruction. Customer charges for the first plan would not be subject to tax. Customer charges for the second plan would be subject to tax. Charges for the third plan would be subject to tax if billed in one lump sum. If, under the third plan, charges to the customer for instruction and use are separately stated, and the charges for instruction are not unreasonable, the charges for instruction shall be exempt from tax. If it is necessary to pay for instruction to secure use of the facilities for recreation, charges for the instruction are a part of the gross receipts from commercial recreation and shall be subject to tax.

b. The persons receiving the instruction must be under the guidance and direction of a person training them in how to perform the recreational activity. If the persons receiving what purports to be “instruction” are allowed any substantial amount of time to pursue recreational activities, no instruction is taking place. The instruction should be received in what would ordinarily be thought of as a “class” with a fixed time and place for meeting. The instruction need not be received in what would ordinarily be

thought of as a “classroom,” but the instructor and the persons receiving instruction should be segregated from persons engaging in recreational activity insofar as this is possible. Instruction may still occur if complete or partial segregation is impossible.

EXAMPLE 1: A golf pro offers instruction to students on a golf course. The students cannot circulate around the golf course in a group with the golf pro because this would slow the play of golfers following such a group and lead to complaints. The students circulate on the course individually, and the golf pro observes the play of each student and comments upon it. Even though no segregation of the individual students into any sort of a class is possible, the students are receiving instruction from the golf pro and, therefore, no taxable event occurs.

EXAMPLE 2: A retailer maintains a golf driving range. There are separate tee-off positions for each customer to practice driving golf balls. There is also an instructor in driving present. The instructor cannot reserve individual tee-off positions for instruction of students because the positions are filled on a first-come, first-served basis. When students come for instruction, the instructor must make use of whatever tee-off positions are available. Even though segregation of students from other customers is impossible, instruction exists and, therefore, no taxable event occurs.

c. The “instruction” must impart to the learner a level of knowledge or skill in the recreational activity that would not be known to the ordinary person engaging in the recreational activity without instruction. Also, the person providing the instruction must have received some special training in the recreational activity taught if charges for that person’s instruction are to be exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6) “v.”
[ARC 7715C, IAB 3/6/24, effective 4/10/24]

701—216.4(423) Campgrounds.

216.4(1) *In general.* Persons engaged in the business of renting campground sites are selling a service subject to sales tax, regardless of the duration of the rental. This includes the sales price for the operation of a campground and the use of a campground site.

216.4(2) *Definition.* For purposes of this rule:

“*Campground*” is any location at which sites are provided for persons to place their own temporary shelter, such as a tent, travel trailer, or motorhome. “*Campground*” does not include any hunting, fishing, or other type of camp where accommodations are provided, though such camps are likely subject to sales tax as commercial recreation under rule 701—216.3(423).

216.4(3) *Related charges.* The sale price of charges, whether mandatory or optional, imposed on persons using a campground site that are subject to sales tax include but are not limited to entry fees, utility (electric, water, sewer) fees, fees for the use of swimming pools or showers, and fees for extra persons or vehicles.

216.4(4) *Public parks.*

a. The sales price for the use of a state park as a campground is subject to sales tax; however, the sales price for the use of a county or municipal park as a campground is not subject to sales tax.

b. The sales price of vehicle entry fees into any state, county, or municipal park, commonly called “park user fees,” is not subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “j.”
[ARC 7715C, IAB 3/6/24, effective 4/10/24]

701—216.5(423) Rental of personal property in connection with the operation of amusements. The sales price from rental of tangible personal property in connection with the operation of amusements is taxable. Such rentals include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately.

This rule is intended to implement Iowa Code section 423.2(1).
[ARC 7715C, IAB 3/6/24, effective 4/10/24]

701—216.6(423) Exempt sales by excursion boat licensees.

216.6(1) The sales price of the following sales by licensees authorized to operate excursion gambling boats is exempt from Iowa sales and use tax:

- a. Charges for admission to excursion gambling boats, and
- b. The sales price from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

216.6(2) The sales price from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and the sales price from nongambling video games and other types of games that do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10.
[ARC 7715C, IAB 3/6/24, effective 4/10/24]

701—216.7(423) Tangible personal property, specified digital products, or services given away as prizes.

216.7(1) *In general.* The sales price from the sale of tangible personal property, specified digital products, or services that will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B is exempt from tax. The rules issued by the department of inspections, appeals, and licensing in 481—Chapters 100 through 106 further describe the games of skill, games of chance, raffles, and bingo games that are lawful and may be lawfully awarded.

216.7(2) *Gift certificates.* A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize and then redeems the gift certificate for merchandise, tax is payable at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code section 423.3(63).
[ARC 7715C, IAB 3/6/24, effective 4/10/24]

[Filed ARC 6508C (Notice ARC 6400C, IAB 7/13/22), IAB 9/7/22, effective 10/12/22]

[Filed ARC 6704C (Notice ARC 6577C, IAB 10/5/22), IAB 11/30/22, effective 1/4/23]

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[Filed ARC 7715C (Notice ARC 7377C, IAB 12/27/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 218
SALES AND SERVICES RELATED TO VEHICLES

701—218.1(423) Armored car. Persons engaged in the business of either providing armored car service to others or converting a vehicle into an armored car are selling a service subject to sales tax. For purposes of this rule, “armored car” means a wheeled vehicle affording defensive protection by use of a metal covering or other elements of ordinance.

This rule is intended to implement Iowa Code section 423.2(6) “b.”
[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.2(423) Vehicle repair.

218.2(1) In general. Persons engaged in the business of repairing vehicles are selling a service subject to sales tax. Rule 701—225.4(423) contains more information on purchases made by auto body shops.

218.2(2) Definitions. For purposes of this rule:

“Repair” includes any type of restoration, renovation or replacement of any motor, engine, working parts, accessories, body, or interior of a vehicle. “Repair” does not include the installation of new parts or accessories, which are not replacements, added to a vehicle.

“Vehicle” means the same as defined in Iowa Code section 321.1(90).

218.2(3) Disposal fees. Fees charged with the disposal of any item in connection with the performance of this service are subject to sales tax if the disposal fee of the item is not separately contracted for or itemized in the billing of the repair service. If the disposal fee is itemized or separately contracted for, the disposal fee is not subject to sales tax. Items that may be subject to disposal fee include but are not limited to air filters, batteries, oil, or tires.

This rule is intended to implement Iowa Code section 423.2(6) “c.”
[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.3(423) Motorcycle, scooter, and bicycle repair.

218.3(1) In general. Persons engaged in the business of repairing motorcycles, scooters, and bicycles are selling a service subject to sales tax.

218.3(2) Definitions. For purposes of this rule:

“Bicycle” includes human-powered bicycles and electric bicycles.

“Motorcycle” includes autocycles.

“Repair” means the same as defined in rule 701—211.1(423).

This rule is intended to implement Iowa Code section 423.2(6) “ag.”
[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.4(423) Battery, tire, and allied.

218.4(1) Batteries in general. Persons engaged in the business of installing, repairing, maintaining, restoring, or recharging batteries and any services related to or connected therewith are selling a service subject to sales tax.

218.4(2) Tires in general. Persons engaged in the business of installing, repairing, or maintaining tires and any services related to or connected therewith are selling a service subject to sales tax.

218.4(3) Disposal fees. Disposal fees charged in connection with the performance of the services identified in this rule are subject to sales tax if the disposal fee is not itemized or separately contracted for in the billing for the charge of the service. If the disposal fee charged in connection with the performance of the services identified in this rule are itemized or separately contracted for, then the disposal fee is not subject to sales tax. Items that may be subject to disposal fee include but are not limited to air filters, oil, tires, and batteries.

This rule is intended to implement Iowa Code sections 423.2(6) “d” and 423.2(7) “a”(1).
[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.5(423) Boat repair.

218.5(1) *In general.* Persons engaged in the business of repairing watercraft are selling a service subject to sales tax.

218.5(2) *Definitions.* For purposes of this rule:

“*Repair*” means the same as defined in rule 701—211.1(423).

“*Watercraft*” means the same as defined in Iowa Code section 462A.2.

This rule is intended to implement Iowa Code section 423.2(6) “*h.*”

[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.6(423) Vehicle wash and wax.

218.6(1) *In general.* Persons engaged in the business of vehicle washing and waxing are selling a service subject to sales tax, whether performed by hand, machine, or coin-operated device. Rule 701—225.7(423) contains more information on purchases of inputs in vehicle wash and wax services.

218.6(2) *Definition.* For purposes of this rule:

“*Vehicle*” means the same as defined in Iowa Code section 321.1(90).

This rule is intended to implement Iowa Code section 423.2(6) “*i.*”

[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.7(423) Wrecker and towing.

218.7(1) *In general.* Persons engaged in the business of towing any vehicle are selling a service subject to sales tax. Included in this are service charges for a person to travel to any place to lift, extricate, tow, or salvage a vehicle.

218.7(2) *Definitions.* For purposes of this rule:

“*Towing*” includes any means of pushing, pulling, carrying, or freeing any vehicle from mud, snow, or any other impediment, including any incidental hoisting. “*Towing*” does not include transporting operable vehicles from one location to another when no operative aspect of the vehicle is integral to the transporting.

“*Vehicle*” means the same as defined in Iowa Code section 321.1(90).

This rule is intended to implement Iowa Code sections 423.1(7) and 423.2(6) “*bn.*”

[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.8(423) Flying service.

218.8(1) *In general.* Persons engaged in the business of teaching a course of instruction in the art of operation and flying of an airplane, and instructions in repairing, renovating, reconditioning an airplane, or any other related service are selling a service subject to sales tax.

218.8(2) *Not included.* Flying services do not include those relating to agricultural aerial application, those relating to aerial commercial and chartered transportation services, and those services exempted by rule 701—211.2(423).

218.8(3) *Flight instruction charges.* Charges relating to flight instruction can be taxable or nontaxable. Taxable charges include but are not limited to the sales price for the following:

- a. Instructors’ services, ground instruction, and ground school.
- b. Students learning to fly with an instructor and dual flying.
- c. Rental of a plane. Rule 701—218.9(423) contains more information.

This rule is intended to implement Iowa Code section 423.2(6) “*s.*”

[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.9(423) Aircraft rental.

218.9(1) *In general.* Persons engaged in the business of renting aircraft for 60 days or less are selling a service subject to sales tax.

218.9(2) *Definition.* For purposes of this rule:

“*Aircraft*” means the same as defined in Iowa Code section 328.1. “*Aircraft*” also includes any drone aircraft or any aircraft transporting only the pilot.

This rule is intended to implement Iowa Code section 423.2(6) “*bf.*”

[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.10(423) Snowmobiles, motorboats, and certain other vehicles. The sales price of snowmobiles, all-terrain vehicles, dirt bikes, race karts or go-carts, and motorboats is taxable when purchased and not classified as vehicles subject to registration.

This rule is intended to implement Iowa Code chapter 423.
[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.11(423) Motor fuel, special fuel, electric fuel, aviation fuels and gasoline.

218.11(1) *In general.* The sales price from the sale of motor fuel, including ethanol, special fuel, and electric fuel is exempt from sales tax if (1) the fuel is consumed for highway use, in watercraft, or in aircraft, (2) the Iowa fuel tax has been imposed and paid, and (3) no refund or credit of fuel tax has been made or will be allowed. The sales price from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa is exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat.

218.11(2) *Refunds or credits of motor fuel and special fuel.* Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax-paid and used for purposes other than to propel a motor vehicle or used in watercraft.

218.11(3) *Refunds of tax on fuel purchased in Iowa and consumed outside of Iowa.* Even though fuel is purchased in Iowa, fuel tax is paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of the fuel tax does not subject the purchase of the fuel to sales tax.

218.11(4) *Tax base.* The basis for computing the Iowa sales tax will be the retail sales price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the sales price in determining the proper sales tax due. Rule 701—288.12(423) contains more information.

This rule is intended to implement Iowa Code section 423.3(56).
[ARC 7716C, IAB 3/6/24, effective 4/10/24]

701—218.12(423) Ships, barges, and other waterborne vessels. Tax will not be imposed upon the use, within Iowa, of any ship, barge, or other waterborne vessel if that use is primarily for the transportation of property or cargo for hire on the rivers bordering this state. This exemption is also applicable to tangible personal property used as material in the construction of or as a part for the repair of any such ship, barge, or waterborne vessel. The use must be on a river or rivers bordering Iowa, not on any river or rivers bounded on both banks by Iowa territory.

This rule is intended to implement Iowa Code section 423.4(10).
[ARC 7716C, IAB 3/6/24, effective 4/10/24]

[Filed ARC 6704C (Notice ARC 6577C, IAB 10/5/22), IAB 11/30/22, effective 1/4/23]

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CHAPTER 279

Reserved

CHAPTER 280

RECEIPTS SUBJECT TO USE TAX

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

[Prior to 11/2/22, see Revenue Department[701] Ch 31]

Rescinded **ARC 7717C**, IAB 3/6/24, effective 4/10/24

CHAPTER 281

RECEIPTS EXEMPT FROM USE TAX

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

[Prior to 11/2/22, see Revenue Department[701] Ch 32]

Rescinded **ARC 7717C**, IAB 3/6/24, effective 4/10/24

CHAPTER 282
RECEIPTS SUBJECT TO USE TAX DEPENDING ON METHOD OF TRANSACTION

[Prior to 12/17/86, Revenue Department[730]]
[Prior to 11/2/22, see Revenue Department[701] Ch 33]

701—282.1(423) Transaction consummated outside this state. Iowa use tax applies to purchases of tangible personal property, specified digital products, and services as described in Iowa Code section 423.5 on which sales tax was not collected. This would most commonly occur if the good or service was purchased from a retailer that does not have nexus with Iowa.

This rule is intended to implement Iowa Code section 423.5(1).
[ARC 7717C, IAB 3/6/24, effective 4/10/24]

701—282.2(423) Sales by federal government or agencies to consumers. A consumer purchasing tangible personal property, specified digital products, or a taxable enumerated service for use in Iowa from the federal government or any of its agencies is liable for the payment of Iowa use tax and shall report and remit the tax due on a sales and use tax return furnished by the department.

This rule is intended to implement Iowa Code section 423.5(1)“c.”
[ARC 7717C, IAB 3/6/24, effective 4/10/24]

701—282.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current. Tangible personal property purchased outside the state and consumed in creating power, heat or steam for processing tangible personal property or for generating electric current intended to be sold ultimately at retail is exempt from sales and use tax. If the property purchased to be consumed as fuel in creating power, heat or steam for processing is also used in the heating of the factory or office, ventilation of the building, lighting of the premises or for any use other than that of direct processing, that portion of the property so used is subject to use tax.

When buying tangible personal property, part of which is exempt as fuel under the provisions of the law, from an out-of-state seller registered to collect tax for the state, the purchaser shall furnish to such registered seller a written certificate certifying the cost of the property that is to be used for processing and is, therefore, exempt. The certificate shall also show the cost of the property that is not to be used in processing and is, therefore, taxable in order that the registered seller may properly bill the amount of use tax due.

This rule is intended to implement Iowa Code section 423.6(3)“b.”
[ARC 7717C, IAB 3/6/24, effective 4/10/24]

701—282.4(423) Taxation of Native Americans.

282.4(1) Definitions.

“*Native Americans*” means all persons who are descendants of and who are members of any recognized tribe.

“*Settlement*” means all lands recognized as a tribal government settlement or reservation within the boundaries of the state of Iowa.

282.4(2) Use tax. Out-of-state purchases made by Native Americans that are purchased for use on a recognized settlement where delivery occurs on a settlement to Native Americans who are members of the tribe located on that settlement are exempt from tax. Out-of-state purchases made by Native Americans where delivery occurs off a recognized settlement are subject to tax even though purchased for use on a recognized settlement.

More information on purchases that may be subject to sales tax is found in rule 701—285.8(423).

This rule is intended to implement Iowa Code section 423.6(6).
[ARC 7717C, IAB 3/6/24, effective 4/10/24]

701—282.5(423) Property used to manufacture certain vehicles to be leased. Tangible personal property that becomes an integral part of a vehicle as described in Iowa Code section 423.6(8) is exempt from use tax, subject to the limitations provided in Iowa Code section 423.6(8). However, this rule does

not exempt the sale of the tangible personal property used from the imposition of sales tax under Iowa Code section 423.2 if that property is otherwise subject to sales tax.

This rule is intended to implement Iowa Code section 423.6(8).
[ARC 7717C, IAB 3/6/24, effective 4/10/24]

701—282.6(423) Out-of-state rental of vehicles subject to registration subsequently used in Iowa. The rental of vehicles that do not meet the definition of transportation equipment as defined in Iowa Code section 423.15(3) will be sourced for tax purposes as described in Iowa Code section 423.17.

This rule is intended to implement Iowa Code sections 423.15(3) and 423.17.
[ARC 7717C, IAB 3/6/24, effective 4/10/24]

701—282.7(423) Sales of mobile homes, manufactured housing, and related property and services.

282.7(1) *Sales of mobile homes, manufactured housing, and related property and services for one package price.* This rule is applicable only to mobile homes and manufactured housing sold as tangible personal property rather than in the form of real property. If, at the time of the sale, a mobile home or manufactured housing is real property, this rule is not applicable to it. If a mobile home dealer buys a mobile home, incorporates that mobile home into real estate in the manner required by and described in Iowa Code section 435.26, and then sells the mobile home to a consumer, the sale of that mobile home, the sale of any services used to transform the mobile home from tangible personal property to real property, and the sale of any tangible personal property with the mobile home (such as furniture) are governed by rule 701—Chapter 219, which deals with building contracts and building contractors. Sales of manufactured housing in the form of real estate are governed by rule 701—282.8(423).

When a customer purchases a mobile home or manufactured housing from a dealer, the customer often wants the dealer to prepare the mobile home or manufactured housing so that it is ready for the customer to move into it. To render a mobile home or manufactured housing “ready to move into,” a dealer may sell, with the home or housing, certain tangible personal property and will also perform or arrange for other parties to perform various services.

With respect to any one particular mobile home or manufactured house that a dealer may sell, a dealer may provide any combination of the following services or provide the following services and sell the below-listed property to any person purchasing the home or house:

- a. Connect the electricity.
- b. Connect the water.
- c. Connect sewer system lines.
- d. Sell and install skirting. Skirting is used to fill the space between the bottom of the mobile home or manufactured house and the ground. It gives the home or house an appearance more like a conventional home because it covers up this space.
- e. Build and install steps for a door.
- f. Build a deck.
- g. Do minor repairs.
- h. Install and sell a foundation upon which to place the mobile home or manufactured housing.
- i. Sell furniture or appliances (e.g., air conditioners, refrigerators, and stoves) for use in the mobile home or manufactured housing. Install the appliance (e.g., an air conditioner) if necessary.

A dealer selling a mobile home or manufactured housing on a “ready-to-move-into” basis usually sells that home or housing and the services and additional property necessary to render it livable for one “package price.” The dealer and customer do not bargain separately for the sale of the various articles of tangible personal property (e.g., the mobile home or manufactured house and appliances) or the services (e.g., electrical installation) that are part of this package price; nor is the dealer’s package price broken down to indicate any of the expenses that are components of the package price either in the dealer’s sales contract or on any sales invoice.

The package price of any one particular mobile home or manufactured house will vary depending upon how many services the dealer will provide or how much tangible personal property the dealer will sell in addition to the home or house. In many cases, a dealer will contract with a third party to perform the services promised in the dealer’s contract to a customer. For example, the dealer will contract with

a third party to hook up the home or house purchaser's electricity, install window air conditioning, or build a deck or perform minor repairs on the mobile home or manufactured house.

In the situation described above, the "purchase price" of a mobile home or manufactured house is the entire package price charged for the home or house, additional personal property for use in and around the home or house, and services performed to render the home or house livable. The entire amount of the package price, reduced by 80 percent, as explained in rule 701—219.7(423), is used to calculate the amount of use tax due resulting from the sale of the mobile home or manufactured house. No part of the package price is subject to Iowa sales tax; rather, it is subject to Iowa use tax.

282.7(2) *Sales of property and rendition of service under separate contract.* If the personal property and services listed in subrule 282.7(1) are purchased under separate contract and not as part of one package price with a mobile home or manufactured house, either from a mobile home dealer or from another party, the price paid for those items of property or services will not be a part of the purchase price of the home or house. Because the price of the property or services is not part of the "purchase price" of a home or house, that price will not be reduced by 80 percent as required under rule 701—219.7(423) in computing the use tax due upon the sale of a mobile home. Also, if sold in Iowa, the property would be subject to Iowa sales tax. The same is true of services rendered in Iowa.

If separately contracted for, the sales price of the following services sold is subject to Iowa sales tax under Iowa Code section 423.2(6):

- a. Electrical hookup and air conditioning installation (electrical installation).
- b. Water and sewer system hookup (plumbing).
- c. Skirting installation and building and installation of steps and decks (carpentry).
- d. Nearly all "minor repairs."

The sale, under separate contract, of skirting, steps, decks, furniture, appliances, and other tangible personal property to customers purchasing mobile homes or manufactured housing are sales of tangible personal property; the sales price is subject to Iowa sales rather than use tax.

The installation of a concrete slab on which to place the mobile home or manufactured housing is not a service taxable to the home or housing owner since this installation involves "new construction" and the service performed upon this new construction is thus exempt from tax. The person installing the concrete slab is treated as a construction contractor and pays sales tax upon any tangible personal property purchased and used in the construction of the slab. More information is contained in rule 701—Chapter 219.

282.7(3) *Dealer purchases of tangible personal property and services for resale.* Regardless of whether the tangible personal property and services connected with the purchase of a mobile home or manufactured housing have been purchased as part of a package price or whether their purchase has been separately contracted for, a dealer's or other retailer's purchase of the tangible personal property or service for subsequent resale to a mobile home or manufactured housing purchaser is a purchase "for resale" and thus exempt from Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.6(10).

[ARC 7717C, IAB 3/6/24, effective 4/10/24]

701—282.8(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate. Tax is imposed on the use of "manufactured housing" in Iowa.

282.8(1) *Definition.*

"Manufactured housing" means the same as defined in Iowa Code section 321.1.

282.8(2) *Tax treatment of manufactured housing that is similar to the tax treatment of mobile homes.*

a. Manufactured housing is subject to Iowa use tax to the extent provided in Iowa Code section 423.6(10) and shall be paid as provided in Iowa Code section 423.26A.

b. The use of manufactured housing previously subject to tax and upon which the tax has been paid is exempt from further tax.

c. The taxation of manufactured housing that is sold in the form of tangible personal property is similar to the taxation of mobile homes that are sold in the form of tangible personal property. More information is contained in rule 701—282.7(423).

282.8(3) Taxable use of manufactured housing in the form of real estate. Unlike mobile homes, the use of which can be taxed only when the homes are in the form of tangible personal property, under certain conditions, the use of manufactured housing in the form of real estate can be subject to tax. If a developer has placed a manufactured home on a foundation in a lot in Iowa and hooked up the necessary utilities and completed the necessary landscaping to convert the home from tangible personal property to realty, the sale of the manufactured home to a user is a taxable use of the home on the user's part.

EXAMPLE: Company A buys land with enough space for 100 lots for manufactured housing and for the streets necessary to provide access to the lots. Company A then buys 100 manufactured houses. It lawfully buys these houses exempt from use tax based on the assertion that they have been purchased for subsequent resale. Company A then develops the land, installing water, sewer and electric lines, placing the manufactured homes on foundations, and otherwise taking steps to convert the homes from tangible personal property to real estate.

Company A then sells the homes on the lots to various customers. Each purchase of a home by a customer is a taxable use of the home on that customer's part, and the customer is obligated to pay the appropriate county treasurer the amount of Iowa use tax due.

a. **Installed purchase price.** When tax is due on the use of manufactured housing in the form of real estate, the basis for computing the tax is the "installed purchase price" of the manufactured housing. Installed purchase price means the same as defined in Iowa Code section 423.1(23). Use tax is due on 20 percent of the amount of the installed purchase price.

(1) **Included in the installed purchase price.** Included within the meaning of "installed purchase price" are amounts charged to a buyer of a manufactured home to build and install a foundation on which to place a home; amounts charged to hook up electric, water, gas, sewer system, and other lines for necessary utilities; amounts charged to sell and install "skirting" as described in subrule 282.7(1); amounts charged to build and install any steps for a door; and amounts separately charged for any appliances or other items that become a part of the housing after installation, e.g., dishwashers and whirlpool tubs.

(2) **Exclusions from installed purchase price.** Excluded from the meaning of "installed purchase price" is any amount charged for the purchase of land on which to place a manufactured house; any amount charged for landscaping in connection with the installation of a manufactured house; any amount charged to build and install any deck or similar appurtenance to a manufactured home; and any amounts charged for the sale of furniture or appliances that remain tangible personal property after installation, e.g., furniture, room air conditioners, and refrigerators. This list of inclusions and exclusions is not exclusive. Furthermore, the purchase of furniture or appliances that remain tangible personal property is subject to Iowa sales or use tax.

b. The exemption in favor of taxable services performed on or in connection with new construction as described in Iowa Code section 423.3(37) is not applicable when calculating the amount of any installed purchase price.

This rule is intended to implement Iowa Code section 423.6(10).

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◊ Two or more ARCs