

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

Former Iowa Family Farm Development Authority[523]. Renamed Agricultural Development Authority[25] under the “umbrella” of Agriculture and Land Stewardship Department [21] by 1986 Iowa Acts, chapter 1245, section 629.

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CHAPTER 1
GENERAL

[Prior to 4/22/87, Iowa Family Farm Development Authority [523] Ch 1]

25—1.1(175) Description of agricultural development authority organization. The agricultural development authority consists of nine members. The treasurer of the state or the treasurer's designee and the state secretary of agriculture or the secretary's designee are ex officio nonvoting members. Members are appointed for staggered six-year terms. A chairperson, vice-chairperson and treasurer are elected by the membership. Authority staff consists of an executive director and additional staff as approved by the agricultural development authority.

This rule is intended to implement Iowa Code section 17A.3 and Iowa Code chapter 175.

25—1.2(175) General course and method of operations. The authority usually meets on a monthly basis at a time and place designated by resolution of the authority. If the meeting date coincides with a legal holiday, it shall be held on a date mutually agreed upon by the members. The purpose of the meetings shall be to review progress in implementation and administration of authority programs, to consider and act upon proposals for authority assistance, to establish policy as needed, and take other actions as necessary and appropriate.

This rule is intended to implement Iowa Code section 17A.3(1) "a."

25—1.3(175) Public participation in open meetings. The public shall have an opportunity to present their views at board meetings.

1.3(1) Members of the public who wish to present their views at a board meeting shall contact the executive director in writing. Requests shall outline the subject to be addressed at the meeting.

1.3(2) A presentation shall be placed on the agenda of a board meeting if the request is received by the executive director at least one week prior to that meeting. Requests received by the executive director less than one week prior to a board meeting shall be deferred to the following meeting.

1.3(3) At the board meeting, ten minutes shall generally be scheduled for each presentation. At the discretion of the board, more time may be allowed.

1.3(4) The executive director, or a designee, shall notify the requesting party of the exact time and place for the presentation before the board. This notification shall be by telephone call, and followed up by a confirming letter.

1.3(5) On the date of the board presentation, each person scheduled to make a presentation, or each member of a delegation, shall sign a registration sheet located at the reception desk.

1.3(6) In addition to the above, a 30-minute public forum shall be scheduled on the agenda of each regularly scheduled meeting to allow the public an opportunity to address the board on issues related to the board's responsibility. Time for individual presentations during the public forum may be allocated by the executive director to give all those wishing to speak the opportunity to do so.

This rule is intended to implement Iowa Code sections 17A.3, 21.3, 21.5, 21.7, and 21.8 and Iowa Code chapter 175.

25—1.4(175) Location where public may submit requests for assistance or obtain information. Requests for assistance or information should be directed to the Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322, telephone (515)281-6444. Requests may be made personally, by telephone, mail or any other medium available, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Special arrangements for accessibility to the authority at other times will be provided as needed.

This rule is intended to implement Iowa Code section 17A.3(1) "a."

25—1.5(175) Waiver. The executive director of the authority may in the director's discretion retroactively or prospectively waive or vary particular provisions of these rules as necessary to conform to changes in federal or state law or regulations; to further the legislative purposes of programs of the authority; to bestow additional benefits or privileges on persons eligible to participate in the authority's

programs; or to avoid inequitable, harsh or unforeseen results from the application of these rules; provided that the waiver shall be for good cause to avoid irreparable harm or injury to citizens of this state, shall not be unduly prejudicial to any person and shall not be in conflict with the Act.

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CHAPTER 2
BEGINNING FARMER LOAN PROGRAM
[Prior to 4/22/87, Iowa Family Farm Development Authority [523] Ch 2]

Subchapter A—General Provisions
PART I

25—2.1(175) Operational definitions.

“*Agricultural improvements*” means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. Agricultural improvements include a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the building.

“*Agricultural land*” means land suitable for use in farming and which is or will be operated as a farm.

“*Application*” means a completed instrument with all of the information required by subrule 2.7(4) in the Bond Market Loan Program or rule 2.10(175) in the Individual Agricultural Development Bond Program. The time of application is when a completed application is submitted to the authority.

“*Bond purchaser*” means any person as defined in Iowa Code section 4.1(13), other than a participating lender, who purchases an authority bond under the Individual Agricultural Development Bond Program.

“*Depreciable agricultural property*” means personal property suitable for use in farming for which an income tax deduction for depreciation or cost recovery is allowable in computing federal income tax under the Internal Revenue Code and which is qualified for financing with tax-exempt bonds pursuant to section 144 of the Internal Revenue Code.

“*Eligible applicant*” means an individual who is a beginning farmer, as defined in Iowa Code section 175.12, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility and who operates or will operate a farm.

“*Farm*” means a farming enterprise which is recognized in the community as a farm rather than a rural residence.

“*Lender*” means a participating lender or a bond purchaser.

“*Participating lender*” means any bank, trust company, bank holding company, mortgage company, national banking association, savings and loan association, life insurance company, state or federal governmental agency or instrumentality or other financial institution or entity authorized and able to make mortgage loans or secured loans in this state.

Total assets shall include but not be limited to the following: Cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery, equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; any other assets.

Total liabilities shall include but not be limited to the following: Accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contract or real estate mortgages; judgments; accrued interest payable; any other liabilities.

1. Total assets shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

2. Liabilities shall be determined on the basis of generally accepted accounting principles.

PART II

25—2.2(175) General provisions.

2.2(1) Forms. The executive director shall prepare and, as needed, revise and amend, with the approval of the authority, forms necessary for administration of authority programs. The number and type of forms shall be sufficient to safeguard the interests of the authority.

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

2.2(2) Waiver. The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a beginning farmer with respect to which federal assistance, insurance or guaranty is sought, provided such waiver does not conflict with the Act.

25—2.3(175) Recipient eligibility.

2.3(1) Residence. The beginning farmer must be a resident of Iowa at the time the bond is issued to finance the loan.

2.3(2) Training and experience. The beginning farmer must have documented to the satisfaction of the lender and the authority sufficient education, training, and experience, for the anticipated farm operations.

2.3(3) Access to capital. The beginning farmer must, as a condition of loan closing, demonstrate to the satisfaction of the lender and the authority access to the following, as may be needed: Adequate working capital; farm machinery; livestock; agricultural land.

2.3(4) Unavailability of alternative credit. The authority may require the beginning farmer at the time of loan application to present to the lender formal evidence satisfactory to the lender that the beginning farmer has been unable to secure credit on terms which the beginning farmer could be reasonably expected to fulfill. The authority may require such additional certifications and evidence from the lender and the beginning farmer as the authority may deem appropriate.

This rule is intended to implement Iowa Code section 175.12.

*Subchapter B—Bond Market Loan Program***25—2.4(175) Limitations on agricultural improvements and depreciable property.**

2.4(1) Agricultural improvements and agricultural depreciable property which are to become a fixture or an integral part of real estate may be financed by the authority only if the beginning farmer owns the real estate on which they are to be located.

2.4(2) Reserved.

25—2.5(175) Loan eligibility.

2.5(1) Security for loans. The authority may take security for any loan. The form of security may include, but not be limited to a promissory note, security agreement, or first mortgage.

2.5(2) Loan conditions. Fees and interest rates, loan-to-value ratio, maximum loan amount, amortization period, repayment, prepayment, assumption, and assumption terms of a loan shall be determined from time to time by the authority and shall be contained in the security and servicing documents relating to the loan.

2.5(3) A loan may not be assumed or any interest in agricultural land, agricultural improvements or agricultural depreciable property may not be leased, sold, exchanged or used as a trade-in, used on an equipment-for-hire basis or otherwise conveyed without the prior written consent of the authority. The authority shall not consent to an assumption of its loan or the conveyance of such property subject to its mortgage or security agreement unless the purchaser of the property would be an eligible applicant for an authority loan.

2.5(4) Loan delinquency, foreclosure, and repossession provision shall be determined from time to time by the authority and shall be contained in the security and servicing documents relating to the loan.

PART III

25—2.6(175) Procedures for application by participating lenders.

2.6(1) The authority will disseminate a summary of the beginning farmer program to eligible lending institutions located within Iowa. Lenders wishing to secure a commitment of agricultural development authority funds must submit a letter of interest to the agricultural development authority by the initial application deadline set out in the letter of instructions accompanying the program summary.

2.6(2) The agricultural development authority board will review the letters of interest and will determine if the requests would provide opportunity for statewide participation by beginning farmers.

2.6(3) Based on the above determination, the agricultural development authority will send full program information and documents to selected lenders, and will invite full applications in a format prescribed by the agricultural development authority and sent to all lenders initially, with the program summary.

2.6(4) Prospective participating lenders must complete and execute the full application and forward to the agricultural development authority with any commitment fee required on or before the final application deadline set out in the letter of instructions accompanying the program summary.

2.6(5) The full application must be based on the participating lender's estimate of potential for timely loan of the agricultural development authority funds to qualified beginning farmers.

25—2.7(175) Application procedures—beginning farmers.

2.7(1) The agricultural development authority shall give public notice of the application period, application procedures, and participating lenders, as soon as possible after the initial lender application deadline.

2.7(2) Beginning farmers may apply to participating lenders during the application period, defined as the period between the starting and ending dates and times set out in the letter of instructions accompanying the program summary.

All applications will be taken and processed on a first-come, first-served basis. Applications approved for funding, subject to sale of the agricultural development authority bonds, will be given priority by the lender on a first-come, first-served basis.

An application shall expire if it is subsequently denied any applicable guarantee or insurance or is rejected by the lender or the authority as unqualified. An application shall lose its priority if it is not funded by the authority within the number of days following the issuance of the authority's bonds issued to fund the loan determined by the authority as a reasonable period of time to deliver the loans. In any of these events, the participating lender's commitment (to the extent available) shall be allocated to the next qualified applicant of the original applications, if any, and any subsequent applicants, if any, to the extent permitted by law, on a first-come, first-served basis.

The authority may deviate from the first-come, first-served rule to the extent necessary to (a) comply with federal income tax laws and regulations, or (b) fully utilize the proceeds of any series of bonds or allocations of bond proceeds to participating lenders.

2.7(3) Applications will be made on customary and appropriate forms approved by the authority. Each application must include the following: applicant name, address and credit data; description of anticipated use of beginning farmer loan proceeds; amount of loan and applicant down payment (if any); the agricultural development authority net worth compliance; application for FmHA commitment (if applicable); last two years' federal income tax returns.

2.7(4) Each participating lender shall, within one year of the date of issuance of the bonds from which the agricultural development authority loan is made, have originated and disbursed all of the loan proceeds to beginning farmers. Failure to comply will result, at a minimum, in forfeiture of any commitment fees and loss of the unused agricultural development authority commitment.

25—2.8(175) Allocation of bond proceeds among participating lenders.

2.8(1) The authority will aggregate its approved full applications and will base its preliminary offering circular on the aggregate loan amount. Based on the ratio between the amount of bonds actually sold by the agricultural development authority and the aggregate loan application amounts, the agricultural development authority will allocate its bond proceeds to the participating lenders, with those adjustments as the authority deems appropriate.

2.8(2) Participating lenders shall maintain adequate books and records setting forth payments received and disbursements made pursuant to all authority loans. The participating lender's books and records shall be available for examination by the authority or its agent at any time during normal business hours.

Rules 25—2.1(175) to 2.8(175) are intended to implement Iowa Code section 175.12.

Subchapter C—Individual Agricultural Development Bond Program

PART IV

25—2.9(175) Individual agricultural development bond program description. This program is intended to allow beginning farmers to obtain lower interest rate loans for qualified purposes by obtaining loan funds from the proceeds of a tax-exempt bond issued by the authority and purchased by the lender. The authority will enter into a loan agreement with the beginning farmer and assign that loan to the lender. At the same time, the authority will issue a tax-exempt bond in the amount of the loan and the lender will purchase that bond, which is used to fund the loan assigned to the lender. The bond which is issued by the authority and purchased by the lender is a nonrecourse obligation. The only security for the lender is the underlying security on the assigned loan.

PART V

25—2.10(175) Definitions. “*Application*” means a completed instrument on a form approved by the authority. Each application must include the following: applicant name, address, and credit data, description of anticipated use of loan proceeds, amount of loan and applicant down payment (if any), and the authority's net worth compliance.

PART VI

25—2.11(175) Application procedures. The beginning farmer may apply (on forms approved by the authority) for an authority loan with any lender. Any loan approved will be assigned to that lender. Authority loan eligibility is determined by the requirements of the Act and the rules of the authority.

If a beginning farmer meets the loan eligibility requirements, the decision on whether to enter into the loan agreement is between the beginning farmer and the lender. They must agree on terms of the loan such as interest rates, length of loan, down payment, service fees, origination charges, and repayment schedule, which may not be any more onerous than those charged to similar customers for similar loans, but taking into account the tax-exempt nature of interest on the loan.

Following completion of the loan application by the beginning farmer and approval by the lender, the loan application must be submitted to the authority for its review and approval. The authority's review will include, but not be limited to, whether (1) the loan applicant is a qualified beginning farmer, (2) the loan proceeds will be used for a qualified purpose by a qualified borrower under the Act, rules of the authority, and the Internal Revenue Code and IRS regulations relating to private activity bonds, (3) the terms of the loan comply with these rules, and (4) the lender meets the definition of a participating lender or bond purchaser. The authority may require that the lender furnish any information which the

authority deems necessary to determine whether the lender qualifies as either a participating lender or bond purchaser. If the authority determines that the lender does not qualify as either a participating lender or bond purchaser, it may deny the application. As part of its review, the authority and lender may require the beginning farmer to submit appraisals on part or all of the property being financed by the loan or to submit any or all other documents and information as may be necessary to complete its review of the loan application.

Following approval and issuance of the bond, the authority will enter into a loan agreement with the beginning farmer and then assign the loan without recourse to the lender. The authority may charge fees as needed to defray its costs for processing the loan and bond.

25—2.12(175) Issuance of bond. The authority will not issue a bond for the purpose of financing a project for a specific beginning farmer unless, prior to its issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code of 1986 as amended, and its regulations. Upon receipt of a completed application, in a form prescribed by the authority, the executive director of the authority shall set a date, time and place for the hearing. The hearing shall be preceded by a notice published at least 14 days prior to the date of the hearing in a newspaper of general circulation and available to residents in the county where the project is located. The notice shall include, but not be limited to, the date, time and place of the hearing, the name of the beginning farmer, a general description of the project, and the right of individuals to request a local hearing.

The hearing shall be held in the authority's offices in Des Moines, or other location stated in the notice, unless at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing may be canceled. The executive director of the authority shall set a date, time and place for a local hearing and notice of the hearing in the local area shall be published as stated above. The date, time and place for the local hearing shall be reasonably convenient to persons affected by the project.

Public hearings may be held by a staff member, board member of the authority, an appointee or employee of the authority, or other qualified hearing officer.

The authority will not issue a bond for the purpose of financing a project by a specific beginning farmer unless, prior to the issuance, the governor or another elected official of the state designated by the governor, shall approve the issuance of the bond. Following the public hearing, the authority shall prepare and send to the governor's office, or the office of the elected official of the state designated by the governor, a statement describing each bond or series of bonds which it proposes to issue, along with a summary of the public comments received with respect thereto, if any.

Following approval of the loan by the authority, and upon completion of a public hearing and approval of the bond issuance by the governor or another elected state official designated by the governor, the authority will issue a bond, to be purchased by the lender, in the amount and fitting the terms of the loan to the beginning farmer. The principal and interest on the bond is a limited obligation payable solely out of the revenues derived from the loan to the beginning farmer and the underlying collateral or other security furnished by or on behalf of the beginning farmer. The lender shall have no other recourse against the authority. The principal and interest on the bond does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

25—2.13(175) Participating lenders. Rescinded IAB 2/21/90, effective 3/28/90.

25—2.14(175) Bond purchaser. Any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity, other than a participating lender, may be the purchaser of an authority bond under the Individual Agricultural Development Bond Program in connection with a contract sale or loan to the beginning farmer.

25—2.15(175) Minimum loan. There will be no minimum amount for a loan under this program.

25—2.16(175) Priority of applications. Applications shall be processed by the authority on a first-come, first-served basis, based upon the receipt of all completed documents by the authority.

Subchapter D—Postissuance Procedures

PART VII

25—2.17(175) Procedures following bond issuance. No bond proceeds may be used for a nonqualified purpose or by a nonqualified user. Following disbursement of the bond proceeds, the lender and beginning farmer may be required to certify to the authority that the proceeds were used by the qualified beginning farmer for a qualified purpose.

25—2.18(175) Assignment of loans by participating lenders. A participating lender may assign a loan in whole or in part to any person, as defined in Iowa Code section 4.1(13). Servicing of the loan may also be assigned, but must at all times be with a participating lender as defined in rule 25—2.13(175). The authority must be notified in writing prior to assignment of servicing of the loan.

25—2.19(175) Assignment of loans by bond purchasers. A bond purchaser may assign a loan in whole or in part to any person, as defined in Iowa Code section 4.1(13). The authority must be notified in writing prior to assignment of the loan.

25—2.20(175) Assumption of loans, substitution of collateral and transfer of property. Loans may not be assumed without the prior approval of the authority, and then only if the purchaser of the property is an eligible applicant for an authority loan. Equipment and other depreciable property may be exchanged or traded for similar property, and other property such as breeding livestock may be added or substituted as collateral at the discretion of the lender without the prior approval of the authority. The benefits of the loan made at the tax-exempt rate from the proceeds of an authority bond must remain with the qualified beginning farmer, and no person to whom property is traded or otherwise transferred may obtain the benefits of the authority loan.

25—2.21(175) Right to audit. The authority shall have at any time the right to audit the records of the lender and the beginning farmer relating to this loan and bond to ensure that bond proceeds were used for a qualified purpose by a qualified user.

Rules 2.9 to 2.21 are intended to implement Iowa Code sections 175.2, 175.12, 175.19 and 175.33.

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CHAPTER 3
IOWA RURAL REHABILITATION STUDENT
LOAN AND GRANT PROGRAM

[Transferred from Social Services Department[770], Ch 146; IAC 9/17/80, effective 8/29/80]

[Prior to 4/22/87, Iowa Family Farm Development Authority[523] Ch 3]

Rescinded IAB 3/27/96, effective 3/7/96

CHAPTER 4
IADA LOAN PARTICIPATION PROGRAM

25—4.1(175) Program summary. The Iowa agricultural development authority (IADA) loan participation program for qualified farmers (hereafter referred to as “program”) is intended to assist lenders and qualified farmers (hereafter referred to as “borrower(s)”) by participating in a loan for the purchase of agricultural property. This chapter will be known as the IADA loan participation program.

4.1(1) Supplement borrower’s down payment. The participation can be used to supplement the borrower’s down payment so that the borrower can more readily secure a loan (the “participated loan”) from a participating lender (the “lender”).

4.1(2) IADA’s last-in/last-out collateral position. The program enables lenders to request a “last-in/last-out” loan participation (the “participation”) from the Iowa agricultural development authority (the “authority”). The lender, on behalf of the borrower, shall apply for the participation on application forms provided by the authority. The authority board and staff will review the application and make a determination regarding approval of a participation.

4.1(3) Lender’s certification. The lender and the borrower shall certify that:

a. The information included in the application and any other documents submitted to the authority for consideration is true and correct to the best of their knowledge.

b. Borrower is a low-income farmer who cannot obtain financing to purchase agricultural property without the assistance of a loan participation with the Iowa agricultural development authority.

c. No other state or private credit is available or can be obtained in a timely manner.

4.1(4) Participation loan in conjunction with beginning farmer loan. The loan participation program may be used in conjunction with the authority’s beginning farmer loan program, providing the borrower meets the criteria for both programs respectively. In these instances, the lender will have the borrower sign one promissory note to cover the loan funds to purchase the “aggie bond” as well as the down payment loan funds to be participated with the authority.

25—4.2(175) Definitions. As used in this chapter, unless the context otherwise requires:

“*Agricultural improvements*” means any improvements, buildings, structures, or fixtures suitable for use in farming which are located on agricultural land. Agricultural improvements are defined in Iowa Code chapter 175 to include a single-family dwelling located on agricultural land, which is or will be occupied by the borrower, and structures attached to or incidental to the use of the dwelling.

“*Agricultural land*” means land suitable for use in farming and which is or will be operated as a farm.

“*Agricultural property*” means agricultural land, agricultural improvements, or depreciable agricultural property.

“*Application*” means a completed instrument on a form approved by the authority. Each application must include the following: borrower’s name, address, financial data, description of anticipated use of loan proceeds, amount of loan, down payment amount (if any), statement of borrower’s net worth determined in accordance with authority rules, a summary of proposed loan terms, and certifications of the borrower.

“*Authority*” means the agricultural development authority established in Iowa Code section 175.3.

“*Corporation*” or “*domestic corporation*” means a corporation for profit, which is incorporated under Iowa Code chapter 490 and not a foreign corporation. To comply under this program, such corporation shall have no more than two corporate shareholders. Shareholder means the person in whose name the shares are registered in the records of the corporation.

“*Depreciable agricultural property*” means personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income tax under the Internal Revenue Code of 1986.

“*Farm*” means a farming enterprise which is recognized in the community as a farm rather than a rural residence.

“Farming” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority’s rules.

“Lender” means any regulated bank, trust company, bank holding company, mortgage company, national banking association, savings and loan association, life insurance company, state or federal governmental agency or instrumentality, or other financial institution or entity authorized to make mortgage loans or secured loans in this state.

“Limited liability company” means a limited liability company as defined in Iowa Code section 490A.102.

“Low-income farmer” means a farmer who cannot obtain financing to purchase agricultural property without the assistance of a loan participation with the Iowa agricultural development authority.

“Net worth” means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the net worth of the individual, partnership, limited liability company or corporation. Assets shall be valued at fair market value.

“Participated loan” means the aggregate amount of a loan that is participated in total by the lender and the Iowa agricultural development authority.

“Participation” means the “last-in/last-out” loan participation requested by the lender from the Iowa agricultural development authority.

“Partnership” means a partnership formed by two or more persons under the laws of the state of Iowa.

“Projected gross income” is the total of all nonfarm income plus gross farm revenues which include revenue from cash sales, inventory and receivable charges; crops, livestock products, government program payments, and other farm income received by the borrower during the next calendar year.

“Term debt coverage ratio” is the total of net farm income from operations plus total nonfarm income plus depreciation/amortization expense plus interest on term debt plus interest on capital leases minus total income tax expense minus withdrawals for family living multiplied by 100 and divided by the sum of annual scheduled principal and interest payments on term debt and the annual scheduled principal and interest payments on capital leases. The ratio provides a measure of the ability of the borrower to cover all term debt and capital lease payments. The greater the ratio over 100 percent, the greater the margin to cover the payments.

“Total assets” shall include but not be limited to the following: cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery, equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; any other assets.

Total assets shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

“Total liabilities” shall include but not be limited to the following: accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contract or real estate mortgages; judgments; accrued interest payable; any other liabilities. Liabilities shall be determined on the basis of generally accepted accounting principles.

25—4.3(175) Basic qualification criteria.

4.3(1) Borrower. A borrower may be an individual, partnership, corporation or limited liability company that is a low-income farmer.

4.3(2) Age limits. A borrower must be at least 18 years of age unless the borrower is married. There is no upper age limit.

4.3(3) Residence. Borrower must be an Iowa resident at the time of loan closing and throughout the duration of the participation. Project must be located in Iowa.

4.3(4) Training and experience. The borrower, whether an individual, partnership, corporation or limited liability company, must have documented, to the satisfaction of the authority, sufficient education, training, and experience in the type of farming operation for which the participated loan is requested.

4.3(5) Loan purpose. Loans must be for new purchases of agricultural property; funds may not be used for refinancing, except for those instances when down payment funds are made for a new purchase no more than 60 days prior to the authority approving the participation.

4.3(6) Amount of participated loan. The aggregate amount of the participated loan can be no more than two times the net worth of the borrower.

4.3(7) Net worth.

a. For an individual, an aggregate net worth of the individual and the individual's spouse and minor children (if any) shall be less than \$300,000.

b. For a partnership, an aggregate net worth of all partners, including each partner's net capital in the partnership, together with each partner's spouse and minor children, shall be less than \$600,000. However, the aggregate net worth of each partner, including the partner's net capital in the partnership together with that of the partner's spouse and minor children, shall not exceed \$300,000.

c. For a corporation, an aggregate net worth of all corporate shareholders, including each shareholder's net capital in the corporation plus the net capital of the corporation, shall not exceed \$600,000. The aggregate net worth of each shareholder, including the shareholder's net capital in the corporation together with that of the shareholder's spouse and minor children (if any), shall not exceed \$300,000.

d. For a limited liability company, an aggregate net worth of all members, including each member's ownership interest in the limited liability company, together with that of each member's spouse and minor children, shall be less than \$600,000. However, the aggregate net worth of each member, including the member's ownership interest in the limited liability company together with that of the member's spouse and minor children, shall not exceed \$300,000.

4.3(8) Maximum debt level. Borrower's debts at the time of application:

a. For an individual, and the individual's spouse and minor children (if any) shall be less than \$400,000.

b. For a partnership, including each partner, together with each partner's spouse and minor children, shall be less than \$800,000. However, the aggregate debt of each partner, together with that of the partner's spouse and minor children, shall not exceed \$400,000.

c. For a corporation, its aggregate debt shall not exceed \$800,000. The aggregate debt of each shareholder, together with that of the shareholder's spouse and minor children (if any), shall not exceed \$400,000.

d. For a limited liability company, the aggregate debt of all members, including each member, together with each member's spouse and minor children, shall be less than \$800,000. However, the aggregate debt of each member, together with that of each member's spouse and minor children, shall not exceed \$400,000.

4.3(9) Farm debt-to-asset ratio. Borrower must have a farm debt-to-asset ratio of no more than 80 percent upon completion of loan closing. If the farm debt-to-asset ratio is greater than 60 percent, borrower's projected term debt coverage ratio must be 120 percent or greater.

4.3(10) Ratio of current assets to current liabilities. Borrower must have a ratio of current assets to current liabilities better than 1.1 to 1 at the time of application.

4.3(11) Off-farm income. Borrower may have off-farm income, but 50 percent or more of the projected gross income must come from farm income.

4.3(12) Collateral appraisals. All real estate and depreciable property intended for use as collateral on a participated loan must be evaluated/appraised by a qualified third-party appraiser. All real estate

appraisals must meet the federal regulatory requirements of the lender's examiners and the uniform standards of professional appraisal practice of the appraisal foundation.

4.3(13) *Loan-to-value ratio.*

a. The authority may approve any participation where the borrower does not borrow more than 100 percent of the appraised value or purchase price of the property offered as security for the participated loan.

b. Participation loans for real estate cannot exceed 90 percent of the appraised value of the real estate collateral unless the participation loan is evenly amortized and paid in full in seven years.

25—4.4(175) Eligible projects and activities.

4.4(1) *Use of project.* Loans must be for new purchases; funds may not be used for refinancing. Assets purchased with loan funds must be used for agricultural purposes.

a. If the borrower is an individual, the agricultural property purchased with funds from a participated loan shall be used for farming only by the individual, the individual's spouse, or the individual's minor children.

b. If the borrower is a partnership, the agricultural property purchased with funds from a participated loan shall be used for farming only by the partners, each partner's spouse or each partner's minor children.

c. If the borrower is a corporation, the agricultural property purchased with funds from a participated loan shall be used for farming only by the corporate shareholders, each shareholder's spouse or each shareholder's minor children.

d. If the borrower is a limited liability company, the agricultural property purchased with funds from a participated loan shall be used for farming by the members, each member's spouse or each member's minor children.

4.4(2) *Agricultural land.* The participated loan can be used for the purchase of agricultural land, which may include small acreages on which sufficient agricultural improvements are located to conduct a livestock operation. If a house is located on land for which a participation is requested, an appraisal of the house will be made. If the appraised value of the house exceeds 50 percent of the appraised value of the property or total collateral, then the property will not be eligible for a loan.

4.4(3) *Agricultural improvements.* The participated loan can be used for the construction or purchase of improvements located on agricultural land (which is suitable for use in farming). Examples of such improvements include, but are not limited to, the following: confinement systems for swine, cattle, or poultry; barns or other outbuildings; grain storage facilities and silos. There are restrictions regarding participated loans for a personal residence on a farm.

4.4(4) *Livestock used for breeding purposes.* The participated loan can be used for the purchase of livestock for which an income tax deduction for depreciation is allowed in computing state and federal income taxes.

a. Eligible livestock include, but are not limited to, the following: swine, sheep, beef, and dairy cattle used for breeding purposes.

b. Ineligible animals include, but are not limited to, the following: feeder cattle, feeder pigs, feeder lambs, chickens, or turkeys as they do not qualify as depreciable property and, as a result, are not eligible under the program. Other animals that would be ineligible under the program would include horses and those classed as "exotic" such as llamas, fallow deer, ostriches and emus.

c. There are certain provisions included in the loan agreement regarding payments due to the death or sale of livestock included in the loan.

4.4(5) *Machinery and equipment.* The participated loan can be used for the purchase of agricultural machinery and equipment for which an income tax deduction for depreciation is allowed in computing state and federal income taxes. This machinery and equipment must be used in the borrower's farming operation.

4.4(6) *Recent purchases.* Purchases which can be approved by the authority within 60 days of the purchase date are permitted.

4.4(7) *Interim financing by lender.* Interim financing by the lender may be done provided the authority has received a written request by the lender explaining the details and justification for interim financing and the expected time frame for participation closing date. Examples: construction projects, buying breeding livestock or machinery.

25—4.5(175) Ineligible projects and activities. The following program activities are ineligible:

4.5(1) *Refinancing of existing debt.* Refinancing of existing debt or new purchases which have been incurred by the borrower more than 60 days prior to approval of the participation by the authority.

4.5(2) *Financing personal expenses.* Financing personal or living expenses and working capital to purchase such items as feed, seed, fertilizer, fuel, and feeder livestock.

4.5(3) *Down payment funds for contract sale.* Down payment to a contract sale, or in connection with a loan from a nonregulated lender.

25—4.6(175) Program maximums.

4.6(1) *Purchase price impact.* Maximum participation amount is the lesser of:

- a. Thirty percent of the purchase price; or
- b. One hundred thousand dollars.

4.6(2) *Net worth factor.* The aggregate amount of the participated loan can be no more than two times the net worth of the borrower.

4.6(3) *Real estate collateral issues.* A participated loan for real estate:

a. Cannot exceed 90 percent of the appraised value of the real estate collateral, unless additional collateral is provided so that the total value of the collateral pledged has an appraised value of at least 125 percent of the amount of the participated loan.

b. If additional collateral does not have an appraised value of at least 125 percent, the participation will be evenly amortized and paid in full in seven years.

c. Any guarantee of repayment or pledge of additional collateral required by the lender to secure the participated loan shall secure the entire participated loan including the participation (by the authority).

4.6(4) *Loan terms.* The authority has established the following with respect to participation terms:

a. The maximum amortization period for the participation is seven years for depreciable agricultural property. When a participated loan is made for livestock, the length of the participation is restricted to the expected useful life of the animal being purchased. The following expected useful life schedules have been approved for livestock: cattle (including beef and dairy) equal 7 years; swine equal 3 years; and sheep equal 7 years.

b. IADA participation loan payments on participated real estate loans will be equally amortized for either 7 or 20 years over the term of the participation, depending upon the amount of down payment provided by the applicant.

(1) No down payment, 7-year amortization, 7-year term, no balloon payment, and will be paid in full by the end of the seventh year.

(2) Ten percent down payment, 20-year amortization, 10-year term with balloon payment, paying the balance of the participation in full by the end of the tenth year.

c. The interest rate on the participated loan may be a fixed rate, a variable rate, or a combination thereof. If the rate of interest adjusts during the life of the participated loan, the interest rate on the participated loan cannot exceed the initial interest rate by more than 500 basis points.

4.6(5) *Loans outstanding.* Loans under the program may be issued more than once, providing the outstanding participation totals do not exceed \$50,000 to any single borrower.

25—4.7(175) Loan application procedures.

4.7(1) *Financial statement.* Lenders may use their own form of financial statement and other forms deemed necessary and appropriate to document the eligibility of the borrower and the borrower's ability to make principal and interest payments. A copy of the borrower's most current financial statement (taken within one month preceding application submission) and the prior two years' financial statements, and a projected after-closing financial statement must be submitted with the application. If a participation

is sought with respect to a partnership, a limited liability company or corporation, separate applications and financial statements must be submitted by each partner, member or shareholder.

NOTE: If the borrower or the borrower's spouse is involved in a business, partnership, limited liability company, or corporation, for example, either related or unrelated to the borrower's farming operation, a financial statement from this entity must also be submitted with the application.

4.7(2) *Income statement.* A copy of the borrower's most recent income statement, prior three years' income statements, and a projected income statement must be submitted with the application. If historical income statements are not available, then copies of income tax returns may be submitted. If a participation is sought with respect to a partnership, limited liability company or corporation, separate applications and financial statements must be submitted by each partner, member or shareholder.

4.7(3) *Background letter.* A "background letter" regarding the borrower must be submitted with the application. This letter should explain the borrower's background with respect to education and experience in the type of farming operation for which a participation is sought. The letter should also outline the borrower's access to machinery, if the participated loan is for land; or the borrower's access to land, if the participated loan is for agricultural improvements or depreciable agricultural property. The letter should also state where the borrower will obtain operating capital.

4.7(4) *Credit evaluation.* The lender will submit a credit evaluation of the project for which a participation is sought. The lender will evaluate the borrower's net worth and ability to pay principal and interest and certify the sufficiency of security for the participated loan. The authority will review the application and make its own credit evaluation prior to issuance of a participation. Such evaluation will center on whether:

a. The borrower adequately demonstrates the ability to service the debt requirements of the participated loan based on cash flow, net worth, down payment, and collateral pledged for the participated loan.

b. The borrower provides sufficient collateral to adequately secure the participated loan and keep the participated loan collateralized throughout its term.

c. The lender certifies that all of the borrower's debts will be current at the time the participated loan is closed.

d. The applicant is a "low-income" farmer who cannot obtain financing to purchase agricultural property without the assistance of a loan participation with the Iowa agricultural development authority.

e. The lender certifies that no other private or state credit is available or can be obtained in a timely manner.

4.7(5) *Processing loan applications.* Applications for the program will be taken and processed by the authority on a first-come, first-served basis. The authority reserves the right to change the program or terminate the approval of participations under the program at any time. Grounds for termination/suspension of the program would include, but not be limited to, reaching the maximum allowable limit for total outstanding participations as established by the authority or changing the program by order of the Iowa general assembly or by rules promulgated by the authority.

4.7(6) *Security for participated loans and use of security documents.* The lender shall take any security, cosignatures, guarantees, sureties, for example, that are deemed necessary for any participated loan.

a. The authority would advise that any security documents or guarantees required to be used in connection with a participated loan clearly state they are given as security for the indebtedness evidenced by the promissory note and to further secure the agreements, covenants, and obligations of the borrower for the loan involved.

b. The security documents and any guarantees should run directly between the borrower and the lender.

c. Any guarantee of repayment or pledge of additional collateral required by the lender to secure the participated loan shall secure the entire participated loan including the participation (by the authority).

4.7(7) *Loan terms.* The lender and borrower must agree on terms of the participated loan including interest rate, length of loan, prepayment options, service fees, and repayment schedule. See loan terms in rule 25—4.6(175), Program maximums.

4.7(8) Fees. The lender or borrower must submit to the authority a nonrefundable application fee in the amount of \$100 when the application is submitted. A participation closing fee equal to 1.25 percent of the IADA participation will be deducted from the participation proceeds by the IADA. A minimum participation closing fee of \$300 will be charged.

25—4.8(175) Loan closing procedures.

4.8(1) IADA conditional commitment. If the application is approved, a conditional commitment to participate will be sent to the lender.

4.8(2) Before loan closing.

a. Lender will submit to IADA:

- (1) Signed conditional commitment to participate.
- (2) Preliminary title opinion on real estate collateral, if applicable.
- (3) Appraiser's certification (completed by third-party appraiser).
- (4) At least three days prior to closing, in the IADA office:
 - Copy of the UCC search on the borrower.
 - Credit Bureau report on the borrower.
 - Copy of blank promissory note form to be used if loan is not a part of Aggie Bond program.

b. IADA will submit to lender:

(1) If participation is for a project that is NOT also funded through the IADA beginning farmer loan program (BFLP), IADA will forward loan participation certificate and agreement.

(2) If participation is for a project that IS also funded through the IADA beginning farmer loan program (BFLP), the IADA will forward the loan participation certificate and agreement along with the closing documents for the BFLP bond.

NOTE: A Loan Participation coupled with a loan with the Beginning Farmer Loan Program will need to close the same day.

4.8(3) On loan closing day:

a. Lender closes loan for the approved agricultural purchase and forwards the following to the IADA:

- (1) Original signed loan participation certificate and agreement.
- (2) Copy of signed promissory note.
- (3) Copy of signed mortgage, if applicable.
- (4) Copy of signed security agreement.
- (5) Copy of bill of sale, purchase agreement, or sales receipt of purchase(s).
- (6) Copy of recorded UCC filing.

b. Upon receipt of the above items, the IADA will disburse their participation funds, less 1 percent loan participation fee.

4.8(4) Final title opinion. For real estate loans, the participating bank will be expected to forward a copy of the final title opinion within 90 days after closing.

4.8(5) Recording documents and fees. Any recording or filing fees or transfer taxes associated with the participated loan will be paid by the borrower or lender and not the authority. Also, the authority will have no responsibility with respect to the preparation, execution, or filing of any declaration of value or groundwater hazard statements.

25—4.9(175) Loan administration procedures.

4.9(1) Lender's responsibilities. The lender is responsible for servicing the participated loan following accepted standards of loan servicing and transferring participation payments to the authority.

a. The lender shall:

(1) On an annual basis, provide the authority with copies of a current financial statement or a current tax return, or both.

(2) Provide copies of insurance to the authority with the lender named as loss payee. Lender will apply payments to the participated loan on a pro-rata basis.

- b.* The lender shall not, without prior consent of the authority:
- (1) Make or consent to any substantial alterations in the terms of any participated loan instrument;
 - (2) Make or consent to releases of security or collateral unless replaced with collateral of equal value on the participated loan;
 - (3) Lender will not use the collateral purchased with funds from the participated loan as security for any other loan without prior written consent of the authority;
 - (4) Accelerate the maturity of the participated loan;
 - (5) Sue upon any participated loan instrument;
 - (6) Waive any claim against any borrower, cosignor, guarantor, obligor, or standby creditor arising out of any instruments.

4.9(2) *Payment due dates.* Payment due dates for the participation will be the same as for the lender's share of the loan.

4.9(3) *Prepayment penalty.* There is no penalty for early repayment of principal or interest.

4.9(4) *Repayment proceeds and collateral.* Without limitation, the repayment of proceeds and collateral shall include rights of setoff and counterclaim, which the lender or the authority jointly or severally may at any time recover on any participated loan.

4.9(5) *Subsequent loans.* Any loan or advance made by a lender to a borrower subsequent to obtaining a participation under the program and secured by collateral or security pledged for the participated loan will be subordinate to the participated loan.

4.9(6) *Events of loan default.*

a. Default will occur when loan payment is 30 days past due. Notice to cure will be sent to borrower with a copy sent to the authority; and the lender will take appropriate steps to cure the default through mediation, liquidation, or foreclosure if needed.

b. After a participated loan is in default for a period of 30 days, the lender shall file monthly reports regarding the status of the participated loan to the authority.

c. The authority may, anytime a participated loan is in default, purchase the unpaid portion of the participated loan from the lender including the note, security agreements, additional guarantees, and other documents. The authority would become the servicer of the participated loan in such case.

4.9(7) *Applying principal and interest payments.* Lenders shall receive all payments of principal and interest. All payments made prior to liquidation or foreclosure shall be made on a pro-rata basis. All accrued interest must be paid to zero at least annually on the anniversary date of the note.

4.9(8) *Application of proceeds of loan liquidation.* Application of proceeds of loan liquidation will be determined after a written liquidation plan is approved by the authority or the authority's loan committee. All amounts recovered upon liquidation or foreclosure will be applied first to the unpaid balance of the lender's portion and then to the unpaid portion of the participation's portion. All funds received from liquidation or foreclosure procedures shall be applied in the following order of priority:

First Priority: To the payment of the outstanding principal of and accrued interest on the lender's portion of the participated loan;

Second Priority: To the payment of the outstanding principal of and accrued interest on the authority's participation;

Third Priority: To the payment on a pro-rata basis of all reasonable and necessary expenses incurred by the lender or the authority in connection with such liquidation or foreclosure procedures.

25—4.10(175) Source of participation funds. Funding for the program is derived from the Iowa Rural Rehabilitation Corporation Assets (IRRC). The IRRC assets were obtained from the Rural Rehabilitation Corporation Trust Liquidation Act, 40 U.S.C. 440 et seq., and prior thereto from the Federal Emergency Relief Act of 1933, 48 Stat. 55, the Act of February 15, 1934, 48 Stat. 351, and the Act of June 19, 1934, 48 Stat. 1055. The administration of the fund was transferred to the authority in 1980 when the authority was created.

25—4.11(175) Right to audit.

4.11(1) The authority shall have, at any time, the right to audit records of the lender and the borrower relating to any participated loan made under the program.

4.11(2) Loans made pursuant to the provisions of this program may be subject to review by the Iowa division of banking for the purpose of determining that the underwriting requirements of the program have been complied with by the lender.

These rules are intended to implement Iowa Code section 175.13A.

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CHAPTER 5
OPERATING LOAN GUARANTEE PROGRAM
[Prior to 4/22/87, Iowa Family Farm Development Authority[523] Ch 5]

25—5.1(175) Operational definitions.

“Beginning farmer” means an individual or partnership as defined by Iowa Code chapter 175, that became engaged in farming on or after January 1, 1982.

“Displaced farmer” means a person who discontinued farming on or after January 1, 1982, due to foreclosure or voluntary liquidation for financial reasons, and who was actively engaged in farming for at least one year prior to discontinuing farming.

“Net worth” means total assets minus total liabilities as determined by the lender, in accordance with rules of the authority and accepted accounting procedures.

“Total assets” shall include, but not be limited to, the following: cash crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery and equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; any other assets.

Total assets shall not include items used for personal, family or household purposes by the applicant, but in no event shall such property be excluded to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. Such value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

“Total liabilities” shall include, but not be limited to, the following: accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contract or real estate mortgages; judgments; accrued interest payable; and any other liabilities.

25—5.2(175) General provisions.

5.2(1) *Loan period.* The loan period shall not exceed one year following the date the participating lender has advanced the first funds for the operating loan. The authority shall have the option to extend the loan guarantee for an additional year. The loan guarantee will automatically expire on the expiration date unless extended by the authority. The authority shall guarantee only one operating loan for each beginning farmer or displaced farmer.

5.2(2) *Fees.* The authority may charge reasonable and necessary fees needed to defray the costs of the loan guarantee program.

25—5.3(175) Loan eligibility.

5.3(1) The loan guarantee fund shall not be used to guarantee a loan where the ratio of the beginning or displaced farmer’s liabilities, excluding the amount of the loan, to net worth is greater than three to one.

5.3(2) The authority shall not issue a loan guarantee to be used to refinance existing loans held by any lender eligible to participate in the loan guarantee program.

5.3(3) Purposes for which guaranteed loan proceeds may be used include items needed for a successful farming operation. Such items shall include: livestock feed, seed, fuel, fertilizer, lime, chemicals, building and machinery repair and maintenance, cash farm rent, breeding fees, veterinary fees, livestock medicine, storage and warehousing, interest, real estate taxes, insurance for crops and buildings, utility expenses for farm purposes, freight and trucking expense, machine hire, hired labor, repairs of livestock and poultry equipment. No operating loan guarantee funds shall be used for personal or living expenses or for capital goods.

25—5.4(175) Application procedures.

5.4(1) Application will be made on customary and appropriate forms approved by the authority. Each application will include, but not be limited to, the following: names and addresses of beginning or

displaced farmer and participating lender, amount of loan, statement of beginning or displaced farmer's net worth determined in accordance with the authority's rules, length of loan guarantee plus certain certifications of the beginning or displaced farmer and lender including the ratio of the beginning or displaced farmer's liabilities, excluding the amount of the loan, to net worth.

5.4(2) Applications for loan guarantees will be taken and processed by the authority on a first-come, first-served basis.

5.4(3) The authority shall, by a majority vote, approve each loan application before an operating loan guarantee will be issued.

25—5.5(175) Total amount of loan guarantee. The authority, under its operating loan guarantee program, will pay to a participating lender 75 percent of the actual amount of a loan deficiency, except that in no event will payment exceed \$18,750 on any single loan guarantee, provided that:

1. Guaranteed loan is in default;
2. Amount of loan deficiency has been documented to the satisfaction of the authority;
3. Participating lender has satisfied all of the requirements of the authority's operating loan guarantee and operating loan guarantee program;
4. All other sources of payment have been pursued and fully exhausted.

The amount of loan deficiency shall include principal, accrued interest and liquidation expenses which can be attributed to the guaranteed loan.

25—5.6(175) Allocation of loan funds among lenders.

5.6(1) No participating lender shall be eligible to obtain loan guarantees for more than an aggregate principal amount of \$100,000.

5.6(2) Reserved.

25—5.7(175) Security for loans. The lender shall take security, cosignatures, guarantees, sureties, etc., that the lender or authority deems necessary for any loan.

25—5.8(175) Loan minimum. There will be no minimum amount for a loan under this program.

25—5.9(175) Administration of loans. Lenders shall hold the loan instruments and shall receive all payments of principal and interest. The holder of the note (lender) shall not, without prior consent of the authority:

1. Make or consent to any substantial alterations in the terms of any loan instrument;
2. Make or consent to releases of security or collateral on the loan;
3. Accelerate the maturity of the note;
4. Sue upon any loan instrument;
5. Waive any claim against any borrower, cosigner, guarantor, obligor, or standby creditor arising out of any loan instruments.

All servicing actions shall be the responsibility of the lender who shall follow accepted standards of loan servicing employed by prudent lenders generally.

25—5.10(175) Sharing of repayment proceeds and collateral. Lenders shall not acquire any preferential security, surety, or insurance to protect the unguaranteed interest in a loan. All repayments, security, or guarantee of any nature, including without limitation, rights of setoff and counterclaim, which the lender or the authority jointly or severally may at any time recover from any source whatsoever or have the right to recover on any guaranteed loan, shall repay and secure the interest of the lender and the authority in the same proportion as such interest bears respectively to the unpaid balance of the loan.

Any loan or advance made by the lender to a borrower subsequent to a guaranteed loan, secured by security or collateral pledged for the guaranteed loan will be subordinate to the guaranteed loan.

25—5.11(175) Events of loan default.

5.11(1) After a loan is in default for a period of 30 days, the lender shall have 10 days to file a report regarding the status of the loan to the authority on forms provided by the authority.

5.11(2) The authority may at its option, any time a guaranteed loan is in default, purchase from the lender the note, security agreements, additional guarantees, and other documents for an amount equal to the authority's guarantee. In the event the authority exercises this option, it will issue to the lender a participation certificate representing the lender's unguaranteed interest in the loan. The authority would become the servicer of the loan in such case.

5.11(3) All reasonable and necessary expenses incurred by the lender or the authority which are applicable in the liquidating of a guaranteed loan, which are not recoverable from the borrower, cosigners, guarantors, or any other sureties shall be shared ratably by the lender and the authority in accordance with their respective interests in any such loan. If expenses are incurred by the lender to collectively liquidate loans of the borrower, including both the guaranteed loan and another loan or loans not guaranteed by the authority, the authority will guarantee only a pro-rata share of the necessary expenses associated solely with the liquidation of the guaranteed loan.

These rules are intended to implement Iowa Code sections 175.2 and 175.30.

[Filed emergency 11/18/83—published 12/7/83, effective 12/1/83]

[Filed 2/24/84, Notice 12/7/83—published 3/14/84, effective 4/18/84]

[Filed 10/31/86, Notice 7/2/86—published 11/19/86, effective 12/24/86]¹

[Filed 4/3/87, Notice 1/28/87²—published 4/22/87, effective 5/27/87]

¹ See Agricultural Development Authority[25], IAB 11/19/86.

² Transfer of Ch 5 did not appear in Notice of Intended Action.

CHAPTER 6
BEGINNING FARMER TAX CREDIT PROGRAM

25—6.1(175) Definitions.

“Agricultural asset” means agricultural land, agricultural improvements or depreciable agricultural property used for farming purposes. “Farming” is defined by Iowa Code section 175.2(10).

“Agricultural asset transfer agreement” means any commonly accepted written agreement which specifies the terms of the transfer of operation of the agricultural asset. This may be made on a cash basis or a commodity share basis.

“Agricultural improvements” means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. “Agricultural improvements” includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the building.

“Agricultural land” means land suitable for use in farming and which is or will be operated as a farm.

“Application” means a completed instrument with all of the information required by rule 25—6.3(175). The time of application is when a completed application from all parties is received by the authority.

“Cash basis agreement” means an agreement whereby operation of the agricultural asset is transferred via a fixed cash payment per annum.

“Commodity share basis” means an agreement whereby operation of the agricultural asset is transferred via a risk-sharing mechanism, whereby the agricultural asset owner receives a portion of the production and payment for use of the agricultural asset.

“Depreciable agricultural property” means personal property suitable for use in farming for which an income tax deduction for depreciation or cost recovery is allowable in computing federal income tax under the Internal Revenue Code and which is eligible for the beginning farmer tax credit.

“Eligible applicant” means an individual who has a net worth of less than \$300,000 and who satisfies all of the criteria contained in 2006 Iowa Acts, Senate File 2268, and provisions of these rules relating to recipient eligibility, and who operates or will operate a farm.

“Farm” means a farming enterprise which is recognized in the community as a farm rather than a rural residence.

“Taxpayer” means a person or entity who may acquire or otherwise obtain or lease agricultural land in the state pursuant to Iowa Code chapter 9H or 9I. An individual may claim a tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed shall be based upon the pro-rata share of the individual earnings from the partnership, limited liability company, S corporation, estate, or trust. A taxpayer must also meet the requirement of 2006 Iowa Acts, Senate File 2268, section 2.

“Total assets” shall include but not be limited to the following: cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery, equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; any other assets.

“Total assets” shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the applicant. The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate. The applicant should complete the financial statement disregarding this deduction and the authority will make the appropriate adjustments to the statement.

“*Total liabilities*” shall include but not be limited to the following: accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contracts or real estate mortgages; judgments; accrued interest payable; any other liabilities.

Liabilities shall be determined on the basis of generally accepted accounting principles.
[ARC 7619B, IAB 3/11/09, effective 2/19/09]

25—6.2(175) General provisions.

6.2(1) Eligibility. To qualify for this credit, the taxpayer must meet all the requirements of Iowa Code chapter 9H or 9I, 2006 Iowa Acts, Senate File 2268, section 2, and these rules. The beginning farmer must meet all requirements of Iowa Code section 175.12 and these rules.

6.2(2) Term. The term of the credit shall be equal to the term of the agricultural assets transfer agreement, except that any unused credit may be carried forward for a period of five years if unused in the tax year the credits are earned. Credits may not be carried back to past tax years.

6.2(3) Fees. The authority may charge reasonable and necessary fees to defray the costs of this program.

6.2(4) Expiration of lease. The beginning farmer will continue to be an eligible beginning farmer for the term of the lease. Upon expiration of the lease, both the agricultural asset owner and beginning farmer must reapply to continue the tax credit.

25—6.3(175) Application procedures.

6.3(1) The authority shall prepare and make available appropriate forms to be used in making application for the tax credit, including forms for both the asset owner and the beginning farmer applicant.

6.3(2) Each agricultural asset owner’s application shall include, but not be limited to, the following: name and address, social security number, length of the lease, type of lease, and location of the agricultural asset to be leased. In addition, the asset owner application shall have attached to it a copy of the lease agreement between the parties and shall be due no later than the fifteenth day of the month in which approval is requested.

6.3(3) Each beginning farmer application shall include, but not be limited to, the following: name and address, social security number, and location of the asset to be leased. In addition, the beginning farmer application shall have attached to it a copy of the beginning farmer’s financial statement, completed within 30 days of receipt by the authority. The application will also include a background letter on the beginning farmer. This letter may be submitted by one or more of the following: the beginning farmer, the agricultural asset owner or another third party. This letter shall state that the beginning farmer has access to working capital, sufficient education, knowledge or training to complete the project and that the beginning farmer has access to adequate other items (such as machinery and equipment) to carry out the terms of the lease.

6.3(4) Applications shall be processed in the order they are received by the authority.

6.3(5) The authority shall, by majority vote, approve each application before the tax credit is issued.

25—6.4(175) Execution of an agricultural assets transfer agreement. In addition to the requirements set forth above, both the taxpayer (agricultural asset owner) and the beginning farmer shall execute an agricultural assets transfer agreement. This form shall be in a format from the Iowa Bar Association or other commonly accepted form and signed by all parties.

25—6.5(175) Procedures following tax credit approval.

6.5(1) Either the beginning farmer or the taxpayer shall immediately notify the authority of any material changes in the agricultural assets transfer agreement. The authority shall act upon these changes pursuant to 2006 Iowa Acts, Senate File 2268, section 2. Material changes cannot result in an increase in the original tax credit amount approved. Death of a party to the lease, divorce, or sale of the property will be considered eligible material changes. Sale of the property will be considered only if the original lease terms remain in effect and the asset purchaser is determined to be eligible for the program.

6.5(2) The beginning farmer shall annually by April 15 submit to the authority a copy of the Schedule F for the previous year. This schedule should document that the beginning farmer paid cash rent, received income and incurred expenses associated with operating the agricultural asset under the terms of the lease agreement.

[ARC 7619B, IAB 3/11/09, effective 2/19/09]

These rules are intended to implement Iowa Code chapter 175 as amended by 2006 Iowa Acts, Senate File 2268.

[Filed emergency 10/3/06—published 10/25/06, effective 11/1/06]

[Filed Emergency ARC 7619B, IAB 3/11/09, effective 2/19/09]

CHAPTER 7
CONTESTED CASES

The uniform rules on contested cases published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

25—7.1(17A,175) Scope and applicability. In lieu of the words “(agency name)” insert “the agricultural development authority”.

25—7.2(17A,175) Definitions. Insert the following definitions in alphabetical order:

“*Authority*” means the agricultural development authority, established pursuant to Iowa Code chapter 175.

“*Board*” means the board of the authority established in accordance with Iowa Code section 175.3.

In lieu of the words “(designate official)” insert “person designated by the chairperson of the board to preside over a contested case in accordance with the provisions of Iowa Code section 17A.11”. In lieu of the words “(agency name)” insert “the authority”.

25—7.3(17A,175) Time requirements.

7.3(2) Delete the words “or by (specify rule number)”.

25—7.4(17A,175) Requests for contested case proceeding. In lieu of the first paragraph insert “Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question. If no time is specified in the agency action and there is no applicable rule or statute, then the written request for a contested case proceeding shall be filed in writing within 30 calendar days of the action or notice of the intended action the person wishes to contest.”

25—7.5(17A,175) Notice of hearing.

7.5(1) Delete paragraph “e.”

25—7.6(17A,175) Presiding officer.

7.6(1) Delete the words “(or such other time period the agency designates)”.

7.6(2) Delete the words “(or its designee)”. Delete paragraphs “c” and “i” and reletter the subsequent paragraphs.

7.6(3) Delete the subrule and insert “The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.”

7.6(4) Delete the subrule and renumber the subsequent subrules.

25—7.12(17A,175) Service and filing of pleadings and other papers.

7.12(3) In lieu of the words “(specify office and address)” insert “the Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322”. In lieu of the words “(agency name)” insert “authority”.

7.12(4) In lieu of the words “(designate office)” insert “authority”.

25—7.15(17A,175) Motions.

7.15(4) Delete the words “(or other time period designated by the agency)”.

7.15(5) In lieu of the words “(45 days)” insert “45 days”. In lieu of the words “(15 days)” insert “15 days”. In lieu of the words “(20 days)” insert “20 days”.

25—7.16(17A,175) Prehearing conference.

7.16(1) Delete the words “(or other time period designated by the agency)”. In lieu of the words “(designate office)” insert “presiding officer”.

25—7.17(17A,175) Continuances.

7.17(1) Delete the words “(or other time period designated by the agency)”.

25—7.22(17A,175) Default.

7.22(5) Delete the words “(or other time specified by the agency)”.

25—7.23(17A,175) Ex parte communication.

7.23(8) In lieu of the words “(or disclosed)” insert “or disclosed”.

7.23(10) In lieu of the words “(agency to designate person to whom violations should be reported)” insert “the chairperson of the board or the chairperson’s designee”.

25—7.24(17A,175) Recording costs. In lieu of the words “(agency name)” insert “authority”.

25—7.25(17A,175) Interlocutory appeals. In lieu of the words “(board, commission, director)” insert “board or the board’s designee”. In lieu of the words “(of the presiding officer)” insert “of the presiding officer”. Delete the words “(or other time period designated by the agency)”.

25—7.26(17A,175) Final decision.

7.26(1) In lieu of the words “(the agency) (or a quorum of the agency)” insert “the authority”.

7.26(2) In lieu of the words “(agency name)” insert “authority”.

25—7.27(17A,175) Appeals and review.

7.27(1) In lieu of the words “(board, commission, director)” insert “board or the board’s designee”. Delete the words “(or other time period designated by the agency)”.

7.27(2) In lieu of the words “(board, commission, director)” insert “board or the board’s designee”. Delete the words “(or other time period designated by the agency)”.

7.27(3) In lieu of the words “(agency name)” insert “authority”.

7.27(4) Delete the words “(or other time period designated by the agency)”. In lieu of the words “(board, commission, director)” insert “board or the board’s designee”.

7.27(5) In lieu of the words “(agency name)” insert “authority”.

7.27(6) Delete the words “(or other time period designated by the agency)”. In lieu of the words “(board, commission, director)” insert “board or the board’s designee”.

25—7.28(17A,175) Applications for rehearing.

7.28(3) In lieu of the words “(agency name)” insert “authority”.

7.28(4) In lieu of the words “(agency name)” insert “authority”.

25—7.29(17A,175) Stays of agency action.

7.29(1) In lieu of the words “(agency name)” insert “authority”. In lieu of the words “(board, commission, director)” insert “board or the board’s designee”.

7.29(2) In lieu of the words “(board, commission, director, as appropriate)” insert “the board or the board’s designee”.

7.29(3) In lieu of the words “(agency name)” insert “authority”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 175.

[Filed 3/6/87, Notice 12/31/86—published 3/25/87, effective 4/29/87]

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 8
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

25—8.1(22) Adoption by reference. The agricultural development authority adopts by reference 21—Chapter 6, Iowa Administrative Code.

25—8.2(22) Custodian of records. The custodian for the records maintained by the agricultural development authority is the executive director.

These rules are intended to implement Iowa Code chapters 17A, 22 and 175.

[Filed 4/28/89, Notice 10/19/88—published 5/17/89, effective 6/21/89]

CHAPTER 9
DECLARATORY ORDERS

The uniform rules on declaratory orders published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

25—9.1(17A,175) Petition for declaratory order. In lieu of the words “(designate agency)” the first time they appear, insert “agricultural development authority (hereinafter referred to as “the authority”)", and for each time the words “(designate agency)” appear thereafter, insert “authority”. In lieu of the words “(designate office)” insert “505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322”. In lieu of the words “(AGENCY NAME)” insert “AGRICULTURAL DEVELOPMENT AUTHORITY”.

25—9.2(17A,175) Notice of petition. In lieu of the words and numbers “_____ days (15 or less)” insert “15 days”. In lieu of the words “(designate agency)” insert “authority”.

25—9.3(17A,175) Intervention.

9.3(1) In lieu of the words “_____ days” insert “20 days”.

9.3(2) In lieu of the words “(designate agency)” insert “the authority”.

9.3(3) In lieu of the words “(designate office)” insert “the authority’s office”. In lieu of the words “(designate agency)” insert “authority”. In lieu of the words “(AGENCY NAME)” insert “AGRICULTURAL DEVELOPMENT AUTHORITY”.

25—9.4(17A,175) Briefs. In lieu of the words “(designate agency)” insert “authority”.

25—9.5(17A,175) Inquiries. In lieu of the words “(designate official by full title and address)” insert “the Executive Director, Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322”.

25—9.6(17A,175) Service and filing of petitions and other papers.

9.6(2) In lieu of the words “(specify office and address)” insert “the Executive Director, Agricultural Development Authority, 505 Fifth Avenue, Des Moines, Iowa 50309-2322”. In lieu of the words “(agency name)” insert “authority”.

9.6(3) In lieu of the words “(uniform rule on contested cases X.12(17A))” insert “rule 7.12(17A,175)”.

25—9.7(17A,175) Consideration. In lieu of the words “(designate agency)” insert “authority”.

25—9.8(17A,175) Action on petition.

9.8(1) In lieu of the words “(designate agency head)” insert “chairperson of the board”.

9.8(2) In lieu of the words “(contested case uniform rule X.2(17A))” insert “contested case uniform rule 7.2(17A,175)”.

25—9.9(17A,175) Refusal to issue order.

9.9(1) In lieu of the words “(designate agency)” insert “authority”.

25—9.12(17A,175) Effect of a declaratory order. In lieu of the words “(designate agency)” insert “authority”. In lieu of the words “(who consent to be bound)” insert “who consent to be bound”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 175.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 10
AGENCY PROCEDURE FOR RULE MAKING

The uniform rules on agency procedure for rule making published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

25—10.1(17A,175) Applicability. In lieu of the word “(agency)” insert “the agricultural development authority (hereinafter referred to as “the authority”)”.

25—10.3(17A,175) Public rule-making docket.

10.3(2) In lieu of the words “(commission, board, council, director)” insert “board of the authority”.

25—10.4(17A,175) Notice of proposed rule making.

10.4(3) In lieu of the words “(specify time period)” insert “one year”.

25—10.5(17A,175) Public participation.

10.5(1) In lieu of the words “(identify office and address)” insert “the Executive Director, Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322”.

10.5(5) In lieu of the words “(designate office and telephone number)” insert “the authority at (515)281-6444”.

25—10.6(17A,175) Regulatory analysis.

10.6(2) In lieu of the words “(designate office)” insert “the authority”.

25—10.10(17A,175) Exemptions from public rule-making procedures.

10.10(2) is deleted and the subsequent subrules are renumbered.

25—10.11(17A,175) Concise statement of reasons.

10.11(1) In lieu of the words “(specify the office and address)” insert “the Executive Director, Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50309-2322”.

25—10.13(17A,175) Agency rule-making record.

10.13(2) In lieu of the words “(agency head)” insert “executive director”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 175.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 11
WAIVER OR VARIANCE OF RULES

25—11.1(17A,175) Definition. For purposes of this chapter, a “waiver or variance” means action by the authority which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

25—11.2(17A,175) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the authority 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.

25—11.3(17A,175) Applicability of chapter. The authority may grant a waiver from a rule only if the authority has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The authority may not waive requirements created or duties imposed by statute.

25—11.4(17A,175) Criteria for waiver or variance. In response to a petition completed pursuant to rule 25—11.6(17A,175), the authority may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the authority finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested.
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law.
4. 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.

25—11.5(17A,175) Filing of petition. A petition for a waiver must be submitted in writing to the authority as follows:

11.5(1) 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.

11.5(2) 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.

11.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the bureau chief of the bureau administering the rule from which the waiver is sought.

25—11.6(17A,175) 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 being requested and the case number of any related contested case.
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 rule 25—11.4(17A,175). 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 authority 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.

6. Any information known to the requester regarding the authority's treatment of similar cases.

7. 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 granting of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

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

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver.

25—11.7(17A,175) Additional information. Prior to issuing an order granting or denying a waiver, the authority 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 authority may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the authority.

25—11.8(17A,175) Notice. The authority shall acknowledge a petition upon receipt. The authority 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 authority may give notice to other persons. To accomplish this notice provision, the authority 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 authority attesting that notice has been provided.

25—11.9(17A,175) 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 authority so provides by rule or order or is required to do so by statute.

25—11.10(17A,175) 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.

11.10(1) Authority discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the authority, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the authority based on the unique, individual circumstances set out in the petition.

11.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the authority should exercise its discretion to grant a waiver from an authority rule.

11.10(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

11.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the authority shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

11.10(5) Conditions. The authority may place any condition on a waiver that the authority finds desirable to protect the public health, safety, and welfare.

11.10(6) *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 authority, a waiver may be renewed if the authority finds that grounds for a waiver continue to exist.

11.10(7) *Time for ruling.* The authority 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 authority shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

11.10(8) *When deemed denied.* Failure of the authority to grant or deny a petition within the required time period shall be deemed a denial of that petition by the authority. However, the authority shall remain responsible for issuing an order denying a waiver.

11.10(9) *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.

25—11.11(17A,175) 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 authority is authorized or required to keep confidential. The authority may accordingly redact confidential information from petitions or orders prior to public inspection.

25—11.12(17A,175) Summary reports. Semiannually, the authority shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the authority's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

25—11.13(17A,175) Cancellation of a waiver. A waiver issued by the authority pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the authority 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.

25—11.14(17A,175) 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.

25—11.15(17A,175) Defense. After the authority 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.

25—11.16(17A,175) Judicial review. Judicial review of an authority's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and chapter 175.

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