State of Iowa

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

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

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

Editor's telephone (515)281-3355 or (515)242-6873

Administrative Services Department[11]

Replace Chapter 114

Soil Conservation and Water Quality Division[27]

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Replace Chapters 3 to 5
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CHAPTER 114
ORGANIZATION AND OPERATION OF TERRACE HILL

[Prior to 5/31/89, see Historical Division[223] Ch 25]
[Prior to 2/16/94, see Historical Division[223] Ch 55]
[Prior to 1/21/04, see 401—Ch 14]

11—114.1(8A) Definitions. The definitions listed in Iowa Code section 17A.2 shall apply for terms as used throughout this chapter. In addition, the following definitions shall apply:

"Administrator" means the administrator of Terrace Hill.

"Commission" means the Terrace Hill commission as established by Iowa Code section 8A.326.

"Facility" means the Terrace Hill mansion, carriage house, grounds, and all related property, all of which have been designated a National Historic Landmark and which are subject to a Conservation Easement Agreement for the Preservation of Terrace Hill, recorded with the Polk County, Iowa, Recorder and effective until January 6, 2061.

[**ARC 2199C**, IAB 10/14/15, effective 11/18/15]

11—114.2(8A) Mission statement. The commission exists in accordance with Iowa Code section 8A.326 to preserve, maintain, renovate, landscape, and administer the facility. The commission has authority to establish policy and procedures and approve the ongoing expenditures for preservation, renovation, and landscaping of the facility and seeks necessary funds for these activities. The facility is maintained as the official residence for the governor of Iowa and serves as a facility for public and private functions.

[**ARC 2199C**, IAB 10/14/15, effective 11/18/15]

11—114.3(8A) Terrace Hill commission.

114.3(1) *Composition.* The commission consists of nine members appointed by the governor in accordance with Iowa Code section 8A.326.

114.3(2) *Meetings.* The commission shall meet at the call of the chair. A majority of the members of the commission shall constitute a quorum, and an affirmative vote of a majority of the members present is required for approval of an item.

All meetings are open to the public under Iowa Code chapter 21 and conducted in accordance with Robert's Rules of Order, Revised Edition, to the extent such rules are not inconsistent with Iowa law. Public notice of all meetings shall be made available to the news media. The tentative agenda for meetings shall be posted in the governor's office at the State Capitol at least 24 hours prior to the commencement of any meeting in accordance with Iowa Code chapter 21.

114.3(3) *Committees—appointment.* Committees of the commission may be appointed on an ad hoc basis by the chairperson of the commission. Persons who are not members of the commission may be appointed to committees.

[**ARC 2199C**, IAB 10/14/15, effective 11/18/15]

11—114.4(8A) Gifts, bequests, endowments. The commission may accept private gifts, bequests, and endowments. Accepted gifts, bequests, and endowments shall be used in accordance with the desire of the donor as expressed at the time of the donation. Undesignated funds shall be used for projects and activities of the commission.

[**ARC 2199C**, IAB 10/14/15, effective 11/18/15]

11—114.5(8A) Public and private grants and donations. The commission may apply for and receive funds from public or private sources. Receipts from these grants shall be used in accordance with all stipulations of the grant contract.

[**ARC 2199C**, IAB 10/14/15, effective 11/18/15]

11—114.6(8A) Sale of mementos. The commission may sell mementos or other items relating to Iowa and its culture at its facilities.

114.6(1) *Operator of gift shop.* Rescinded IAB 10/14/15, effective 11/18/15.

114.6(2) *Income.* Rescinded IAB 10/14/15, effective 11/18/15.
[**ARC 2199C**, IAB 10/14/15, effective 11/18/15]

11—114.7(8A) Facilities management.

114.7(1) *Address.* Terrace Hill is located at 2300 Grand Avenue, Des Moines, Iowa 50312. Telephone number (515)281-7205.

114.7(2) *Hours of operation.* Terrace Hill is open to the public a minimum of 20 hours per week and is closed the months of January and February. Specific hours and days shall be posted at the facility. The hours shall be approved by the commission. Changes in the hours shall be effective upon 30 days' notice as posted.

114.7(3) *Fees.* Fees may be charged and collected by the commission including, but not limited to, fees for admission, special events, use of images, and technical services. All fees charged shall be approved by the commission and shall become effective upon 30 days' notice. This notice shall be a public posting in the facility. All fees shall be permanently posted.

114.7(4) *Smoking.* Smoking shall be prohibited in the facility.

114.7(5) *Food and drink.* Consumption of food and beverages shall be prohibited in the facility except in specific areas as designated by the commission.

114.7(6) *Use of alcoholic beverages.* Alcoholic beverages may be served at functions at the facility only with the use of an approved caterer. Interested caterers shall contact the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

114.7(7) *Liability.* All individuals or groups renting the facility shall be liable for any or all damages to the facility. The renter shall be billed for the cost of the repairs, extraordinary cleaning and, if necessary, the collection costs.

114.7(8) *Public functions.* Public functions may be held at the facility when the governor has an immediate interest or the function meets the special events criteria established by the commission. The criteria require that the event be in accordance with the mission of the facility. Weddings and wedding receptions are strictly prohibited, except in the case of the immediate family of the current governor. Inquiries shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.
[**ARC 2199C**, IAB 10/14/15, effective 11/18/15]

11—114.8(8A) Tours.

114.8(1) *Group tours.* Reservations shall be required for tour groups of ten or more. Requests for reservations shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

114.8(2) *Fees.* An admission fee is charged at Terrace Hill. There shall be no charge for school groups. The fee schedule shall be permanently posted at the site. Inquiries concerning fees shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

114.8(3) *Parking.* Designated parking has been established by the commission. Vehicles are not permitted in the east driveway.

114.8(4) *Pets.* Pets are not permitted at the facility with exception of those belonging to the governor or the governor's family or service dogs or assistive animals accompanying and under the control of a person with a disability, a person assisting a person with a disability, or a person training a service dog or assistive animal. The person is liable for damage done to the facility by the service dog or assistive animal.
[**ARC 2199C**, IAB 10/14/15, effective 11/18/15]

These rules are intended to implement Iowa Code section 8A.326.

[Filed emergency 2/13/87—published 3/11/87, effective 2/13/87]
[Filed without Notice 5/12/89—published 5/31/89, effective 7/5/89]
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[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]
[Filed ARC 2199C (Notice ARC 2072C, IAB 8/5/15), IAB 10/14/15, effective 11/18/15]

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

[Renamed Soil Conservation Division[27] under the Agriculture and Land Stewardship Department[21] "umbrella"]
[Renamed Soil Conservation and Water Quality Division[27] pursuant to 2015 Iowa Acts, House File 634]

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CHAPTER 3
CONTESTED CASE PROCEEDINGS AND PRACTICE

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

27—3.1(17A,161A) Scope and applicability. In lieu of the words "(agency name)" insert "the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—3.2(17A,161A) Definitions. Insert the following definitions in alphabetical order:

"Committee" means the state soil conservation committee established at Iowa Code section 161A.4.

"Department" means the department of agriculture and land stewardship.

"Director" means the director of the division of soil conservation and water quality, department of agriculture and land stewardship.

"Division" means the division of soil conservation and water quality, department of agriculture and land stewardship.

"Secretary" means the Iowa secretary of agriculture.

In lieu of the words "(designate official)" insert "person designated by the director to preside over a contested case including, but not limited to, an administrative law judge with the department of inspections and appeals". In lieu of the words "(agency name)" insert "the division of soil conservation and water quality, department of agriculture and land stewardship".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—3.3(17A,161A) Time requirements.

3.3(2) Delete the words "or by (specify rule number)".

27—3.4(17A,161A) 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."

27—3.5(17A,161A) Notice of hearing.

3.5(1) Delete paragraph "e. (other options)."

27—3.6(17A,161A) Presiding officer.

3.6(1) Delete the words "(or such other time period the agency designates)".

3.6(2) Delete the words "(or its designee)". Delete paragraphs "c" and "i" and reletter the subsequent paragraphs.

3.6(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."

3.6(4) Delete the subrule and renumber the subsequent subrules.

27—3.12(17A,161A) Service and filing of pleadings and other papers.

3.12(3) In lieu of the words "(specify office and address)" insert "Director's Office, Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319". In lieu of the words "(agency name)" insert "division".

3.12(4) In lieu of the words "(designate office)" insert "director's office".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—3.15(17A,161A) Motions.

3.15(4) Delete the words "(or other time period designated by the agency)".

3.15(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".

27—3.16(17A,161A) Prehearing conference.

3.16(1) Delete the words "(or other time period designated by the agency)". In lieu of the words "(designate office)" insert "presiding officer".

27—3.17(17A,161A) Continuances.

3.17(1) Delete the words "(or other time period designated by the agency)".

27—3.22(17A,161A) Default.

3.22(5) Delete the words "(or other time specified by the agency)".

27—3.23(17A,161A) Ex parte communication.

3.23(8) In lieu of the words "(or disclosed)" insert "or disclosed".

3.23(10) In lieu of the words "(agency to designate person to whom violations should be reported)" insert "the division director or the director's designee".

27—3.24(17A,161A) Recording costs. In lieu of the words "(agency name)" insert "division".

27—3.25(17A,161A) Interlocutory appeals. In lieu of the words "(board, commission, director)" insert "director or the director'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)".

27—3.26(17A,161A) Final decision.

3.26(1) In lieu of the words "(the agency) (or a quorum of the agency)" insert "the division".

3.26(2) In lieu of the words "(agency name)" insert "division".

27—3.27(17A,161A) Appeals and review.

3.27(1) In lieu of the words "(board, commission, director)" insert "director or the director's designee". Delete the words "(or other time period designated by the agency)".

3.27(2) In lieu of the words "(board, commission, director)" insert "director or the director's designee". Delete the words "(or other time period designated by the agency)".

3.27(3) In lieu of the words "(agency name)" insert "division".

3.27(4) Delete the words "(or other time period designated by the agency)". In lieu of the words "(board, commission, director)" insert "director or the director's designee".

3.27(5) In lieu of the words "(agency name)" insert "division".

3.27(6) Delete the words "(or other time period designated by the agency)". In lieu of the words "(board, commission, director)" insert "director or the director's designee".

27—3.28(17A,161A) Applications for rehearing.

3.28(3) In lieu of the words "(agency name)" insert "division".

3.28(4) In lieu of the words "(agency name)" insert "division".

27—3.29(17A,161A) Stays of agency action.

3.29(1) In lieu of the words "(agency name)" insert "division". In lieu of the words "(board, commission, director)" insert "director or the director's designee".

3.29(2) In lieu of the words "(board, commission, director, as appropriate)" insert "director or the director's designee".

3.29(3) In lieu of the words "(agency name)" insert "division".

These rules are intended to implement Iowa Code chapters 17A and 161A.

[Filed 5/12/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]
[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 4
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:

27—4.1(17A,161A) Petition for declaratory order. In lieu of the words "(designate agency)" the first time the words are used, insert "division of soil conservation and water quality, department of agriculture and land stewardship (hereinafter referred to as "the division")". In lieu of the words "(designate agency)" the subsequent times the words are used, insert "division". In lieu of the words "(designate office)" insert "Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319." In lieu of the words "(AGENCY NAME)" insert "DIVISION OF SOIL CONSERVATION AND WATER QUALITY, DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—4.2(17A,161A) Notice of petition. In lieu of the words "_____ days (15 or less)" insert "15 days". In lieu of the words "(designate agency)" insert "division".

27—4.3(17A,161A) Intervention.

4.3(1) In lieu of the words "_____ days" insert "20 days".

4.3(2) In lieu of the words "(designate agency)" insert "the division".

4.3(3) In lieu of the words "(designate office)" insert "the division director's office". In lieu of the words "(designate agency)" insert "the division". In lieu of the words "(AGENCY NAME)" insert "DIVISION OF SOIL CONSERVATION AND WATER QUALITY, DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP". Delete paragraph "6" and insert in lieu thereof "6. A statement that the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding."
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—4.4(17A,161A) Briefs. In lieu of the words "(designate agency)" insert "division".

27—4.5(17A,161A) Inquiries. In lieu of the words "(designate official by full title and address)" insert "the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—4.6(17A,161A) Service and filing of petitions and other papers.

4.6(2) In lieu of the words "(specify office and address)" insert "the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319". In lieu of the words "(agency name)" insert "division".

4.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))" insert "rule 27—3.12(17A,161A)".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—4.7(17A,161A) Consideration. In lieu of the words "(designate agency)" insert "division".

27—4.8(17A,161A) Action on petition.

4.8(1) In lieu of the words "(designate agency head)" insert "the director of the division of soil conservation and water quality".

4.8(2) In lieu of the words and numbers "(contested case uniform rule X.2(17A))" insert "rule 27—3.2(17A,161A)".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—4.9(17A,161A) Refusal to issue order.

4.9(1) In lieu of the words "(designate agency)" insert "division".

27—4.12(17A,161A) Effect of a declaratory order. In lieu of the words "(designate agency)" insert "division". Delete the words "(who consent to be bound)".

These rules are intended to implement Iowa Code chapters 17A and 161A.

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[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 5
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:

27—5.1(17A,161A) Applicability. In lieu of the word "agency" insert "the division of soil conservation and water quality, department of agriculture and land stewardship (hereinafter referred to as "the division")".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—5.3(17A,161A) Public rule-making docket.
5.3(2) In lieu of the words "(commission, board, council, director)" insert "director of the division of soil conservation and water quality".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—5.4(17A,161A) Notice of proposed rule making.
5.4(3) In lieu of the words "(specify time period)" insert "one year".

27—5.5(17A,161A) Public participation.
5.5(1) In lieu of the words "(identify office and address)" insert "the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".
5.5(5) In lieu of the words "(designate office and telephone number)" insert "the division director's office at (515)281-6146".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—5.6(17A,161A) Regulatory analysis.
5.6(2) In lieu of the words "(designate office)" insert "the division director's office".

27—5.10(17A,161A) Exemptions from public rule-making procedures.
Subrule 5.10(2) is deleted and subsequent subrules are renumbered.

27—5.11(17A,161A) Concise statement of reasons.
5.11(1) In lieu of the words "(specify the office and address)" insert "the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—5.13(17A,161A) Agency rule-making record.
5.13(2) In lieu of the words "(agency head)" insert "director of the division of soil conservation and water quality".
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

These rules are intended to implement Iowa Code chapters 17A and 161A.

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[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 10
IOWA FINANCIAL INCENTIVE PROGRAM FOR SOIL EROSION CONTROL

[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 5]

27—10.1 to **10.9** Reserved.

PART 1

27—10.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing the state's financial incentive program for soil erosion control. It also establishes standards and guidelines to which the soil conservation districts shall conform in fulfilling their responsibilities under this program.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—10.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—10.12 to **10.19** Reserved.

PART 2

27—10.20(161A) Definitions.

"Administrative order" means a written notice from the commissioners to the landowner or landowners of record and to the occupants of land informing them they are violating the district's soil loss limit regulations or maintenance agreement and advising them of action required to conform to the regulations.

"Allocation" means those funds that are identified as a district's share of the state's appropriated funds that have been distributed to a particular program.

"Applicant" means a person or persons requesting assistance for implementing soil and water conservation practices.

"Appropriations" means those funds appropriated from the general fund of the state and provided the division of soil conservation and water quality for funding the various incentive programs for soil erosion control.

"Case file" means a record that is assembled and maintained for each application approved for state cost sharing.

"Certification of practice form" means a signature page used to attest that a practice was installed, performed or maintained in accordance with applicable standards.

"Certifying technician" means the district conservationist of the Natural Resources Conservation Service (NRCS) or the district forester of the department of natural resources.

"Commissioner" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of Iowa Code chapter 161A.

"Committee" or *"state soil conservation committee"* means the committee established by Iowa Code section 161A.4 as the policymaking body of the division of soil conservation and water quality.

"Complaint" means a written and signed document received by the commissioners from a landowner or occupant of land stating that said property in the district is being damaged by sediment resulting from soil erosion on the property of another named landowner.

"Conservation cover" means that if a tract of agricultural land has not been plowed or used for growing row crops at any time within the prior 15 years, it shall be classified as agricultural land under conservation cover.

"Department" means the department of agriculture and land stewardship as established in Iowa Code chapter 159.

"District" or *"soil and water conservation district(s)"* means a governmental subdivision of this state organized for the purposes, with the powers, and subject to the restrictions set forth in Iowa Code chapter 161A.

"District cooperator" means an individual or business that has entered into a cooperator's agreement with a district for the purpose of planning, applying, and maintaining the necessary soil and water conservation practices on land under control of the individual or business.

"Division" means the division of soil conservation and water quality as established and maintained by the department pursuant to Iowa Code section 159.5(15) and administered pursuant to Iowa Code chapter 161A.

"Excessive erosion" means soil erosion that is occurring at a rate exceeding the established soil loss limit.

"Fiscal year" means the state fiscal year for which program funds were appropriated.

"Landowner" includes any person, firm or corporation, partnerships, estates, trusts, or any federal agency, this state or any of its political subdivisions, who shall hold title to or have legal control over land lying within a district.

"Maintenance/performance agreement" means an agreement between the recipient, the landowner, and the district. The recipient and landowner agree to maintain the soil conservation practices for which financial incentives from the division through the district have been received. The agreement states that the recipient and landowner will maintain, repair, or reconstruct the practices if they are not maintained according to the terms specified in the agreement. The terms of the agreement shall be specified by the division.

"Obligated funds" means those moneys that are set aside out of the district's allocation or by the division for payment to a landowner after the commissioners have approved an application for financial incentives.

"Power of attorney" means a legal document that grants a person the right to act on behalf of the landowner.

"Recipient" means a landowner or district cooperator who has qualified for and received financial incentive payments for implementing soil and water conservation practices.

"Road" means the entire width between property lines of the publicly owned right-of-way.

"Row cropped lands" means land that is in an established rotation sequence that includes row crops and the sequence is actively being followed or is in consecutive row crop sequence.

"Soil conservation practices" means any of the practices which serve to reduce erosion of soil by wind and water on land used for agricultural or horticultural purposes and approved by the state soil conservation committee.

"Soil loss limit" means the maximum amount of soil loss due to erosion by water or wind, expressed in terms of tons per acre per year, which the commissioners of the respective soil and water conservation districts have established by rule as acceptable.

"State soil survey data base for Iowa" means a listing of the soil map units for each county and the properties and interpretation for each of the map units.

"Supplemental allocation" means additional funds provided beyond the original allocation.

"Supplementary administrative order" means a written notice sent to those receiving an administrative order for violation of the district's soil loss limit regulations advising that cost-share funds are being committed to the landowner or landowners and establishing time limits for correcting the soil erosion problems.

"Technician" means a person qualified to design, lay out and inspect construction of soil conservation practices, and who is assigned to or employed by a soil and water conservation district.

"Unobligated funds" means those cost-share moneys the districts have been allocated and those the division administers that have not been obligated.

[**ARC 8766B**, IAB 5/19/10, effective 7/1/10; **ARC 0224C**, IAB 7/25/12, effective 8/29/12; **ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—10.21 to **10.29** Reserved.

PART 3

27—10.30(161A) Compliance, refunds, reviews and appeals. This division establishes rules for determining landowner or farm operator compliance with performance or maintenance agreements that have been entered into as a result of receiving financial incentive payments for implementing soil conservation practices. This division also defines the responsibilities of the districts and the division for obtaining refunds from landowners or farm operators, and procedures to be followed, when it is found that temporary practices are not being performed in accordance with funding agreements.

This division also defines the responsibilities of the districts and the division for requiring maintenance, repair or reconstruction of permanent soil and water conservation practices when it is found that permanent practices are not being maintained in accordance with funding agreements.

27—10.31(161A) Compliance with maintenance/performance agreements.

10.31(1) *Performance agreement.* Rescinded IAB 7/18/07, effective 6/27/07.

10.31(2) *Maintenance/performance agreement.* As a condition for receipt of any financial incentives funds for implementing soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices for the term specified in the maintenance/performance agreement. Specific conditions of the agreement are detailed on the form.

a. Determination of practice implementation and continued compliance with maintenance/performance agreements.

(1) The certifying technician or the technician of the district will determine if the completed practice is in compliance with applicable standards and specifications in Part 8 of these rules. The certifying technician shall attest to completion and compliance with the standards by completing and signing a certification of practice form. The completed certification will be retained in the district case file for the appropriate landowner.

(2) The certifying technician or district technician shall inspect the practice at any time the district commissioners have reason to believe it is not being satisfactorily maintained. The division will evaluate the situation to determine that proper procedures were followed. "Satisfactorily maintained" means being maintained in such a state of repair so that the practice is successfully performing the function for which it was originally installed. Following the inspection, the certifying technician shall complete a certification of practice form. The completed certification shall be filed in the district's case file for the landowner.

(3) The district shall inspect a practice whenever requested to do so by the landowner. The person requesting the inspection shall be provided a copy of the completed certification of practice form, used to document the results of this inspection.

b. Determination of noncompliance with maintenance/performance agreement. If the certifying technician determines that the practice is not being satisfactorily maintained, it shall be so noted on the certification of practice form. The district shall notify the division in writing of the noncompliance finding. The notification to the division shall contain a complete explanation of why the practice is considered not to be in compliance with the maintenance/performance agreement. The division will evaluate the situation to determine that proper procedures were followed. "Satisfactorily maintained" means the practice has been maintained in such a state of repair that it is successfully performing the function for which it was originally installed.

c. In the event that properly maintained practices that were installed with the assistance of Iowa financial incentive program funds are damaged due to natural disasters, completing the maintenance/performance agreement shall not constitute an action or intent on the part of the division to prevent the owner of the land on which the practices were installed from receiving federal emergency conservation program assistance to repair or replace the practices.

27—10.32(161A) Noncompliance.

10.32(1) *Noncompliance with performance agreements.* Rescinded IAB 7/18/07, effective 6/27/07.

10.32(2) *Refunds for noncompliance with maintenance agreements to cost-share agreements entered prior to July 1, 1981.* Rescinded IAB 7/18/07, effective 6/27/07.

10.32(3) *Refunds for noncompliance with maintenance agreements entered between January 1, 1981, and July 1, 1982.* Rescinded IAB 7/18/07, effective 6/27/07.

10.32(4) *Noncompliance with maintenance/performance agreements.* Upon determination by the district and the division that a landowner is not in compliance with a maintenance/performance agreement, the division shall assist the district in the issuance of an administrative order to the landowner requiring appropriate maintenance, repair or reconstruction of the practice, provided voluntary means have been exhausted. The district, in its sole discretion, may allow the landowner or the landowner's successors to refund to the division the entire amount of the financial incentive payment received by the landowner in lieu of maintaining, repairing or reconstructing a practice.

a. Within 60 days from the date of issue of the administrative order, the landowner shall submit to the district a written and signed statement of intent to maintain, repair or reconstruct the practice.

b. The maintenance, repair or reconstruction work shall be initiated within 180 days from the date of issue of the administrative order and shall be satisfactorily completed within one year of the date of issue of the administrative order.

10.32(5) *Agricultural land converted to nonagricultural land.* If land subject to a maintenance/performance agreement is converted to a nonagricultural use that does not require a permanent soil and water conservation practice which has been established with financial incentives, the practice shall not be removed until the owner refunds the appropriate amount of the payment received.

a. Amount of refund. The amount of refund will be the amount of the financial incentive payment received less 5 percent for each year the practice was in place.

b. Districts will notify the division when such refunds are collected.

c. Refunds will be made to the division. The division will deposit refunds to the appropriate district account. Use of the refunds will be limited to providing financial incentives under this chapter.

27—10.33(161A) Appeals and reviews. A landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may, as appropriate, review the order with the district commissioners or the division of soil conservation and water quality. Appeals to the state soil conservation committee may be made by the district, a landowner or a farm operator following a review by the division director or the director's designee.

10.33(1) Review with soil and water conservation district commissioners. When a landowner or farm operator wishes to appeal an order to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement, the landowner or farm operator may request a review of the order with the district commissioners. The commissioners shall schedule a meeting to review the issue with the landowner or farm operator. This proceeding shall be informal. A landowner or farm operator shall request a review with the district commissioners in writing and within 30 days following receipt of their order.

10.33(2) Review with the division of soil conservation and water quality. After having unsuccessfully met with the district commissioners, a landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may file a written request for review with the division. The division review shall be conducted by the division director or the director's designee. This proceeding shall be informal. A landowner or farm operator shall request the review with the division in writing within 30 days following the review with the district.

10.33(3) Appeal to the state soil conservation committee. In those cases where the district, landowner, or farm operator is not satisfied with the decision rendered as a conclusion of a division review concerning an order to maintain, repair or reconstruct a temporary or permanent practice covered by a maintenance/performance agreement, the district, landowner, or farm operator may appeal the division's decision to the state soil conservation committee. This proceeding shall be a formal,

contested case hearing. The district, landowner, or farm operator shall make the appeal to the state committee in writing within 30 days following completion of the division's review.

10.33(4) The committee will either affirm, modify, or vacate the administrative order following the completion of the contested case hearing.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—10.34 to **10.39** Reserved.

PART 4

27—10.40 Reserved.

27—10.41(161A) Appropriations. The department of agriculture and land stewardship, division of soil conservation and water quality, has received appropriations for conservation cost sharing since 1973 and appropriations to fund certain incentive programs for soil erosion control since 1979. Funds are appropriated each year by the general assembly.

The division has four years to encumber or obligate these funds before they revert to the state's general fund. This rule addresses the distribution of these appropriations among the incentive programs for soil erosion control established by the division in accordance with the authorities extended in Iowa Code chapter 161A. The rule is also consistent with the restrictions imposed by language of the appropriations bills.

10.41(1) Voluntary program. Ninety percent of the appropriation is to be used for cost sharing to provide state funding of not more than 50 percent of the approved cost of permanent soil and water conservation practices or for incentive payments to encourage management practices to control soil erosion on land that is now row-cropped.

The first $15,000 allocated to each district and up to 30 percent of the amount remaining in a district's original and supplemental allocation may be used for the establishment of practices listed in subrules 10.82(1) and 10.82(2).

The commissioners of a district may allocate voluntary program funds for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency. Funds may be used for construction, reconstruction, installation, or repair of projects. The commissioners must determine that funds are necessary to restore permanent practices to prevent erosion in excess of applicable soil loss limits caused by the disaster emergency. Funds cannot be used unless a state of disaster emergency pursuant to a proclamation as provided in Iowa Code section 29C.6 has been declared. Funds can be used only if federal or state disaster emergency funds are not adequate. Funds do not have to be allocated on a cost-share basis. Districts are required to report to the division regarding restoration projects and funds allocated for projects.

10.41(2) Publicly owned lakes. For the approved cost of permanent soil conservation practices on watersheds above publicly owned lakes, a minimum of 5 percent of the amount appropriated is to be set aside for cost sharing at a rate not to exceed 75 percent.

10.41(3) Mandatory program. A maximum of 5 percent of the appropriation shall be set aside for cost sharing with landowners or farm operators who are required to install soil erosion control practices as a result of an administrative order from the district to abate complaints filed under Iowa Code section 161A.47.

10.41(4) Special watershed projects. Iowa Code section 161A.7 permits cost sharing up to 60 percent of the cost of a project including five or more contiguous farm units which have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or subwatershed, where the owners jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plan.

10.41(5) Summer construction incentives. Funds are available for the planting of a conservation cover crop in place of cropland during the growing season to extend the construction season for the purpose of the installation of conservation practices. This practice shall be applied using the

conservation crop rotation standard. Summer construction incentives are only available in conjunction with state-funded conservation practices.

This rule is intended to implement Iowa Code chapter 161A.

[**ARC 7722B**, IAB 4/22/09, effective 4/1/09; **ARC 8766B**, IAB 5/19/10, effective 7/1/10; **ARC 0737C**, IAB 5/15/13, effective 7/1/13; **ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—10.42 to **10.49** Reserved.

PART 5

27—10.50(161A) Allocations to soil and water conservation districts. This division identifies those program funds that are allocated to the districts and explains how the allocations are made.

27—10.51(161A) Voluntary program. The division will allocate program funds to the districts in steps identified as original allocations and supplemental allocations.

10.51(1) *Original allocation.* Sixty percent of the fiscal year funds distributed to this program will be allocated to the districts at the beginning of the fiscal year in accordance with a formula based on the state soil survey database for Iowa. The formula is A = wzf, where:

a. A = allocation to the district.

b. w = the percentage factor for the district, determined by (x/y) (100), where:

(1) x = district acres, determined by totaling the district's land capability class acres from the state soil survey database for Iowa using the formula: (¼)2e + 3e + 4e.

(2) y = state acres, determined by totaling the state's land capability class acres from the state soil survey database for Iowa using the formula: (¼)2E + 3E + 4E.

c. z = sixty percent of fiscal year funds distributed to the voluntary program.

d. f = an adjustment factor of 0.980 applied to each district's allocation to adjust the original allocation to compensate for establishing a minimum of four-tenths of 1 percent of "z" to ensure that each district has a workable program.

e. The following table provides the value of "w" for each district:

Individual Soil and Water Conservation District

Percentage Allocation Factors

W(%) District	W(%) District	W(%) District	W(%) District
1.7 Adair	1.2 Davis	1.0 Jefferson	0.2 Pocahontas*
1.1 Adams	1.4 Decatur	1.2 Johnson	0.8 Polk
1.5 Allamakee	0.8 Delaware	1.2 Jones	1.4 E. Pottawattamie
1.1 Appanoose	0.5 Des Moines	1.4 Keokuk	1.2 W. Pottawattamie
1.3 Audubon	0.4 Dickinson	0.5 Kossuth	1.6 Poweshiek
1.2 Benton	1.8 Dubuque	1.0 Lee	1.6 Ringgold
0.3 Black Hawk*	0.4 Emmet	1.0 Linn	0.7 Sac
0.6 Boone	1.1 Fayette	0.5 Louisa	0.8 Scott
0.3 Bremer*	0.3 Floyd*	1.1 Lucas	1.8 Shelby
0.3 Buchanan*	0.6 Franklin	0.9 Lyon	1.0 Sioux
0.5 Buena Vista	1.0 Fremont	1.2 Madison	0.6 Story
0.6 Butler	0.5 Greene	1.2 Mahaska	1.5 Tama
0.3 Calhoun*	0.5 Grundy	1.3 Marion	1.7 Taylor
1.2 Carroll	1.5 Guthrie	1.5 Marshall	1.1 Union
1.5 Cass	0.4 Hamilton	1.1 Mills	1.2 Van Buren
1.2 Cedar	0.4 Hancock	0.2 Mitchell*	1.0 Wapello

W(%) District	W(%) District	W(%) District	W(%) District
0.4 Cerro Gordo	0.7 Hardin	1.3 Monona	1.2 Warren
1.0 Cherokee	1.7 Harrison	1.0 Monroe	1.1 Washington
0.4 Chickasaw	0.9 Henry	1.2 Montgomery	1.4 Wayne
1.2 Clarke	0.4 Howard	0.5 Muscatine	0.3 Webster*
0.4 Clay	0.2 Humboldt*	0.5 O'Brien	0.5 Winnebago
2.0 Clayton	1.3 Ida	0.3 Osceola*	2.0 Winneshiek
1.2 Clinton	1.4 Iowa	1.5 Page	2.2 Woodbury
2.5 Crawford	1.7 Jackson	0.4 Palo Alto	0.2 Worth*
0.8 Dallas	1.8 Jasper	2.4 Plymouth	0.4 Wright

*The minimum value to be used in determining original allocations to districts shall be 0.4.

10.51(2) *Supplemental allocation.* The remaining balance of the fiscal year funds plus recalled funds will be provided to the districts in a supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1 and by December 31. Factors to be considered in making a supplemental allocation to a district include:

a. The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

b. Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

10.51(3) *Recall of funds.* The division shall recall unobligated funds from district accounts on December 31 and on June 30. Recalled funds will be made available to qualifying districts as supplements to their initial allocation.

10.51(4) *Reallocation of recalled funds.* Rescinded IAB 7/18/07, effective 6/27/07.

10.51(5) *Eligibility for supplemental allocations.* In order to be considered as a pending application for the purpose of calculating supplemental need, an application must be immediately ready to proceed to layout, design and construction upon approval by the district.

a. Fall supplemental funding shall only be available to those districts that have 75 percent of their funds obligated and have demonstrated an ability to use available funds.

b. Spring supplemental funding shall be made available to practices that will be completed by June 30 of the current year.

10.51(6) *Recall and reallocation of funds by division director.* If districts are not demonstrating an ability to use available funding, the division director may recall these funds and reallocate the funds to a district that has an immediate need for additional funding.

[**ARC 8766B**, IAB 5/19/10, effective 7/1/10; **ARC 0737C**, IAB 5/15/13, effective 7/1/13; **ARC 1448C**, IAB 4/30/14, effective 7/1/14]

27—10.52(161A) Publicly owned lakes. The division of soil conservation and water quality maintains the funds that are distributed to the publicly owned lakes program. These funds may be used to provide cost sharing not to exceed 75 percent of the approved cost of soil conservation practices on watersheds above publicly owned lakes and reservoirs. The division will allocate these program funds to eligible districts in steps identified as original allocation, recall of unobligated funds, and reallocation.

10.52(1) *Original allocation.* Funding needs will be identified and funds will be set aside for watershed projects which have cost-share funds in addition to state and district cooperator funds (e.g., federal, county, or other). The remaining funds will be allocated equally between the other watersheds identified on the publicly owned lakes priority list.

10.52(2) *Recall of unobligated funds.* Funds that are allocated to districts under this program and are not obligated by September 1 shall be recalled by the division and reallocated.

10.52(3) *Recall of obligated, but unspent funds.* Rescinded IAB 7/18/07, effective 6/27/07.

10.52(4) *Reallocation of recalled funds.* The reallocation of recalled funds will be based on need and demonstrated ability to use the funds. The districts shall submit their requests identifying valid

applications and cost estimates, if any, to the division. The division shall allocate funds for these requests on a first-come, first-served basis to other eligible watersheds above publicly owned lakes.

10.52(5) *Eligible watersheds.* For a landowner to qualify for 75 percent cost sharing under this program, the watershed in which the land is located must be on a list of priority watersheds above publicly owned lakes or reservoirs that is established by the department of natural resources.

10.52(6) *Applications and agreements.* Applications and agreements for 75 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except that the division will allocate funds to districts on an as-needed and first-come, first-served basis.

[**ARC 0737C**, IAB 5/15/13, effective 7/1/13; **ARC 1448C**, IAB 4/30/14, effective 7/1/14; **ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—10.53 Reserved.

27—10.54(161A) Mandatory program. The division of soil conservation and water quality maintains the funds that are distributed to the mandatory cost-share program. These funds are used to provide cost sharing to landowners who are required to establish permanent soil and water conservation practices as the result of a district's administrative order or a court order.

10.54(1) *Applications and agreements.* Applications and maintenance/performance agreements for 50 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except as follows:

a. When the district commissioners have decided that cost-share assistance is to be approved for a landowner, a copy of the application and a copy of the cost estimate proposed by the technician will be sent to the division with a request for funding obligation. The division will review the application, allocate funds for the specific application to the district and notify the district of the approval. If funds are not available, the division will not allocate funds to the specific application, but will write a letter of explanation to the district. The district will notify the landowner of the status by issuing a supplementary administrative order.

b. Prior approval of the amendment must be obtained from the division should the commissioners desire to amend the application to change the amount of work or the cost.

10.54(2) *Redistribution of program funds.* Any unobligated program funds remaining at the end of the fiscal year will be redistributed to the voluntary cost-share program. These funds may be included with the supplemental allocation to districts or may be disbursed with the original allocation.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—10.55 Reserved.

27—10.56(161A) Special watershed projects. District commissioners will satisfy the following conditions with regard to special watershed projects:

10.56(1) Prior to approving a project application for 60 percent cost-share, the district must obtain a project number from the division.

10.56(2) All participating landowners in a particular project will be required to show progress towards completion during the first year of the project. Progress will be evaluated by the district. Failure of all participating landowners to show progress during the first year will result in loss of authorization of the project and 60 percent cost-share funding eligibility.

10.56(3) Authorization for each project shall not exceed five years.

27—10.57(161A) Reserve fund.

10.57(1) *Purpose and use of the reserve fund.* The reserve fund will be set aside and used only to meet contingencies that occur in the districts or within the division. The reserve fund shall not exceed $150,000.

10.57(2) *Replenishing the reserve fund.* On June 30 of each year, the division may recall any unspent allocations and replenish the fund in accordance with subrule 10.57(1). If needed, the reserve fund may also be replenished at any time with recalled funds to return the balance to $150,000.

27—10.58 and **10.59** Reserved.

PART 6

27—10.60(161A) Funding rates. The purpose of this division is to establish the funding rates at which the state will fund or share the cost for approved soil conservation practices under the various incentive programs. In all cases, except for the mandatory program, the state's share will be computed using the percentages specified below and the estimated cost, the amended estimated cost, or the actual cost of implementing the practice, whichever is less. Payments under the mandatory program will be based on actual costs. Funds distributed to annual programs for permanent practices may be used in combination with other public funds as long as the maximum cost-share rate realized by the district cooperator does not exceed 75 percent of the total eligible costs.

10.60(1) *Voluntary.*

a. The state will cost-share 50 percent of the cost certified by the certifying technician as being reasonable, proper, and incurred by the applicant in voluntarily installing approved, permanent soil conservation practices, except for tree planting. Eligible costs include machine hire or use of the applicant's equipment, needed materials delivered to and used at the site, and labor required to install the practice.

b. For tree and shrub establishment, the following criteria shall apply:

(1) Fifty percent of the actual cost, not to exceed $450 per acre, including the following:

1. Establishing ground cover;
2. Trees and tree planting operations;
3. Weed and pest control; and
4. Mowing, disking, and spraying.

(2) Fifty percent of actual cost, not to exceed $150 per acre, for wood plant control.

(3) Actual cost, not to exceed the lesser of $14 per rod or $45 per acre protected, for permanent fences that protect planted acres from grazing, excluding boundary and road fencing.

c. For currently funded fiscal years, the division will make one-time payments of up to $10 per acre for no-tillage, ridge-till and strip-till; $6 per acre for contour farming; $25 per acre for establishing a cover crop; and 50 percent of the cost up to $25 per acre for strip-cropping, field borders and filter strips. The one-time only payment may apply to management practices lasting up to four consecutive years. The one-time only payment for multiple years is calculated based on the listed annual amounts. A performance agreement is required for incentive payments covering a time period of one year or longer.

d. Funding for the restoration of permanent practices damaged or destroyed because of a disaster (see 10.41(1)) does not have to be allocated on a cost-share basis.

e. Where a livestock watering system is installed in a grade stabilization structure, cost share is limited to 50 percent of the estimated or eligible cost, whichever is less, not to exceed $500 for the watering tank or holding facility, pipe and valves. Payment will be made only if the structure is fenced.

10.60(2) *Summer construction incentives.* In addition to cost share for the establishment of a permanent conservation practice, up to $200 per acre is available to offset income lost from cropland acres taken out of production during the growing season. Payment will be made upon completion of the permanent conservation practice. To qualify:

a. The field being treated shall be in row cropland during the growing season in which the permanent conservation practice is being constructed.

b. The construction area shall be planted with a conservation cover for erosion control purposes on the construction site.

c. The construction of the permanent conservation practice shall take place between June 15 and October 15. Work must be started and completed between these dates and verified by the technician prior to payment of the incentive.

d. Only the land necessary for the construction is eligible for this incentive. The construction work area shall be determined by the technician.

e. The construction work area shall not be used to grow a row crop except for the required conservation cover crop.

10.60(3) *Special watershed projects.* Commissioners may enter into agreements providing for cost sharing up to 60 percent of the cost of a project that includes five or more contiguous farm units which collectively have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or a subwatershed. The owners must jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plans.

10.60(4) *Mandatory.* The rate of cost share for permanent soil and water conservation practices required as a result of an administrative order shall be 50 percent of the total cost to the landowner of installing the approved practice. The cost must be certified by the technician as being reasonable, proper and incurred by the landowner. The rate of cost share for temporary soil and water conservation practices is set by the state soil conservation committee.

10.60(5) *Watersheds above publicly owned lakes.* The state will cost-share 75 percent of the approved cost of permanent soil and water conservation practices on watersheds above certain publicly owned lakes. Watersheds above publicly owned lakes that qualify for 75 percent cost sharing must be identified on a priority list established by the department of natural resources.

10.60(6) *Conservation cover.* Cost share for certain lands is restricted by Iowa Code chapter 161A. Each tract of agricultural land which has not been plowed or used for growing row crops at any time within the prior 15 years shall be considered classified as agricultural land under conservation cover. "Agricultural land" has the meaning assigned that term by Iowa Code section 9H.1. If any tract of land so classified is thereafter plowed or used for growing row crops, the district commissioners shall not approve use of state cost-share funds for establishing permanent or temporary soil and water conservation practices on that tract of land in an amount greater than one-half the amount of cost-share funds which would be available for that land if it were not classified as agricultural land under conservation cover. This restriction shall apply even if an administrative order or court order has been issued requiring establishment of conservation practice.

[**ARC 7722B**, IAB 4/22/09, effective 4/1/09; **ARC 8766B**, IAB 5/19/10, effective 7/1/10; **ARC 0224C**, IAB 7/25/12, effective 8/29/12; **ARC 0331C**, IAB 9/19/12, effective 8/24/12; **ARC 0477C**, IAB 11/28/12, effective 1/2/13; **ARC 0737C**, IAB 5/15/13, effective 7/1/13; **ARC 1448C**, IAB 4/30/14, effective 7/1/14]

27—10.61 to **10.69** Reserved.

PART 7

27—10.70(161A) Applications and agreements. The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving financial incentives for implementing approved temporary or permanent soil and water conservation practices.

27—10.71(161A) Applications submitted to soil and water conservation district. District cooperators desiring to be considered for financial incentives for implementing soil and water conservation practices shall complete necessary applications as specified by the division. If an applicant's land is in more than one district, the respective district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

27—10.72(161A) Application signup.

10.72(1) *Signatures by landowner and applicant.* All applications and agreements shall be signed by the landowner except as noted in subrule 10.72(3) below. For an applicant to qualify for payment, both landowner and applicant must sign the application.

10.72(2) *Land being bought under contract.* All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the operator is applying, the contract buyer, the contract seller, and the operator must sign.

10.72(3) *Power of attorney.* Applications and agreements may be signed by any person designated to represent the landowner or applicant, provided the appropriate power of attorney has been filed with

the district office. The power of attorney requirement can be met by submitting a notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

27—10.73(161A) Eligibility for financial incentives.

10.73(1) *District cooperator.* Rescinded IAB 7/18/07, effective 6/27/07.

10.73(2) *Administrative order.* Rescinded IAB 7/18/07, effective 6/27/07.

10.73(3) *Practices installed on adjoining public lands.* Where soil and water conservation practices are installed on public lands, which benefit adjoining private lands, and costs of the installation are to be shared by the parties, state cost-share funds may be used to cost-share the landowner cost of the erosion control portion of the project.

10.73(4) *Ineligible lands.*

a. Iowa financial incentive funds shall not be used to reimburse other units of government for implementing soil and water conservation practices.

b. Privately owned land not used for agricultural production shall not qualify for financial incentives.

c. Tracts of land used for agricultural production which are less than ten acres in size and from which less than $2500 of agricultural products are sold annually shall not qualify for financial incentives funds, unless approved by the commissioners as part of a group project or as a continuation of an adjacent system.

d. Tracts of land enrolled in the United States Department of Agriculture's Conservation Reserve Program (CRP) that have more than 90 days left on the contract.

10.73(5) *Need for soil and water conservation practices.*

a. Financial incentives shall be available only for those soil and water conservation practices determined to be needed by the district to reduce excessive erosion or sedimentation and included in the designated practices identified in Part 8 of these rules. Such determination of need shall be made by a qualified technician.

b. At the discretion of the SWCD commissioners, practice construction may be allowed during the last 90 days of the CRP contract.

10.73(6) *District priorities.* Each application for financial incentives shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The district priority system shall be reviewed annually by the district. The priority system shall be sent electronically to the division for the division's record after the annual review. The priority system shall give consideration to the public benefit derived. The priority system adopted by the district shall be made available for review at the district office.

[**ARC 8766B**, IAB 5/19/10, effective 7/1/10; **ARC 0737C**, IAB 5/15/13, effective 7/1/13]

27—10.74(161A) Financial incentive application and processing procedures.

10.74(1) *Application for financial incentives.*

a. *Application submitted by landowner and applicant.* Applicants for financial incentives for soil and water conservation practices shall complete and submit a request for assistance to the district office where the practice will be implemented.

b. *Denial of application by district.* Applications which are denied by the district shall be retained in the district until the end of the fiscal year. Application denial as used in this part refers to those applications which cannot be approved for reasons other than lack of available financial incentive funds.

c. *Obligation of funds.* Following approval of an application, the district may obligate funds for the project or, as appropriate, secure obligation of funds from the division for the amount of the project cost estimate identified on the application. In those cases where funds are not available, the application will be held by the district until funding becomes available or until the end of the fiscal year. Upon obligation of funds, the district shall notify the applicant. The district will maintain a record of funds obligated for approved applications.

d. Application withdrawn by applicant. An application may be withdrawn by the applicant at any time prior to receipt of payment by notifying the district in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the district until the end of the fiscal year.

10.74(2) *Project design by district.*

a. District personnel responsible for design. The technician of the district shall design and lay out proposed soil and water conservation practices for which financial incentives funds have been obligated. The certifying technician of the district shall be responsible for determining compliance with applicable design standards and specifications.

b. Cost estimate adjustments.

(1) Application amendment. In the event that adjustment to the project cost estimate is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment request to the district for approval by the commissioners.

(2) Adjustment to obligated funds. The district may adjust the amount of incentive funds obligated for the project or may secure an adjusted obligation from the division for funds obligated by the division. In the event that additional funds are not available, the project may be redesigned, if possible, to a level commensurate with available funds, or the applicant can agree to assume full financial responsibility for the portion of the project cost in excess of the amount obligated.

10.74(3) *Practice construction and certification.*

a. Construction contracts. The landowner and applicant shall be responsible for securing any contractors needed and for all contractual or other agreements necessary to construct or perform the approved practices.

b. Certification of practice. The certifying technician or the technician of the district will determine that the completed practice is in compliance with applicable standards and specifications and that costs incurred are reasonable and proper. The certifying technician shall make such determination by completing and signing the certification of practice form. A copy of the certification will be retained in the district's case file.

10.74(4) *Payment of financial incentives.*

a. Submittal of bills and claim or certification of practice form to district. The applicant shall submit to the district a signed claim or certification of practice form and all bills relative to the project. Any materials and labor provided by the applicant must be itemized, and the itemization of any materials and labor provided by the applicant shall accompany the claim.

b. Approval for payment. The commissioners shall verify the technician's certification prior to approving the certification of practice form for submittal to the division for payment.

c. Claim submitted to the division by district. The signed claim or certification of practice form shall be submitted to the division. All original signed documents including itemized bills, claim agreements, maintenance/performance agreements and amendments shall be retained at the district office in the cooperator's case file.

d. Payment. Payment for the reimbursable cost of the project will be returned by the division to the district or directly to the landowner or applicant.

10.74(5) *Maintenance/performance agreements.*

a. Maintenance/performance agreement required. As a condition for receipt of any financial incentive funds for permanent soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices for a minimum term as required by the division.

b. Maintenance/performance agreement form. An agreement to maintain practices for which financial incentives are being paid shall be made by completing and signing a maintenance/performance agreement form. Specific conditions of the maintenance/performance agreement are detailed on the form. Completion of the form and signature of the landowner are required prior to transfer of the incentive payment from the district to the recipient(s).

c. Filing of agreements.

(1) Establishment of a file for maintenance/performance agreements. The district shall establish and maintain a separate permanent file containing any documentation related to the maintenance/performance agreement form. The maintenance/performance agreements file shall be accessible for review by the public.

(2) Statement of compliance or noncompliance. A seller of agricultural land with respect to which a maintenance/performance agreement is in effect may request the district to inspect the practices. If the practices have not been removed, altered, or modified, the district shall issue a written statement that the seller has satisfactorily maintained the permanent practice as of the date of the statement.

The buyer of lands covered by a maintenance/performance agreement, where buyer means someone who has completed a contract for sale or deed, may also request that the district inspect the lands to determine whether any practice has been removed, altered, or modified as of the date of the inspection. If a practice has been removed, altered, or modified, the district will provide the buyer with a statement specifying the extent of noncompliance as of the date of the statement.

The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance.

10.74(6) *Case files.* A case file shall be assembled and maintained for each application approved. The file will contain all documents and correspondence that require signatures from either the district, district cooperator or technician. The case file shall also include all bills and invoices related to an approved application.

[**ARC 8766B**, IAB 5/19/10, effective 7/1/10]

27—10.75 to **10.79** Reserved.

PART 8

27—10.80(161A) General conditions, eligible practices and specifications. The purpose of this part is to establish the general conditions and limitations concerning practice implementation, the state-approved soil and water conservation practices eligible for state financial incentives and the specifications for which funded practices must conform.

27—10.81(161A) General conditions. The following general conditions shall be met, where applicable, in addition to the specifications in rule 27—10.84(161A). To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

10.81(1) *Practice need.* The designated soil and water conservation practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to reduce excessive erosion or sedimentation.

10.81(2) *Eligible practices must control erosion and sediment.* Only those soil and water conservation practices applied to agricultural crop and pasture land whose primary function is to control soil erosion and prevent sediment damage will be eligible for incentive program funds.

10.81(3) *Limitation of reimbursable costs of practices.* Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost shared by the state. Examples of overbuilding or exceeding specifications include but are not limited to the following:

a. Where a district cooperator desires that water be stored for purposes other than grade stabilization to control erosion,

b. Where additional top width is added to an earthen fill to provide a field crossing or road,

c. Where additional flow capacity for lowland drainage laterals is added to an underground outlet constructed as a component of a terrace system, and

10.81(4) *Materials.* Projects funded with Iowa financial incentive funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

10.81(5) *Existing practices.*

a. *Repair and maintenance.* Repair and maintenance of existing practices are not eligible for funding.

b. *Addition of underground outlets.* The addition of underground outlets to existing waterways and terraces is not eligible for funding.

10.81(6) *Upland treatment.* Seventy-five percent of the upland area shall be adequately treated for erosion control before waterways or grade stabilization structures will be funded.

10.81(7) *Seeding.*

a. *Seeding required.* Following practice construction, seeding shall be performed as appropriate in accordance with seeding specifications referenced in rule 10.84(161A), except as waived below.

b. *Seeding after specified seeding dates.* When the construction of a practice is completed after the seeding date contained in the specifications, seeding may be delayed until the following year. If delayed, the applicant shall be responsible for protecting the practice with temporary vegetative cover or other means until the seeding can be completed. For seeding delayed until the next year, the district may approve payment for the completed practice but such payment shall exclude the seeding cost. The remaining payment for seeding may be made available the following year.

10.81(8) *Diversions.* Rescinded IAB 5/19/10, effective 7/1/10.

10.81(9) *Converting land to permanent vegetative cover.* Rescinded IAB 5/19/10, effective 7/1/10.

10.81(10) *Underground outlet.* Rescinded IAB 5/19/10, effective 7/1/10.

[**ARC 8766B**, IAB 5/19/10, effective 7/1/10]

27—10.82(161A) State designation of eligible practices. Only those soil and water conservation practices listed in this rule are eligible for the Iowa financial incentives program funds.

10.82(1) *Residue and management practices.* The division will make one-time payments for residue and tillage management practices.

a. No-till planting.

b. Ridge-till planting.

c. Strip-till planting.

d. Cover crops.

10.82(2) *Temporary practices.* The division will make one-time payments for temporary practices.

a. Critical area planting.

b. Contour farming.

c. Strip-cropping.

d. Field border.

e. Filter strips.

f. Pasture and hay planting. Pasture and hay planting will be eligible for funding only when land that has been planted to row crop for three out of the last five years is being converted to permanent vegetative cover.

10.82(3) *Permanent practices.*

a. Reserved.

b. Diversion. Diversions are eligible for funding only when used to prevent downstream erosion.

c. Windbreak and shelterbelt establishment. A strip or belt of trees or shrubs established within or adjacent to a field to reduce sediment damage and soil depletion caused by wind.

d. Grade stabilization structure.

e. Reserved.

f. Grassed waterway.

g. Reserved.

h. Terrace.

i. Underground outlet. Underground outlets are eligible for Iowa financial incentive funding only when used as a component of eligible permanent practices contained in subrule 10.82(3).

j. Water and sediment control basin.

k. Reserved.

l. Conservation cover.

m. Tree and shrub planting. The minimum eligible area is three acres.

[**ARC 8766B**, IAB 5/19/10, effective 7/1/10; **ARC 0331C**, IAB 9/19/12, effective 8/24/12; **ARC 0477C**, IAB 11/28/12, effective 1/2/13]

27—10.83(161A) Designation of eligible practices. District commissioners may designate which soil and water conservation practices will be eligible for Iowa financial incentive payments in their district. The selected practices must be from the state-approved practices contained in rule 27—10.82(161A).

[**ARC 8766B**, IAB 5/19/10, effective 7/1/10]

27—10.84(161A) Practice standards and specifications. Practices shall meet Natural Resources Conservation Service conservation standards and specifications. These standards may be accessed through the electronic field office technical guide at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA. The tree planting standard may be accessed through the department of natural resources' forestry technical guide found at http://www.iowadnr.com/forestry/pdf/techguide.pdf. Standards and specifications are available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

27—10.85 to **10.89** Reserved.

PART 9

27—10.90 Reserved.

27—10.91(161A) Annual report. The district will submit an annual report to the division. The report will reflect accomplishments for the fiscal year ending June 30. The report shall be submitted to the division on or before July 7 each year.

27—10.92(161A) Control of lands. Rescinded IAB 5/19/10, effective 7/1/10.

27—10.93 and **10.94** Reserved.

27—10.95(161A) Forms. Standard forms, applications, and agreements used by the applicant and recipient of financial incentives for soil erosion control as outlined in these rules are provided by the division. Copies of all forms, applications, and agreements are available from the soil conservation district office located in each county. Copies are also available from the division at the following address: Division of Soil Conservation and Water Quality, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—10.96 to **10.99** Reserved.

These rules are intended to implement Iowa Code chapter 161A.

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[1] History transferred from 780—Ch 7

CHAPTER 11
CONSERVATION PRACTICES REVOLVING LOAN FUND

[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 9]

27—11.1 to **11.9** Reserved.

27—11.10(161A) Authority and scope. These rules provide procedures and standards to be followed by the division of soil conservation and water quality, department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in administering the conservation practices revolving loan fund and the standards and guidelines to which the soil and water conservation districts shall conform in all contracts under this program.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—11.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—11.12 to **11.19** Reserved.

27—11.20(161A) Definition of terms. In addition to terms defined herein, rule 27—10.20(161A) Definitions shall apply.

"Current legal usury limit" means the limit on interest rates established by Iowa Code section 535.2, subsection 3, paragraph *"a."*

"Financial partner" means the division's designated bank, mortgage company or governmental agency charged with servicing loans described in this chapter.

"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 landowner's net worth.

"Total assets" means the sum of 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; and 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" means the sum of 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. Liabilities shall be determined on the basis of generally accepted accounting principles.

27—11.21(161A) Financial partner. The division may designate or enter into an agreement with a financial partner to assist with servicing loans under this program.

11.21(1) Responsibilities. The financial partner may assist with the following responsibilities:

a. Making determinations regarding an applicant's ability to repay the loan. Making this determination may include evaluating the applicant's net worth or securing other information as deemed necessary.

b. Securing valid liens on real estate on which the conservation practices are applied.

c. Disbursing loan funds and processing loan payments.

d. Collecting application fees for servicing loans. Maximum application fees assessed to the borrower will be 2 percent of the loan plus filing costs.

e. Pursuing delinquent loan payments and collections.

11.21(2) Reserved.

27—11.22(161A) Allocation of revolving loan funds to soil and water conservation districts. The division shall utilize the following method to allocate program funds to the districts:

11.22(1) *District allocations.* Districts shall submit requests identifying valid applications and cost estimates, if any, to the division by March 1 of each year. If the requests submitted by districts fail to exhaust funds available, the division may continue to fund district requests on an individual basis until December 1. The allocation to any district will be the lesser amount of either:

a. The amount of available funds divided by the number of districts applying for an allocation; or

b. The amount requested.

11.22(2) *Unobligated allocations.* Any funds allocated in a fiscal year that the districts have not obligated by March 1 of that fiscal year and any funds that were obligated during the previous year for projects for which construction has not been started by March 1 will be recalled by the division. Recalled funds shall be distributed in accordance with 11.22(1).

11.22(3) *Reserve funds.* The division shall administer for each program year a reserve fund that shall not exceed $20,000. The reserve fund will be set aside and used only to meet contingencies that occur in the districts or within the division.

27—11.23(161A) Eligibility for revolving fund loan.

11.23(1) Reserved.

11.23(2) *Ability to repay the loan.* The applicant must demonstrate the ability to repay the loan to the satisfaction of the division and its financial partner.

11.23(3) *Use of the loan.* Loan funds shall be used only to pay the total eligible cost of installing permanent soil and water conservation practices listed in 27—subrule 10.82(2) of the Iowa financial incentive program for soil erosion control. District commissioners may designate which soil and water conservation practices will be eligible for loans in their district. The selected practices must be from the state-approved practices contained in rule 27—10.82(161A). The general conditions contained in rule 27—10.81(161A) and the specifications contained in rule 27—10.84(161A) shall apply to the district-designated practices. Revolving loan funds and public cost-sharing funds may be used in combination for funding a particular soil and water conservation practice.

11.23(4) *Other requirements.* The applicant must also meet the eligibility requirements contained in rule 27—10.73(161A) for the Iowa financial incentive program for soil erosion control.

[**ARC 0798C**, IAB 6/26/13, effective 7/31/13]

27—11.24(161A) Loan application processing procedures.

11.24(1) *Application submitted by landowner.* Applicants for loans for soil and water conservation practices shall complete and submit an application for financial incentives to the district office. Application forms shall be available at the district office.

11.24(2) *Denial of application by district.* Applications for financial incentives which are denied by the district shall be retained in the district to the end of the program year. Written notification of the denial shall be provided to the applicant along with the reason(s) that the application was denied. Application denial as used here refers to those applications which cannot be approved for reasons other than lack of available loan funds.

11.24(3) *Initial approval of application by district.* Rescinded IAB 12/7/05, effective 11/16/05.

11.24(4) *Selection of applications for fiscal evaluations.* Applications received by the district shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The high-priority applications that can possibly be funded by the district's loan fund allocation will be identified, and successful applicants will be requested to provide necessary financial information as required by the division or the division's financial partner.

11.24(5) *Final approval of application and obligation of funds.* Upon receipt of proper financial disclosures on a form prescribed by the division or by the division's financial partner, the district shall give the application final approval and obligate funds for the project in the amount of the project cost estimate identified on the application. Upon obligation of funds, the district shall notify the applicant.

11.24(6) *Application withdrawn by applicant.* An application may be withdrawn by the applicant at any time prior to receipt of loan by notifying the district in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the district until the end of the program year.

27—11.25(161A) Project design and construction. 27—subrules 10.74(2), Project design by district, and 10.74(3), Project construction or practice performance, of the Iowa financial incentive program for soil erosion control shall apply to the revolving loan fund program.

27—11.26(161A) Issuance of loan.

11.26(1) *Loan payment to applicant.* 27—subrule 10.74(4), Payment of financial incentive, of the Iowa financial incentive program for soil erosion control shall apply in its entirety. In addition, upon transfer of payment to the recipient(s), the district shall require the recipient to sign appropriate loan papers.

11.26(2) *Maintenance agreement.* As a condition for receipt of a loan for permanent soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices in accordance with the requirements of 27—subrule 10.74(5), Maintenance and performance agreements.

11.26(3) *Case files.* A case file shall be assembled and maintained for each approved loan application. The file will be assembled and maintained in accordance with the requirements of 27—subrule 10.74(6), Case files.

27—11.27(161A) Amount of loan and number.

11.27(1) *Minimum loan.* The minimum loan that will be granted under this program will be $2,500.

11.27(2) *Maximum loan.* The maximum loan that a landowner may receive in one year pursuant to this program shall not exceed $20,000.

11.27(3) *Number of loans.* There will be no limit to the number of loans an applicant can receive, except that an applicant shall be eligible for no more than $20,000 in loans outstanding at any time under this program. Each approved application will be handled as a new loan.

[**ARC 0798C**, IAB 6/26/13, effective 7/31/13]

27—11.28(161A) Repayment of loans.

11.28(1) *Loan period.* Each loan made under this chapter shall be for a period not to exceed ten years.

11.28(2) *Repayment schedule.* Loans shall be paid back to the revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect.

11.28(3) *Repayment upon sale of land.* Loans made under this program shall come due for payment upon sale of the land on which those practices are established. If the entire balance of the loan is not paid within ten days of the date of sale, a delinquent loan charge shall be applied as provided in subrule 11.28(5).

11.28(4) *Interest.* The loans shall bear no interest.

11.28(5) *Interest on delinquent loans.* Interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. This is the maximum rate allowed by Iowa Code section 535.2, subsection 3, paragraph *"a,"* and it shall be applied to the entire unpaid principal, prorated for the period for which the installment is delinquent.

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CHAPTER 12
WATER PROTECTION PRACTICES—WATER PROTECTION FUND

27—12.1 to **12.9** Reserved.

PART 1

27—12.10(161C) Authority and scope. This chapter establishes procedures and standards to be followed by soil and water conservation districts and the division of soil conservation and water quality of the department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing water protection practices through the water protection fund created in Iowa Code section 161C.4. This account shall be used to establish water protection practices with individual landowners.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—12.11(161C) Rules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—12.12 to **12.19** Reserved.

PART 2

27—12.20(161C) Definition of terms. In addition to the term defined herein, definitions in rule 27—10.20(161A) shall apply.

"Agricultural production" means the commercial production of food or fiber.

27—12.21 to **12.29** Reserved.

PART 3

27—12.30(161C) Compliance, refund, reviews and appeals. Rules 27—10.30(161A) through 27—10.33(161A) shall apply.
[**ARC 8755B**, IAB 5/19/10, effective 7/1/10]

27—12.31 to **12.39** Reserved.

PART 4

27—12.40(161C) Appropriations. Resource enhancement and protection program, soil and water enhancement account funds are allocated to the water protection fund. Each year's allocation of water protection funds is divided equally between the water quality protection projects account and the water protection practices account.
[**ARC 8755B**, IAB 5/19/10, effective 7/1/10]

27—12.41 to **12.49** Reserved.

PART 5

27—12.50(161C) Water protection practices account. This part defines procedures for allocation, recall and reallocation of water protection practices funds to soil and water conservation districts and to the division's reserve fund.
[**ARC 0737C**, IAB 5/15/13, effective 7/1/13]

27—12.51(161C) Allocation to soil and water conservation districts.

12.51(1) *Original allocation.* July 1 of each year, funds appropriated to the water protection practices account will be allocated to districts. Seventy-three and one-half percent of the funds will be divided equally among 100 soil and water conservation districts. Twenty-five percent of the funds plus any additional appropriations for reforestation will be kept in a separate account for woodland establishment and protection, and establishment of native grasses and forbs. One and one-half percent will be held in a reserve fund.

12.51(2) *Recall of funds.* Any funds allocated in the current fiscal year that the districts have not spent or obligated by June 30 shall be recalled by the division.

12.51(3) *Supplemental allocations.* The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. The allocation to any district will be the lesser amount of:

a. The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; or

b. Three times the original allocation to the district.

12.51(4) *Reallocation of recalled funds.* Rescinded IAB 7/18/07, effective 6/27/07.

12.51(5) *Woodland, native grass and forbs fund.* Twenty-five percent of the funds and any additional appropriations for reforestation will be allocated to districts.

a. *Original allocation.* Seventy-five percent of the funds distributed to this program will be allocated equally to districts at the beginning of each fiscal year.

b. *Supplemental allocation.* The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. The allocation to any district will be the lesser amount of:

(1) The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; or

(2) Three times the original allocation to the district.

c. *Eligibility of soil and water conservation districts for supplemental allocation.* For a district to qualify for a supplemental allocation, the district must meet the following requirement: ninety percent of the woodland, native grass and forbs funds shall be obligated to landowners.

12.51(6) *Reserve funds.* The division may administer a reserve fund for the program consisting of not more than 1.5 percent of each year's appropriated funds.

a. Purpose and use of the reserve fund. The reserve fund will be set aside and used only to fund contingencies that occur in the application of practices in the districts.

b. On June 30 each year the division will transfer the unspent reserve fund balance into the water protection practices account to be allocated to districts under subrule 12.51(1).

[**ARC 8755B**, IAB 5/19/10, effective 7/1/10; **ARC 0737C**, IAB 5/15/13, effective 7/1/13]

27—12.52 to **12.59** Reserved.

PART 6

27—12.60(161C) Applications and agreements. The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving water protection practices funds.

27—12.61(161C) Applications submitted to soil and water conservation district. Landowners or farm operators desiring to be considered for water protection practices funds shall complete necessary applications as specified by the district. All application forms and agreements for water protection practices funds are available from and shall be submitted to the district office located in the county where such practices are proposed. If an applicant's land is in more than one district, the respective

district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

27—12.62(161C) Application sign-up.

12.62(1) *Signatures by landowner and qualified applicant.* All applications and agreements shall be signed by the landowner and applicant. For an applicant to qualify for payment, both landowner and applicant must sign the application.

12.62(2) *Land being bought under contract.* All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the operator is applying, the contract buyer, the contract seller, and the operator must sign.

12.62(3) *Power of attorney.* Applications and agreements may be signed by any person designated to represent the landowner or farm operator, provided the appropriate power of attorney has been filed with the district office. The power of attorney requirement can be met by submitting a notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

27—12.63(161C) Eligibility for financial incentives.

12.63(1) *District cooperator.* Rescinded IAB 7/18/07, effective 6/27/07.

12.63(2) *Practices installed on adjoining public lands.* Where water protection practices which benefit adjoining private lands are installed on public lands and costs of the installation are to be shared by the parties, state water protection practices funds may be used to cost-share only the private landowner cost of the water protection practice.

12.63(3) *Ineligible lands.*

a. Water protection practices funds shall not be used to reimburse other units of government for implementing soil and water conservation practices.

b. Privately owned land not used for agricultural production shall not qualify for water protection practices funds. Windbreaks, streambank and shoreline protection, and stormwater quality best management practices established on privately owned land are eligible whether or not the land is in agricultural production.

12.63(4) *District priorities.* Each application for water protection practices shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan. The priority system adopted by the district shall be made available for review at the district office.

[**ARC 8755B**, IAB 5/19/10, effective 7/1/10; **ARC 0737C**, IAB 5/15/13, effective 7/1/13]

27—12.64 to **12.69** Reserved.

PART 7

27—12.70(161C) Water protection practices. The purpose of this part is to establish the general conditions, eligible practices, specifications, and cost-share rates for the installation of water protection practices authorized in Iowa Code chapter 161C.

27—12.71(161C) General conditions. The following general conditions shall be met.

12.71(1) *Technician certification.* The designated water protection practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to protect water quality.

12.71(2) *Limitation of reimbursable cost of practices.* Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost shared by the state.

12.71(3) *Materials.* Projects funded with water protection funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

12.71(4) *Repair or maintenance.* Repair or maintenance of existing practices is not eligible for funding.

27—12.72(161C) Eligible practices. Practices listed in this rule are eligible for water protection practices fund reimbursement.

12.72(1) Critical area planting.

12.72(2) Contour buffer strips.

12.72(3) Field border.

12.72(4) Filter strips.

12.72(5) Pasture and hay planting. The practice must include the conversion of land from row crop production to a permanent vegetative cover to control excessive water erosion.

12.72(6) Constructed wetlands. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(7) Wetland restoration. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(8) Streambank and shoreline protection. The practice must be bioengineered using combinations of stream-side plantings or trees, other vegetation, structural practices such as modification of slopes, and installation of reinforcing materials and in-stream structures. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

12.72(9) Stormwater quality best management practices (BMPs). A technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost-effective manner. BMPs can be either:

a. Nonstructural BMPs, which include a range of pollution prevention, education, or institutional management and development practices designed to limit the conversion of rainfall to runoff and to prevent pollutants from entering runoff at the source of runoff generation; or

b. Structural BMPs, which are engineered and constructed systems that are used to treat the stormwater at either the point of generation or the point of discharge to either the storm sewer system or to receiving waters (e.g., detention ponds or constructed wetlands).

[**ARC 8755B**, IAB 5/19/10, effective 7/1/10; **ARC 0737C**, IAB 5/15/13, effective 7/1/13]

27—12.73(161C) Eligible practices for priority water resource protection. Practices listed in this rule are eligible for water protection practice fund reimbursement only in those areas or instances approved in rule 27—12.75(161C).

12.73(1) Grassed waterway.

12.73(2) Grade stabilization structure.

12.73(3) Terrace.

12.73(4) Water and sediment control basin.

12.73(5) Diversion.

12.73(6) Waste storage facility. Cost-sharing under this practice is not authorized for:

a. Portable pumps and pumping equipment.

b. Waste disposal equipment.

c. Building, modification of a building, that portion of the animal waste structure that serves as part of the building, or its foundation.

d. That portion of the cost of animal waste control structures attributed to expansion of an animal waste management system.

[**ARC 8755B**, IAB 5/19/10, effective 7/1/10; **ARC 0737C**, IAB 5/15/13, effective 7/1/13]

27—12.74(161C) Agricultural drainage well closure. Practices listed in this rule are eligible for water protection practice fund reimbursement where installation of the practice is consistent with current drainage law of the state of Iowa. This practice is intended to assist in the voluntary closure

of agricultural drainage wells registered with the department of natural resources prior to September 30, 1988. It is not intended to be a substitute for future agricultural drainage well assistance programs authorized in Iowa Code section 159.29 that will be developed in conjunction with the Iowa department of agriculture and land stewardship's agricultural drainage well research and demonstration project.

12.74(1) *Eligible practices.*

a. Agricultural drainage well plugging and cistern removal.

b. Tile outlet from plugged agricultural drainage well to a suitable, legal outlet.

12.74(2) *Implementation of practice.* This practice shall not be used to provide outlet(s) for previously undrained wetland(s) as defined and classified under state or federal law.

12.74(3) *Outlets with excess capacity.* Tile outlets which exceed the minimum capacity required to provide one-half inch drainage coefficient to the area originally served by the drainage well shall be permitted, if approved by the technician. Any additional cost resulting from providing such excess capacity shall not be cost-shared by the state.

27—12.75(161C) Priority watersheds and water quality problems. Practices listed in rule 27—12.73(161C) will be eligible for landowner reimbursement from water protection practices funds only for watersheds and water quality problems designated by soil and water conservation district commissioners and approved by the state soil conservation committee.

12.75(1) *District designation.* Districts shall submit to the division the description of high priority watershed(s) or water quality problems within their district to be designated as eligible for practices listed in rule 27—12.73(161C).

12.75(2) *State soil conservation committee evaluation.* The state soil conservation committee shall examine the district submission under 12.75(1) with respect to the following criteria.

a. The public value and current use of the water resource to be protected.

b. The nature, extent and severity of the water quality problem to be addressed.

c. The degree to which the district designation focuses practice application in a manner that will achieve a water quality benefit from the funds available.

12.75(3) *Review time limit.* The state soil conservation committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.75(4) *Disapproval of designation.* In the event of disapproval of district designation, the state soil conservation committee shall inform the district of the reason for disapproval.

27—12.76(161C) Practice standards and specifications. In addition to specifications defined herein, rule 27—10.84(161A) specifications shall apply.

12.76(1) *Agricultural drainage well closure.* 567 IAC Chapter 39, Requirements for Properly Plugging Abandoned Wells.

12.76(2) *Agricultural drainage well plugging and cistern removal.* 567 IAC Chapter 39, Requirements for Properly Plugging Abandoned Wells.

12.76(3) *Stormwater quality best management practices.* Iowa Stormwater Management Manual, Chapter 2, Sections D-L.

27—12.77(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rules 27—12.72(161C) to 27—12.74(161C). These rates represent the maximum allowable cost share provided by state funds. These rates may be used in combination with other public funds to provide a total cost-share rate not to exceed 75 percent of the lesser of the eligible or the estimated cost of installation.

12.77(1) *Cost-share rates.* Cost-share rates for practices designated in rule 27—12.72(161C) shall be 50 percent of the eligible or estimated cost of installation, whichever is less, except for contour buffer strips and field borders. Cost-share rates for 12.72(2), contour buffer strips, and 12.72(3), field borders, shall be a one-time payment of 50 percent of the eligible or estimated cost of installation, whichever is less, up to $25 per acre.

12.77(2) *Cost-share rates for water protection practices.* Cost-share rates for practices designated in rule 12.73(161C) shall be 50 percent of the eligible or estimated cost, whichever is less.

12.77(3) *Cost-share rates for agricultural drainage well closure.* Cost-share rates for practices designated in rule 27—12.74(161C) shall be the following:

a. 50 percent of the eligible or estimated cost, whichever is less, of agricultural drainage well plugging and cistern removal, not to exceed $500.

b. 50 percent of the eligible or estimated cost, whichever is less, of establishing a tile outlet from the plugged agricultural drainage well to a suitable, legal outlet, not to exceed $2000.

[**ARC 8755B**, IAB 5/19/10, effective 7/1/10; **ARC 0737C**, IAB 5/15/13, effective 7/1/13]

27—12.78 and **12.79** Reserved.

PART 8

27—12.80(161C) Water protection practices—woodlands, native grasses and forbs. The purpose of this part is to establish the general conditions, eligible practices, specifications and cost-share rates for the installation of woodlands, native grasses and forbs as authorized in Iowa Code chapter 161C.

27—12.81(161C) General conditions. The following general conditions shall be met.

12.81(1) *Practice need.* The designated practices shall not be funded unless the certifying technician has inspected the site and has determined that such practice(s) is needed.

12.81(2) *Forest management plan required.* A forest management plan approved by the forestry bureau of the department of natural resources is required for the practices of forest stand improvement, tree planting, site preparation for natural regeneration, and rescue treatments.

12.81(3) *Eligibility of practices.* Planting or management of trees for nut orchards or Christmas tree production is only eligible as intermediate products in stands being established for other approved purposes. Planting or management of trees for ornamental purposes or fruit orchards is not eligible.

[**ARC 8755B**, IAB 5/19/10, effective 7/1/10]

27—12.82(161C) Eligible practices. Land enrolled in the Conservation Reserve Program is eligible for woodland establishment, management and protection practices and is also eligible for native grass and forb establishment. All practices listed in this part are available to all other eligible landowners within Iowa soil and water conservation districts. All practices listed below are permanent.

12.82(1) Windbreaks. A belt of trees or shrubs established or restored next to an occupied structure. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.

12.82(2) Field windbreak. A belt of trees or shrubs established or restored, within or adjacent to a field. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.

12.82(3) Forest stand improvement. Minimum eligible area is five acres.

12.82(4) Tree planting. Minimum eligible area is three acres.

12.82(5) Site preparation for natural regeneration. Minimum eligible area is three acres.

12.82(6) Riparian forest buffer.

12.82(7) Rescue treatments. Minimum eligible area is three acres.

12.82(8) Prescribed grazing. The practice must include a minimum of two paddocks of native species grasses.

12.82(9) Conservation cover.

[**ARC 8755B**, IAB 5/19/10, effective 7/1/10]

27—12.83(161C) Practice standards and specifications. Soil and water conservation practices shall meet Natural Resources Conservation Service conservation standards and specifications where applicable. These standards may be accessed through the electronic field office technical guide at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA.

Tree planting, forest stand improvement, site preparation for natural regeneration and rescue treatment standards may be accessed through the department of natural resource's forestry technical guide found at http://www.iowadnr.com/forestry/pdf/techguide.pdf.

Standards and specifications are also available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

[**ARC 8755B**, IAB 5/19/10, effective 7/1/10]

27—12.84(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rule 27—12.82(161C). The use of state cost-share funds alone or in combination with other public funds shall not exceed the limits established by these rules.

12.84(1) *Windbreaks.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed $1500 for the total cost of the establishment or restoration of the windbreak.

12.84(2) *Field windbreaks.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed $450 per acre.

12.84(3) *Forest stand improvement.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed $120 per acre for prescribed woodland burning, thinning, pruning crop trees, or releasing seedlings or young trees.

12.84(4) *Tree planting.*

a. 75 percent of the eligible or estimated cost, whichever is less, not to exceed $450 per acre, for tree planting including the following:

(1) Establishing ground cover,

(2) Trees and tree-planting operations,

(3) Weed and pest control,

(4) Mowing, disking, and spraying.

b. 75 percent of the eligible or estimated cost, whichever is less, not to exceed $150 per acre for woody plant competition control.

12.84(5) *Site preparation for natural regeneration.* 75 percent of the eligible or estimated cost, whichever is less, not to exceed $120 per acre of site preparation.

12.84(6) *Riparian forest buffer.* 75 percent of the eligible or estimated cost, whichever is less.

12.84(7) *Rescue treatment.*

a. 75 percent of the eligible or estimated cost, whichever is less, not to exceed $60 per acre to establish alternate cover for competition control.

b. A one-time payment of 75 percent of the eligible or estimated cost, whichever is less, not to exceed $15 per acre to control damaging rodent populations.

c. 75 percent of the eligible or estimated cost, whichever is less, not to exceed $450 per acre, for plantation replanting including the following:

(1) Establishing ground cover,

(2) Trees and tree planting,

(3) Weed control.

12.84(8) *Prescribed grazing.* 75 percent of the eligible or estimated cost, whichever is less. Systems must include at least two paddocks of native species grasses. Development of a water source is not eligible. Boundary fences or road fences are not included.

12.84(9) *Conservation cover.* 75 percent of the eligible or estimated cost, whichever is less.

12.84(10) *Fencing systems.* Fencing systems used to implement or protect a conservation practice described in rule 27—12.82(161C) are eligible for the lesser of 75 percent of the eligible or estimated cost. The fencing costs cannot exceed $14 per rod for permanent fencing or $5 per rod for temporary electric fencing. Fences along roads or land boundaries are not eligible.

[**ARC 8755B**, IAB 5/19/10, effective 7/1/10]

27—12.85(161C) Special practice and cost-share procedures eligibility. Districts may submit requests to establish eligible practices, develop cost-share procedures, experiment with new conservation practices and explore new technologies with approval of the state soil conservation committee.

12.85(1) *District designation.* Districts shall submit to the SSCC the description of their intentions which could include:

a. Type of practice.

b. Cost-share rate.

c. Resource to be protected.

d. Estimated cost.

e. Landowner interest.

f. Technology to be addressed.

12.85(2) *State soil conservation committee evaluation.* The state soil conservation committee shall examine the district submission under 12.85(1) with respect to the following criteria.

a. The public and current use of the resource to be protected.

b. The nature, extent, and severity of the problem to be addressed.

c. The degree to which the request focuses practice or technology application in a manner that will achieve a soil erosion or water quality benefit from the funds available.

d. Whether a specification can be developed by NRCS or DNR for the new technology or practice.

12.85(3) *Review time limit.* The state soil conservation committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.85(4) *Disapproval of designation.* In the event of disapproval of district requests, the state soil conservation committee shall inform the district of the reason for disapproval.

This rule is intended to implement Iowa Code chapters 161A and 161C.

27—12.86 to **12.89** Reserved.

PART 9

27—12.90(161C,312) Reporting and accounting. Reports will be prepared in the same manner as provided in rule 27—10.91(161A).

These rules are intended to implement Iowa Code chapters 161A and 161C, Iowa Code section 99E.34 and 1989 Iowa Acts, chapter 236.

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[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 16
WATER QUALITY INITIATIVE

27—16.1(161A) Purpose. The purpose of these rules is to support the reduction of nutrient losses and exports over time through the adoption of water quality practices and through the establishment and administration of targeted watershed demonstration projects and individual cost-share practices. The purpose is also to assist education and outreach about the feasibility and value of establishing water quality practices.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

27—16.2(161A) Definitions.

"Council" means the water resources coordinating council established pursuant to Iowa Code section 466B.3.

"Department" means the department of agriculture and land stewardship.

"Division" means the division of soil conservation and water quality, department of agriculture and land stewardship.

"Eligible cost-share applicants" means persons who hold a legal interest in agricultural land used in farming.

"Eligible targeted watershed demonstration project applicants" means individual or multiple soil and water conservation districts, counties, county conservation boards, cities, not-for-profit organizations authorized by the secretary of state, public water supply utilities or watershed management authorities.

"Funds" include the water quality initiative fund in Iowa Code section 466B.45 and may include other moneys appropriated to the department from the environment first fund created in Iowa Code section 8.57A for cost sharing to match federal funds or other nongovernmental funds.

"Identified watersheds" means the area identified by the council or by the division.

"Maintenance/performance agreement" means an agreement between the division, the recipient and the landowner. The recipient and landowner agree to maintain the soil conservation practices for which financial incentives from the division through the district have been received. The agreement states that the recipient and landowner will maintain, repair, or reconstruct the practices if they are not maintained according to the terms specified in the agreement. The terms of the agreement shall be specified by the division.

"Nutrient" includes total nitrogen and total phosphorus.

"Nutrient reduction strategy" means the document created by the department, the department of natural resources, and Iowa State University of Science and Technology dated May 29, 2013.

"Recipient" means an eligible applicant who has qualified for and received cost-share payments under this chapter or a project participant who has qualified for and received cost-share payments.

"Secretary" means the Iowa secretary of agriculture.

"Watershed management authority" means an authority as defined in Iowa Code section 466B.21.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13; **ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—16.3(161A) Cost share. The division's share of the practice cost shall not exceed the lesser of 50 percent of the estimated cost of establishing the practice as determined by the division or 50 percent of the actual cost of the practice.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

27—16.4(161A) Eligible practices. Only practices applied to agricultural crop and pasture land whose primary function is to improve water quality will be eligible for funds. These practices are identified in the nutrient reduction strategy or by the division. Practices shall meet applicable Natural Resources Conservation Service conservation standards and specifications or applicable standards and specifications set out by the department. Permanent practices eligible for funding include but are not limited to wetlands, bioreactors, and buffers. Management practices eligible for funding include but are

not limited to cover crops and living mulches. Application may be made to the division for cost-share funding for individual cost-share practices or for targeted watershed demonstration projects.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

27—16.5(161A) Ineligible practices. Repair and maintenance of existing practices are not eligible for funding.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

27—16.6(161A) Statewide cost-share practices. Individual statewide cost-share practices may be eligible for funding as determined by the division.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

27—16.7(161A) Targeted watershed demonstration projects. Projects shall be conducted in the identified watersheds. The division shall conduct water quality evaluations within supported subwatersheds.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

27—16.8(161A) Project threshold application requirements.

16.8(1) *General application requirements.* Project applications shall include the demonstration, outreach, and education objectives of the project and the plan for implementation; project costs, including the estimated cost of each measure to be implemented for each year of participation; anticipated landowner contributions; requested cost-share match; and expected contributions from project participants. Personnel needs and contributions should be outlined.

16.8(2) *Landowner interest.* An assessment of the interest and participation of the eligible applicants shall be included. A majority of the eligible applicants must reside or own land in the demonstration project. Collaborative participation by eligible applicants in the same identified subwatershed will be viewed favorably.

16.8(3) *Project maintenance.* Measures to be taken to ensure the long-term viability of the project through maintenance agreements, easements, or other such measures will be outlined in the agreement.

16.8(4) *Time frame.* The time frame for implementation will be identified in the application and set out in the agreement.

16.8(5) *Project evaluation.* The criteria for evaluation plans will be identified in the request for applications, and an evaluation plan will be contained in the project application.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

27—16.9(161A) Application review. Identified watershed projects meeting the threshold requirements will be reviewed, evaluated and ranked by the division using criteria described in the request for applications. Funding recommendations will take into account the program objective to demonstrate and promote a variety of conservation practices in combination with education and outreach.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

27—16.10(161A) Annual review. The division will review each project annually. The division may establish a budget for the next project year; renegotiate with the applicant or recipient about the objectives, procedures, budget, reports or time schedule; or terminate the project.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

27—16.11(161A) Contract requirements. Recipients must complete performance and maintenance of the practice as required by the contract. Practices shall meet applicable Natural Resources Conservation Service conservation standards and specifications or applicable standards and specifications set out in the contract. The division may, for cause, find that a recipient is not in compliance with the requirements. At the division's discretion, remedies for noncompliance may include penalties up to and including the return of funds to the division. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded projects in a timely manner, the recipient's failure to carry out the terms of the performance/maintenance agreement, the recipient's failure to comply with applicable state or

local rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

27—16.12(161A) Appeal. A recipient who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may, as appropriate, review the order with the division. When a recipient wishes to appeal an order to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement, the recipient may file a written request for review with the division. The division review shall be conducted by the division director or the director's designee. This proceeding shall be informal. The recipient shall request the review with the secretary in writing within 30 days following the review with the division. The secretary or the secretary's designee will either affirm, modify, or vacate the administrative order following the completion of the contested case hearing.
[**ARC 1104C**, IAB 10/16/13, effective 11/20/13]

These rules are intended to implement 2013 Iowa Acts, House File 648, section 20, and Senate File 435, sections 8 and 10 and Iowa Code sections 466B.42 and 466B.45.

[Filed ARC 1104C (Notice ARC 0979C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]
[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 20
IOWA SOIL 2000 PROGRAM

[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 6]

PART 1

27—20.1 to **20.9** Reserved.

27—20.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing the Iowa Soil 2000 Program goal of satisfactorily controlling erosion on all Iowa land. It also establishes standards and guidelines which the soil conservation districts will use in fulfilling their responsibilities under this program.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—20.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—20.12 to **20.19** Reserved.

PART 2

27—20.20(161A) Availability, development, distribution, updating and notice of conservation folders. This division establishes rules for the development, distribution, updating, and minimum requirements for notifying landowners that a conservation folder has been developed. This section also defines the responsibilities of the seller and the district to provide copies of conservation folders and farm unit soil conservation plans to a prospective purchaser.

20.20(1) *Priority for development of conservation folders.* The district staff when developing conservation folders as required by Iowa Code section 161A.62 will include as a minimum the content items required by 27—20.30(161A) of these rules.

The district commissioners will select priority watershed(s) or area(s) within their district, using the following criteria:

a. Highest priority will be given to watersheds or areas with the largest percentage of acreage of soils in the first priority criteria.

b. Lowest priority will be given to watersheds or areas with the largest percentage of acreage of soils in the fifth priority criteria.

c. If after screening watersheds or areas against these priority criteria, no watersheds or areas fall in the highest priority, that district will select the next highest category for which soils exist in that district as the top priority category.

d. Priority criteria.

(1) Fragile soils which under present agricultural use and management will be depleted in 20 years.

(2) Fragile soils which under present agricultural use and management will be depleted in 40 years.

(3) Excessively eroding soils that under present agricultural use and management are eroding greater than 15 tons per acre per year.

(4) Excessively eroding soils that under present agricultural use and management are eroding greater than 10 tons per acre per year.

(5) Excessively eroding soils that under present agricultural use and management are eroding greater than the districts adopted soil loss limits.

20.20(2) *Rate of development of conservation folders.* Iowa Code section 161A.62(1)*"a"* requires that each farm unit must be furnished a conservation folder not later than January 1, 1985, or as soon thereafter as funding is available.

The number of conservation folders to be developed in any given year will be at a rate established in the annual work plan developed and adopted by the commissioners of that district.

20.20(3) *Notification of landowner and operator.* Iowa Code section 161A.62 requires notification of appropriate parties and the keeping of certain records.

Notification that a particular conservation folder is completed will be sent on a date specified by the commissioners. The district records concerning completion and notification of availability of the conservation folder will be maintained in the manner prescribed in 27—20.60(161A) of these rules.

a. Certified completion. A conservation folder will be certified complete upon a vote of approval by the commissioners, on a motion at any regular or special meeting.

b. Notification of landowner and operator. Following certification of completion by the commissioners, the chairman will send a letter by regular mail to the landowner and the operator if known to the commissioners. The letter will offer those persons a copy of the conservation folder in accordance with a distribution procedure adopted by the commissioners in compliance with the guidelines of subrule 20.20(4).

20.20(4) *Distribution procedure.*

a. The annual work plan adopted by the commissioners will specify, within these guidelines, a conservation folder distribution procedure for use in their district. These procedures may include the following:

(1) Neighborhood meetings may be utilized to deliver conservation folders to landowners or operators.

(2) Personal delivery may be by district staff, a commissioner, assistant commissioner, or any individual the commissioners deem qualified to do so.

b. Mailing of conservation folders will only be used in those cases where the individual cannot reasonably be contacted otherwise.

20.20(5) *Updating conservation folders.* Conservation folders previously distributed may be updated at any time the commissioners determine that to do so would be appropriate and helpful to landowners and operators. Records concerning delivery of updated material will be in accordance with 20.60(161A) of these rules.

20.20(6) *Certified updated farm plan.* An existing farm plan prepared for a particular farm unit in January 1971 or later may be certified by the commissioners, as adequate replacement for the conservation folder upon:

a. Commissioner review to determine that the farm plan provides adequate information to meet the intent and purposes of the conservation folder.

b. Updating the farm plan, if needed, with supplemental information to bring the farm plan into conformance with the conservation folder.

c. Certification of adequacy upon a vote of approval by the commissioners on a motion at any regular or special meeting.

d. Establishment of a record and file for that farm plan in compliance with 20.61(161A) of these rules.

20.20(7) *Availability to prospective purchasers.*

a. Copies of a conservation folder or farm unit soil conservation plan will be made available for review in the district office to any prospective purchaser.

b. A statement explaining conservation cover will be supplied to any prospective purchaser when that individual reviews a copy of either a conservation folder or farm unit soil conservation plan.

c. Seller's responsibility. The seller of land, which has a conservation folder or a farm unit soil conservation plan, will either provide that person copies of these documents or refer the prospective purchaser to the district.

27—20.21 to **20.29** Reserved.

PART 3

27—20.30(161A) Conservation folder content. This division establishes rules concerning required content items and establishes guidelines for the inclusion of additional material at the discretion of the commissioners. The conservation folder contents will provide the landowner and operator with adequate information to develop an understanding of the impacts of excessive erosion, the approximate rate of erosion on their own land, potential alternative solutions to excessive erosion, their erosion control obligations under Iowa law and information about available educational, technical and financial assistance.

20.30(1) *Standard conservation folder content.*

a. Concise document covering the following:

(1) Short-term and long-term economic effects of erosion.

(2) Effects associated with potential land treatments; economic, yield, operational, management.

(3) Low cost land treatment alternatives.

(4) Explanation of Iowa's soil conservation laws and landowner's responsibilities.

(5) Erosion's impact on long-term productivity.

b. District specific items.

(1) Estimated erosion rates in the local area.

(2) Rates of acceptable soil loss in the local area.

(3) Potential erosion rates for the dominant soils of the farm unit.

c. Information on educational, technical, and financial assistance available from various agencies.

20.30(2) *Supplemental conservation folder content.* The commissioners may at their own discretion include local information that might be beneficial to landowners and operators in the furtherance of soil conservation and the protection and maintenance of the future productivity of the soil.

27—20.31 to **20.39** Reserved.

PART 4

27—20.40(161A) Farm unit soil conservation plan. The farm unit soil conservation plan as defined in rule 20.70(161A) will identify specific permanent and temporary soil and water conservation practices for achieving erosion control to meet soil loss limits established by the district. Where practicable, the plan shall also identify alternatives by which this objective may be obtained. The completed plan must be acceptable to and approved by the commissioners.

27—20.41 to **20.49** Reserved.

PART 5

27—20.50(161A) Conservation agreement. This part establishes procedures for entering conservation agreement as defined in rule 27—20.70(161A) between district commissioners and landowners and operators.

20.50(1) In accordance with Iowa Code section 161A.62, for any farm unit that has received a conservation folder after January 1, 1986, or one year after the completion of the farm unit plan, whichever is later, state cost-sharing funds through the voluntary program will be available only when a conservation agreement is in effect.

20.50(2) Eligibility. A landowner and, if appropriate, the operator of a farm unit, may enter into a conservation agreement with the commissioners after a farm unit soil conservation plan has been approved by the commissioners.

20.50(3) Initiation of conservation agreement. Within 60 days after the commissioners approve a farm unit soil conservation plan, the district shall offer to enter into a conservation agreement with the landowner.

20.50(4) Conservation agreement form. The schedule for implementing the farm unit soil conservation plan will be recorded on form SCD-6. To complete the conservation agreement, form SCD-6 will be signed by the landowner and the chairman of the district.

20.50(5) Period of conservation agreement. The implementation period of the initial agreement shall not exceed five years, unless amended as defined in 20.50(7).

20.50(6) Performance of conservation agreement. To continue to qualify for state cost-share funds, the landowner shall implement the agreed-upon soil conservation practices according to the schedule contained in the conservation agreement.

20.50(7) Amending or extending the conservation agreement. Conservation agreements may be amended or extended provided the revisions are mutually acceptable to the landowner and the commissioners, for reasons not limited to but including the following:

a. Lack of public cost-share funding.

b. Loss or gain of land under agreement.

c. Uncontrollable circumstances (flood, drought, hail).

d. Economic constraints on the landowner.

20.50(8) Terminating conservation agreements. Conservation agreements can be terminated for the following reasons:

a. Conservation agreements shall be terminated when the land changes ownership.

b. Conservation agreements may be terminated at any time upon request of the landowner, with the understanding that the landowner forfeits the future right to receive state cost-share funds for soil conservation practices on that farm unit.

c. Conservation agreements may be terminated by the commissioners in the event that the landowner fails to implement the agreed-upon soil conservation practices according to the schedule contained in the conservation agreement.

20.50(9) Distribution of conservation agreement records. Copies of the soil conservation agreement and any revisions or terminations thereto shall be provided to the landowner, the division of soil conservation and water quality and the district case file.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—20.51 to **20.59** Reserved.

PART 6

27—20.60(161A) Records. This part establishes rules concerning standards and records necessary to ensure orderly progress toward attaining the requirements of Iowa Code section 161A.62 to furnish a conservation folder to owners of every farm unit in Iowa.

27—20.61(161A) Record of distribution—district file.

The district will maintain a file system, indexed according to township, range and section to adequately describe each farm unit, that contains a record of:

1. The date the conservation folder was certified complete.
2. The date a letter of notification was sent to the landowner.
3. The landowner's name and address.
4. The operator's name and address.
5. The date the conservation folder was delivered and:
   By whom,
   To whom,
   Method of delivery.

27—20.62(161A) Conservation folder file copy. The district will maintain a record of information furnished to each farm unit. The file will also contain all correspondence related to notification, delivery and updating of the conservation folder.

27—20.63(161A) Program performance records. The district will use existing record systems to provide a data base from which progress can be identified by the division in the following areas:

1. Implementing treatment of fragile soils
2. Reducing nonpoint source pollution
3. Reducing excessive soil erosion
4. Attaining a nondepleting level of erosion on all agricultural lands.

27—20.64 to **20.69** Reserved.

PART 7

27—20.70(161A) Definition of terms. In addition to the definitions in rule 27—10.20(161A), the following terms are defined:

"Adjacent tracts" means two or more tracts of land in the same legal section of land or in touching legal sections lying such that the two tracts have a common side or common corner.

"Conservation agreement" is defined in Iowa Code section 161A.42 to mean a commitment by the owner or operator of a farm unit to implement a farm unit soil conservation plan or, with the approval of the commissioners of the district within which the farm unit is located, a portion of a farm unit soil conservation plan. The commitment shall be conditioned on the furnishing by the district of such technical or planning assistance in the establishment of, and cost-sharing or other financial assistance for establishment and maintenance of the soil and water conservation practices necessary to implement the plan, or a portion of the plan.

"Conservation folder" is defined in Iowa Code section 161A.42 to mean compiled information concerning the topography, soil composition, natural or artificial drainage characteristics and other pertinent factors concerning a particular farm unit, which are necessary to the preparation of a sound and equitable conservation agreement for that farm unit. The specific items to be contained in a conservation folder shall be prescribed by administrative rules of the division of soil conservation and water quality. The division shall provide by rule that an updated farm plan prepared for a particular farm unit within 10 years prior to the effective date of this subsection shall be considered an adequate replacement for the conservation folder for that farm unit.

"Contiguous" means two or more tracts of land lying in the same legal section that have separate legal descriptions, but which have at least a partially common boundary line.

"District staff" means all individuals assigned to, assisting, or employed by a soil and water conservation district.

"Farm plan" as used in these rules refers to any conservation plan or other plan developed in cooperation with the landowner, which provides compiled information concerning the topography, soil composition, natural and artificial drainage characteristics, permanent soil and water conservation practices, and other pertinent factors for the farm unit.

"Farm unit" is defined in Iowa Code section 161A.42 to mean a single contiguous tract of agricultural land, or two or more adjacent tracts of agricultural land, located within a single district, upon which farming operations are being conducted by a person who owns or is purchasing or renting all of such land, or by a tenant or tenants. If a landowner has multiple farm tenants, the land on which farming operations are being conducted by each tenant shall constitute a separate farm unit. This definition does not prohibit land which is within a single district and is owned or being purchased by the same person, or is being rented by the same tenant, from being treated as two or more farm units if the commissioners of the district deem it preferable to do so.

"Farm unit soil conservation plan" is defined in Iowa Code section 161A.42 to mean a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the commissioners of the district within which that farm unit is located, based on the conservation folder for that farm unit and identifying those permanent soil and water conservation practices and temporary soil and water conservation practices the use of which may be expected to prevent soil loss by erosion from that farm

unit in excess of the applicable soil loss limit or limits. The plan shall, if practicable, identify alternative practices by which this objective may be attained.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

These rules are intended to implement Iowa Code chapter 161A.

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[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 21
WATER QUALITY PROTECTION PROJECTS—WATER PROTECTION FUND

PART 1
AUTHORITY AND SCOPE

27—21.1 to **21.9** Reserved.

27—21.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing water quality protection projects through the water protection fund created in Iowa Code chapter 161C. These projects will protect the state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants. Water protection fund resources will provide administrative, operational, and personnel support for the projects and funds for management and structural measures to address identified water quality problems.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.11(161A) Rules or subrules are severable. If any provisions of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provisions or application, and to this end the provisions of these rules or subrules are severable.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.12 to **21.19** Reserved.

PART 2
APPLICATIONS

27—21.20(161A) Announcement, eligibility, development and submission of applications. Part 2 establishes procedures for announcement, eligibility, development and submission of applications for water quality projects supported through the water protection fund.

21.20(1) *Announcement of application opportunities.* The state soil conservation committee will announce to districts and other interested parties the opportunity to submit applications for projects. The announcement will state:

a. The application submission deadline.

b. The location to which applications will be submitted.

c. The number of copies of applications to be submitted.

21.20(2) *Eligibility of applicants.* All applications must be submitted by individual or multiple soil and water conservation districts.

a. Districts are encouraged to cooperate with and accept assistance in the development and preparation of applications from other agencies and organizations.

b. Districts are encouraged to accept financial and nonfinancial participation in project implementation from other agencies and organizations.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.21 to **21.29** Reserved.

PART 3
APPLICATION CONTENT

27—21.30(161A) Water quality protection project application content. Part 3 establishes the minimum content requirements of project applications.

21.30(1) *Title, applicant and participants.* Each application will identify:

a. Water quality protection project title.
b. Name of district or districts submitting the application.
c. Names of participating agencies and organizations.
d. Number of landowners within the project area.

21.30(2) *Project location.* Each application will identify:
a. Project location by description and map.
b. Project size.
c. Geographic setting.

21.30(3) *Project description.* Each application will identify:
a. Land use, land management, and land ownership within the project area and, if appropriate, the surrounding area.
b. Priority water resources to be protected.
c. Water quality problems within the project area.
d. Quantification of the sources of contamination.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.31(161A) Project water quality improvement objectives. Each application will identify:
21.31(1) Water quality objectives of the project.
21.31(2) Measures to be taken to address each water quality problem identified within the project.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.32(161A) Project costs. Each application will identify on an annual basis:
21.32(1) *Project measure costs.*
a. Estimated cost of each measure to be implemented.
b. Landowner contribution.
c. Financial incentive contribution of the water protection fund.
d. Financial or other contribution of project participants.

21.32(2) *Project personnel needs.*
a. Personnel contribution of the water protection fund.
b. Personnel contribution of project applicants and participants.

21.32(3) *Project operating expenses.*
a. Project expense contribution from the water protection fund.
b. Project expense contribution from applicants and participants.

21.32(4) *Total project costs for each project year.*
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.33(161A) Landowner interest. Each application will provide an assessment of landowner interest in participating in the project.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.34(161A) Project maintenance. Each application will describe measures to be taken to ensure the long-term viability of the implemented project through maintenance agreements, easements, or other such measures.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.35(161A) Time frame. Each application will provide a time frame for project implementation.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.36(161A) Project evaluation. Each application will describe criteria that will be used to evaluate the success of the project. Evaluation criteria should state, at a minimum, projected landowner participation and water quality improvements.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.37 to **21.39** Reserved.

PART 4
PROPOSAL REVIEW

27—21.40(161A) Proposal review. Part 4 establishes the process that the state soil conservation committee will follow in reviewing the applications submitted, and selecting which, if any, will be funded.

21.40(1) The state soil conservation committee will give consideration to the following criteria in evaluating the project proposals submitted:

a. The water resource to be protected.
b. The nature, extent and severity of water quality issues identified and targeted for correction.
c. The nature and variety of the proposed project measures.
d. The level of financial contribution requested for the project.
e. The cost-effectiveness of the proposed project measures.
f. Agency, organization and landowner participation.
g. The public benefits projected.
h. The likelihood of project success within the projected time frame.

21.40(2) Proposal presentation. The state soil conservation committee may, at its discretion, ask the project applicant to make a formal presentation concerning the application or provide additional information.

21.40(3) Review assistance. The state soil conservation committee may receive assistance in the evaluation of project applications from division staff or other agencies.

21.40(4) Negotiation. The state soil conservation committee may negotiate any part of the proposal with the applicant prior to project selection.

21.40(5) Project selection. Projects selected will be funded on an annual basis. Funding for additional years of the projects will be provided on the basis of satisfactory progress and available funds of the water protection fund.

21.40(6) Notification. The state soil conservation committee will inform each applicant of the final determination with respect to their application.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.41 to **21.49** Reserved.

PART 5
BUDGET AND STAFF

27—21.50(161A) Budget and staff. Part 5 establishes procedures that the division will follow in providing budgets and staff for projects.

21.50(1) *Budget.* The division will establish an annual budget allocation for each selected project, to support:

a. Field office staff.
b. Project expenses.
c. Commissioner project expenses.
d. Financial incentives.

21.50(2) *Staff.* Appropriate to the project, the division will establish positions and allocate them to district field offices.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.51 to **21.59** Reserved.

PART 6
REPORTING

27—21.60(161A) Project reporting. Part 6 establishes reporting requirements for projects.

21.60(1) *Annual reports.* Annual reports meeting the following criteria will be submitted to the division:

a. Annual report deadline to be established consistent with the initiation of the project.

b. The annual report will describe accomplishments during the reporting period and compare them to the objectives of the application.

c. The annual report will itemize funds disbursed during the reporting period.

21.60(2) Reserved.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.61(161A) Supplemental reports. Supplemental reports shall be submitted as required by the division.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.62(161A) Content of project reports. All project reports will contain the following credit: "This project is supported in part or in total by the department of agriculture and land stewardship, division of soil conservation and water quality, through funds of the water protection fund."

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.63 to **21.69** Reserved.

PART 7
ANNUAL PROJECT REVIEW

27—21.70(161A) Annual project review, continuation, amendment and termination. Part 7 describes procedures that the state soil conservation committee will follow to review annual progress for each project and to approve continuation, amend, or terminate them.

21.70(1) *Annual review.* The state soil conservation committee and district(s) will review each project annually. Upon completion of the annual review, the committee will inform the district(s) of their findings. Based on their findings, the committee will do one or more of the following:

a. Instruct the division to establish a budget for the next project year.

b. Renegotiate with the applicant district(s) the project objectives, procedures, budget or time schedule.

c. Terminate the project.

21.70(2) Reserved.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.71 to **21.79** Reserved.

PART 8
PROJECT COMPLETION

27—21.80(161A) Project completion. Part 8 describes the procedures to be followed to close out projects upon completion or termination.

21.80(1) *Required reports.* Upon project completion or termination, the project district(s) will complete the following reports within 90 days:

a. Final project report that summarizes project accomplishments, comparing them to original project objectives.

b. Final financial status report on all water project fund expenditures and any participating agency and organization expenditures.

21.80(2) Reserved.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—21.81 to **21.89** Reserved.

These rules are intended to implement Iowa Code chapter 161A.

[Filed 11/23/88, Notice 10/5/88—published 12/14/88, effective 1/18/89]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 22
SOIL AND WATER RESOURCE CONSERVATION PLANS

27—22.1 to **22.9** Reserved.

27—22.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing the development of soil and water resource conservation plans in all soil and water conservation districts in Iowa and developing a comprehensive soil and water resource conservation plan for the state of Iowa. It establishes standards and guidelines which the soil and water conservation districts will use in fulfilling their responsibilities under this program.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—22.11(161A) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—22.12 to **22.19** Reserved.

27—22.20(161A) Definition. In addition to the definitions in rule 27—10.20(161A), the following term is defined:

"Soil and water resource conservation plan" is a comprehensive long-range assessment of soil and surface water resources in the district consistent with rules approved by the committee under Iowa Code section 161A.4. The plan will assess the condition of soil and water in the district; evaluate the type, amount, and quality of soil and water, the threat of soil erosion, floodwater, and sediment damages, and necessary preventative and control measures; develop methods to maintain or improve soil and water condition; and cooperate with other state and federal agencies to carry out this plan.

27—22.21(161A) Soil and water resource conservation plan development. This rule establishes criteria for districts to develop a plan to preserve and protect the public interest in the soil and water resources of this state and for future generations.

22.21(1) *Plan development criteria.* The soil and water conservation district commissioners will develop a soil and water resource conservation plan as required by Iowa Code section 161A.4 that will include the content items required by rule 27—22.30(161A).

The district commissioners will use the following planning process criteria:

a. Examine and inventory the current resource situation.
b. Identify current problems.
c. List available resources—human and financial.
d. Determine objectives and goals.
e. Determine the best course of action to obtain those objectives and goals.
f. Review the action periodically for progress and effectiveness.

22.21(2) *Plan development deadline.* The soil and water resource conservation plan should be developed by May 31, 1991. The duration of the plan is five years. After five years, the plan should be revised and updated. It will go through the adoption and approval process again.

22.21(3) *Participation in the planning process.* Each soil and water conservation district should enlist the support and input of public and private sector agencies and organizations, including the county board of supervisors, the USDA Soil Conservation Service, the Cooperative Extension Service, and the division.

27—22.22 to **22.29** Reserved.

27—22.30(161A) Soil and water resource conservation plan content. The plan will preserve and protect the public interest in the soil and water resources of this state for future generations. It will include the proper control of and use of the soil and water resources by measures including, but not limited to, the control of floods, the control of erosion by water or by wind, the preservation of the quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed to be conducive to the public health, convenience, and welfare, both present and future.

22.30(1) *Plan content.*

a. Preface.

(1) Purpose of the soil and water resource conservation planning process.

(2) Credits to sources and those assisting in the planning.

(3) Credits to groups providing input for district objectives and goals.

b. Organization and authorities.

c. General description of soil and water conservation district.

d. Inventory of soil, water, and related natural resources.

(1) Existing land use—general description.

(2) Soil resources.

(3) Water resources.

(4) Recreation and wildlife resources.

(5) Mining and mineral resources.

(6) Land management.

(7) Factors limiting practice application.

(8) Actions needed to overcome limiting factors.

e. District objectives, goals, and priorities.

f. District policies.

g. Statement of adoption.

h. Statement of approval.

i. Maps.

22.30(2) *Annual review.* There shall be an annual review of the plan by the district that will assist in developing the annual work plan. The plan may be amended as a part of the annual review.

27—22.31 to **22.39** Reserved.

27—22.40(161A) Soil and water resource conservation plan adoption, approval, filing, and distribution. The plan shall meet all of the requirements of Iowa Code chapter 161A and this chapter before final plan completion.

22.40(1) *Adoption.* The district commissioners by a motion at their regularly scheduled meeting shall approve their completed plan or amendment.

22.40(2) *Approval.* The district shall submit their completed plan or amendment to the state soil conservation committee for approval. If found to meet the content requirements of rule 27—22.30(161A), the state soil conservation committee shall approve the plan or amendment by motion at their regularly scheduled meeting. The approved plan will be signed by the administrator of the division.

22.40(3) *Filing.* The approved district plan or amendment shall be filed with the recorder in the county in which the district is located and shall be filed with the division as part of the state soil and water resource conservation plan.

22.40(4) *Distribution.* The commissioners shall provide notice of the filing and may provide a copy of the approved district plan to the county board of supervisors in the county where the district is located. The district may provide copies to all interested parties that have been a part of the planning process.

27—22.41 to **22.49** Reserved.

27—22.50(161A) State soil and water resource conservation plan. The division is responsible for developing a state plan according to Iowa Code section 161A.4(4)*"h."* The state plan shall contain on a statewide basis the information required for a district plan.

These rules are intended to implement Iowa Code chapter 161A.

[Filed 1/18/91, Notice 10/31/90—published 2/6/91, effective 3/13/91]

[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 30
AGRICULTURAL DRAINAGE WELLS—ALTERNATIVE DRAINAGE SYSTEM ASSISTANCE PROGRAM

27—30.1 to **30.9** Reserved.

27—30.10(161A,460) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing the agricultural drainage wells — alternative drainage system assistance program. This program provides financial assistance for closing agricultural drainage wells and constructing alternative drainage systems that are part of a drainage district. These rules establish the assistance program, provide for the allocation of assistance funds, and establish procedures and standards for eligibility to receive assistance under the program.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—30.11(161A,460) Rules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—30.12 to **30.19** Reserved.

27—30.20(161A,460) Definitions. When used in this chapter:

"Agricultural drainage well" means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, boring, augering, jetting, washing, or coring, and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

"Agricultural drainage well area" means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

"Alternative drainage system" means a drainage system constructed as part of a drainage district in order to drain surface or subsurface water from land due to the closing of an agricultural drainage well.

"Designated agricultural drainage well area" means an agricultural drainage well area in which there is located an anaerobic lagoon or earthen manure storage basin required to obtain a construction permit by the department of natural resources.

"Division" means the division of soil conservation and water quality of the department of agriculture and land stewardship.

"Drainage district" means a drainage district established pursuant to Iowa Code chapter 468.

"Drainage system" means tile lines, laterals, surface inlets, or other improvements which are constructed to facilitate the drainage of land.

"Earthen storage structure" means an earthen cavity, either covered or uncovered, including but not limited to an anaerobic lagoon or earthen manure storage basin which is used to store manure, sewage, wastewater, industrial waste, or other waste regulated by the department of natural resources, if stored in a liquid or semiliquid state.

"Land" means land which is used or which is suitable for use for any purpose, if the land is located within an agricultural drainage well area which includes land used or suitable for use in farming.

"Noncrop acres" means a land tract as identified in the assessment schedule in the report of the classification commission adopted at public hearing pursuant to Iowa Code sections 468.44 through 468.46 which is not predominantly used for row crop production. Areas used for wetland mitigation shall not be considered in determining predominant land use.

"Watershed area" means the benefited land area of a drainage district.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—30.21 to **30.29** Reserved.

27—30.30(161A,460) Appropriations. Moneys shall be used to provide financial assistance under the program and to defray expenses by the division in administering the program. However, not more than 1 percent of the fund may be used to defray administrative expenses of the division. Moneys which are unobligated at the end of the fiscal year shall not revert but will be available during subsequent fiscal years of the program. Moneys earned as income, including interest, from the fund shall remain in the fund until expended, notwithstanding Iowa Code section 12C.7.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—30.31(161A,460) Other funds. Funds for the agricultural drainage wells—alternative drainage system assistance program may be from moneys available to and obtained or accepted by the division or the state soil conservation committee from the United States or private sources for placement in the fund.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—30.32 to **30.39** Reserved.

27—30.40(161A,460) Allocation of funds. Funds will be allocated by the division for specific agricultural drainage well closure and alternative drainage system improvement projects. Allocations shall be 75 percent of the estimated cost of installing the alternative drainage system improvements as defined by Iowa Code section 468.3.

30.40(1) *Allocation by a priority system based on contamination potential.* Rescinded IAB 10/14/15, effective 11/18/15.

30.40(2) *Allocation for a single drainage improvement project which will allow for the closing of 30 or more agricultural drainage wells.* Rescinded IAB 10/14/15, effective 11/18/15.

30.40(3) *Application for fund allocation.* Application for fund allocation to a new drainage district shall be submitted to the division by the board of supervisors on behalf of eligible owners of land following receipt of petition to establish a drainage district pursuant to Iowa Code section 468.8 and before the hearing on establishment pursuant to Iowa Code section 468.22. Application for fund allocation to an existing drainage district shall be submitted to the division by the district board on behalf of eligible owners of land prior to the hearing on improvement pursuant to Iowa Code section 468.126. The application for fund allocation shall be in writing and shall identify:

a. Approximate location and boundary of the watershed area served by the proposed project.

b. Approximate watershed drainage area.

c. Expected number of agricultural drainage wells to be closed.

d. Location of any anaerobic lagoon or earthen manure storage basin required to obtain a construction permit by the department of natural resources.

e. Preliminary cost estimate for the alternative drainage system.

f. Anticipated project time line.

g. Anticipated or actual date of establishment of the drainage district under Iowa Code section 468.22.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—30.41 to **30.49** Reserved.

27—30.50(161A,460) Eligibility. Financial assistance from the program will be limited by the criteria of this rule.

30.50(1) *Cost-share rate.* Cost-share payments from the fund shall not exceed 75 percent of the estimated cost or 75 percent of the actual cost of the project, whichever is less.

30.50(2) *Eligible costs.* Project costs eligible for financial assistance cost sharing from the fund are:

a. Construction costs normally incidental to the costs of a drainage district including, but not limited to:

(1) Tile or channel mains.

(2) Laterals.

(3) Associated excavations, backfilling, tile line cradling materials, and junctions.

b. Cost of improvements as defined by Iowa Code section 468.3 including, but not limited to:

(1) Administrative, legal and publication costs.

(2) Classification.

(3) Engineering design, construction inspection and contract administration.

(4) Financing costs.

(5) Damages.

c. Costs of wetland mitigation required under federal law.

d. Costs of connection lines from mains or laterals of the drainage district to the terminus of in-field drains at the existing wellheads of the agricultural drainage wells.

e. Costs of closure and plugging of agricultural drainage wells in accordance with 567 IAC 39, Requirements for Properly Plugging Abandoned Wells, or by an alternative method approved by the department of natural resources.

f. Costs for removal of agricultural drainage well cisterns in accordance with applicable requirements of the department of natural resources.

30.50(3) *Project design and construction.* The alternative drainage system of the drainage district shall be designed to meet standard engineering practice for drainage district improvements and be approved by the division. Construction shall be in accordance with the design and standard construction practice for drainage district improvements.

30.50(4) *Noncrop acres.* Noncrop acres within a designated agricultural drainage well area shall not be eligible to benefit from the program.

30.50(5) *Eligible persons.* A person who owns an interest in land within a designated agricultural drainage well area shall not be eligible to participate in the program, if the person is any of the following:

a. A party to a pending legal or administrative action, including a contested case proceeding under Iowa Code chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

b. Classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

30.50(6) *Closure of agricultural drainage wells.* Closure of all agricultural drainage wells located within the watershed area served by the alternative drainage system of the drainage district is required for landowners to be eligible for financial assistance from the fund.

30.50(7) *Compliance with applicable statutes.* The alternative drainage system project of the drainage district shall be conducted in compliance with all applicable statutes, rules and requirements.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—30.51 to **30.59** Reserved.

27—30.60(161A,460) Payment of financial assistance. Financial assistance under the program will be distributed to eligible landowners by the drainage district, under the terms of a 28E agreement between the division and the drainage district.

30.60(1) *Distribution to eligible landowners under adopted classification.* Funds will be transferred by the division for all eligible costs of the project under the program to the drainage district for distribution to eligible landowners in accordance with the adopted classification of the district. The financial assistance shall be distributed to reduce the actual assessment to eligible landowners under the adopted classification.

30.60(2) *Time of payment.* Financial assistance funds shall be transferred to the drainage district to reimburse actual expenditures of the district. The fund transfer to the drainage district will be in accordance with the terms of the 28E agreement.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—30.61 to **30.69** Reserved.

27—30.70(161A,460) Compliance procedures and reviews. This rule establishes procedures for compliance actions taken by the division when it is found that program requirements or funding agreements are not being carried out.

30.70(1) *Compliance with program requirements or funding agreements.* Upon determination that program requirements or funding agreements have not been complied with, the division shall notify the affected landowners or drainage district of the lack of compliance and establish a schedule for achieving compliance with applicable requirements. In the event compliance is not achieved, no financial assistance from the program shall be provided. If financial assistance payments have previously been made, the division may order the recipient to pay back the division the total amount of the financial assistance payment in accordance with a schedule determined by the division.

30.70(2) *Compliance reviews.* A landowner or drainage district that has been determined ineligible for financial assistance or has been ordered to pay back to the division financial assistance payments because of lack of compliance with program requirements or funding agreements may seek review of the compliance action taken by the division. The affected landowner or drainage district may address concerns about the compliance action in writing to the director of the division. Upon receipt of such concern, the director shall review the actions taken and shall communicate the findings of the compliance review to the complainant. The director's decision following review of the actions taken shall constitute final agency action for purposes of invoking the judicial review provisions of Iowa Code chapter 17A.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

These rules implement Iowa Code chapter 460.

[Filed 12/12/97, Notice 10/22/97—published 12/31/97, effective 2/4/98]
[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 40
COAL MINING

[Prior to 6/15/88, see Soil Conservation Department, 780—Ch 4]
[Prior to 12/26/90, see Soil Conservation[27] Chs 1 to 49]

PART 1A
COAL MINING—GENERAL

27—40.1(17A,207) Authority and scope. The following sets forth the rules and procedures through which the department of agriculture and land stewardship, division of soil conservation and water quality, will implement the regulatory program pursuant to Iowa Code chapter 207 and the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA).

40.1(1) Parts and sections of the federal regulations of the U.S. Office of Surface Mining Reclamation and Enforcement, U.S. Department of Interior, promulgated pursuant to the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), are incorporated by reference as rules of the division as specified in this chapter, with exceptions as indicated. Rules incorporated by reference, as specified in each specific rule, are those from the Code of Federal Regulations (30 CFR), as in effect on July 1, 2010.

40.1(2) The following general word substitutions are made in all incorporated federal regulations except as otherwise indicated:

"Act" refers to Iowa Code chapter 207.

"Administrator" is to be substituted for *"director", "regional director",* and *"secretary"*.

"Division of soil conservation and water quality" is to be substituted for *"department", "the office", "OSM", "OSMRE", "office of surface mining reclamation and enforcement", "regulatory authority", "State regulatory program",* and *"regulatory program"*.

"These rules" is to be substituted for *"chapter"* and *"subchapter"*.

40.1(3) Delete from 30 CFR 779.25(b), 780.14(c), and 783.25(b) the words "or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional land surveyor,". Also, replace "," with "or" between "professional engineer" and "professional geologist".

Delete from 30 CFR 780.25(a)(1)(i), 780.25(a)(3)(i), 784.16(a)(1)(i), and 784.16(a)(3)(i) the words "or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional land surveyor,". Also, replace "," with "or" between "professional engineer" and "professional geologist".

Delete from 30 CFR 816.46(b)(3) the words "or in any State which authorizes land surveyors to prepare and certify plans in accordance with §780.25(a) of this chapter a qualified, registered, professional land surveyor,".

Delete from 30 CFR 817.46(b)(3) the words "or in any State which authorizes land surveyors to prepare and certify plans in accordance with §784.16(a) of this chapter a qualified, registered, professional land surveyor,".

Delete from 30 CFR 816.151(a) and 817.151(a) the words "or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified, registered, professional land surveyor,".

40.1(4) Delete "or qualified, registered, professional land surveyor" from 30 CFR 816.49(a)(3) and 816.49(a)(11)(ii).

40.1(5) Delete "registered, professional engineer" from 30 CFR Parts 779, 780, 783, 784, 816 and 817, and replace it with "professional engineer, registered with the State of Iowa".

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11; **ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—40.2(207) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without the invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—40.3(207) General. The following is incorporated by reference: 30 CFR Part 700, as in effect on July 1, 2010, except for 30 CFR 700.1, 700.2, 700.3, 700.4, 700.10 and 700.12. The phrase "section 520 of the Act" is deleted from 30 CFR 700.13(a) and the words "Iowa Code section 207.17" are inserted in lieu thereof.

In lieu of the regulations deleted at 30 CFR 700.12 concerning "Petitions to initiate rule making," rules of the Iowa Department of Agriculture and Land Stewardship at 21 IAC Chapter 3, "Petitions for Rule Making" shall serve as the basis for submitting petitions to initiate rule making.

Definitions for *"Federal lands," "Federal lands program," "Fund," "Indian lands,"* and *"Indian tribe"* are correspondingly deleted from 30 CFR 700.5.

The definition of *"Regulatory program"* is deleted at 30 CFR 700.5 and the following definition is inserted in lieu thereof:

"Regulatory program" means Iowa's approved State program.

Delete from 30 CFR 700.14 the phrase "43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act" and insert in lieu thereof "Iowa Code chapter 22, the Iowa open records law".

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.4(207) Permanent regulatory program and exemption for coal extraction incidental to the extraction of other minerals. The following is incorporated by reference: 30 CFR Part 701 and 30 CFR Part 702, as in effect on July 1, 2010, with the following exceptions:

40.4(1) None of the general word substitutions at rule 27—40.1(17A,207) apply to the definitions of *"Permit," "Permittee,"* and *"State program"* at 30 CFR 701.5.

40.4(2) Delete from 30 CFR 701.5 the definitions *"Agricultural activities," "Alluvial valley floor," "Arid or semiarid area," "Essential hydrologic functions," "Farming," "Federal program," "Complete federal program," "Partial federal program," "Flood irrigation," "Materially damage the quantity or quality of waters," "Special bituminous coal mines," "Subirrigation," "Undeveloped rangeland,"* and *"Upland areas."*

40.4(3) Delete from the last sentence in the definition of *"Permittee"* in 30 CFR 701.5 the words "section 523 of the Act" and insert the words "Iowa Code section 207.20".

In 30 CFR 701.5, delete from the definition of "Significant imminent environmental harm to land, air or water resources" at (b)(2), the words "section 521(a)(3) of the Act" and insert the words "Iowa Code section 207.14, subsection 2".

40.4(4) Delete 30 CFR 701.1, 701.3, 701.4, and 701.11(c).

40.4(5) Delete references to "Subchapter B" and "Subchapter K" at 30 CFR 701.11(d) and (e) and substitute in lieu thereof "Part 1B" and "Part 6", respectively.

40.4(6) Delete 30 CFR 702.1 and 702.10.

40.4(7) Delete 30 CFR 702.11(f) and insert in lieu thereof the following:

(f) Administrative review. (1) Any adversely affected person may request administrative review of a determination under paragraph (e) of this section within 30 days of notification of such determination in accordance with Part 9 of these rules.

(2) A petition for administrative review filed under Part 9 of these rules shall not suspend the effect of a determination under paragraph (e) of this section.

40.4(8) Delete 30 CFR 702.17(c)(2) and (3) and insert in lieu thereof the following:

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such a decision in accordance with the procedures of Part 9 of these rules.

(3) A petition for administrative review filed under Part 9 of these rules shall not suspend the effect of a decision whether to revoke an exemption.

40.4(9) Reserved.

40.4(10) Add to 30 CFR 701.5 the definition:

"Full water year" means at a minimum, the nine-month period from March through November.

40.4(11) Delete the definition for "Violation, failure or refusal" at 30 CFR 701.5 and insert in lieu thereof the following:

"Violation, failure, or refusal" means—

(1) A violation of a condition of an approved permit pursuant to the Iowa program or an enforcement action pursuant to Iowa Code section 207.14, or

(2) A failure or refusal to comply with any order issued under Iowa Code section 207.14 or any order incorporated in a final decision issued by the administrator, except an order incorporated in a decision issued under subrule 40.74(7) or rule 27—40.7(207).

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.5(207) Restrictions on financial interests of state employees. The general word substitutions used elsewhere in these rules do not apply to Iowa's incorporation of 30 CFR Part 705. The following is incorporated by reference: 30 CFR Part 705, as in effect on July 1, 2010, with the following exceptions:

40.5(1) Delete from 30 CFR 705.5 the definition for "State regulatory authority" and insert the following definition in lieu thereof:

"State regulatory authority" means the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, or its authorized representative.

40.5(2) Delete 30 CFR 705.1, 705.2, 705.3, 705.4(b), 705.10, and 705.11(e).

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11; **ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—40.6(207) Exemptions for coal extraction incident to government-financed highway or other constructions. The following is incorporated by reference: 30 CFR Part 707, as in effect on July 1, 2010, with the following exceptions:

40.6(1) Add to 30 CFR 707.11 a paragraph (c) that shall read:

(c) Any person who conducts or intends to conduct such coal extraction must file a letter of intent with the division 60 days prior to surface disturbance.

40.6(2) Reserved.

40.6(3) Delete 30 CFR 707.10.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.7(207) Protection of employees. The following is incorporated by reference: 30 CFR Part 865, as in effect on July 1, 2010, with the following exceptions:

40.7(1) Delete the words "Office of Hearings and Appeals" and insert the word "division".

40.7(2) Delete the words "43 CFR Part 4" and insert the words "Iowa Code section 207.14".

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.8 to **40.10** Reserved.

PART 1B
COAL MINING—INITIAL PROGRAM

27—40.11(207) Initial regulatory program. The following is incorporated by reference: 30 CFR Part 710, as in effect on July 1, 2010, with the following exceptions:

40.11(1) Reserved.

40.11(2) Delete 30 CFR 710.1, 710.3, 710.4(a), 710.10, 710.11(b) and (c), and 710.12.

40.11(3) Reserved.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.12(207) General performance standards—initial program. The following is incorporated by reference: 30 CFR Part 715, as in effect on July 1, 2010, with the following exceptions:

40.12(1) Delete from 30 CFR 715.11(c) the scale of "1:6000" and insert the scale of "1:2400".

40.12(2) Delete from 30 CFR 715.17(h)(3) the words "in a manner approved by the regulatory authority" and insert the words "monthly, and reported quarterly to the regulatory authority,".

40.12(3) Delete 30 CFR 715.10.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.13(207) Special performance standards—initial program. The following is incorporated by reference: 30 CFR Part 716, as in effect on July 1, 2010, with the following exception:

Delete 30 CFR 716.1(a), subparagraphs (1) through (5), 716.2, 716.3, 716.4, 716.5, 716.6, and 716.10.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.14 to **40.19** Reserved.

PART 2
COAL MINING—AREAS UNSUITABLE

27—40.20 Reserved.

27—40.21(207) Areas designated by an Act of Congress. The following is incorporated by reference: 30 CFR Part 761, as in effect on July 1, 2010, with the following exceptions:

40.21(1) None of the general word substitutions in rule 27—40.1(17A,207) apply to the definition of "Valid existing rights" at 30 CFR 761.5.

40.21(2) Delete from the definition of "Surface operations and impacts incident to an underground coal mine" in 30 CFR 761.5 the words "section 701(28) of the Act" and insert the words "Iowa Code section 207.2, subsection 14".

40.21(3) None of the general word substitutions in rule 27—40.1(17A,207) apply to 30 CFR 761.11(b).

40.21(4) Delete from 30 CFR 761.5 under the definition for "Valid existing rights" the words "30 U.S.C. 1272(e)" and insert the words "Iowa Code section 207.8".

40.21(5) Delete 30 CFR 761.13.

40.21(6) Delete from 30 CFR 761.16 the words "30 U.S.C. 1272(e)" and insert the words "Iowa Code section 207.8".

40.21(7) None of the general word substitutions for "Act" and "secretary" at rule 27—40.1(17A,207) apply to 30 CFR 761.3.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.22(207) Criteria for designating areas as unsuitable for surface coal mining operations. The following is incorporated by reference: 30 CFR Part 762, as in effect on July 1, 2010, with the following exceptions:

40.22(1) The general word substitutions in rule 27—40.1(17A,207) do not apply to 30 CFR 762.12(b) or 762.13(a).

40.22(2) Delete from 30 CFR 762.15 the words "section 522 of the Act" and insert the words "Iowa Code section 207.8".

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.23(207) State procedures for designating areas unsuitable for surface coal mining operations. The following is incorporated by reference: 30 CFR Part 764, as in effect on July 1, 2010, with the following exceptions:

40.23(1) Delete 30 CFR 764.10.

40.23(2) Delete from 30 CFR 764.13(b)(1)(v) the words "sections 522(a)(2) and (3) of the Act" and insert the words "Iowa Code section 207.8, subsection 1".

40.23(3) Delete from 30 CFR 764.19(c) the words "section 526(e) of the Act" and insert the words "Iowa Code section 207.8, subsection 4, and Iowa Code section 17A.19".

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.24 to **40.29** Reserved.

PART 3
COAL MINING—PERMITS FOR OPERATIONS AND EXPLORATION

27—40.30(207) Requirements for coal exploration. The following is incorporated by reference: 30 CFR Part 772, as in effect on July 1, 2010, with the following exceptions:

40.30(1) Delete from 30 CFR 772.11 and 772.11(a) the words "250 tons" and insert the words "50 tons".

40.30(2) Delete 30 CFR 772.11(b)(3) and insert the following:

(3) A precise description and map at a scale of 1:24,000 or larger of the exploration area showing the lease limits and identifying lessor(s);

40.30(3) Add a new paragraph (6) to 30 CFR 772.11(b) to read as follows:

(6) If the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person who will explore claims the right to enter such area for the purpose of conducting exploration and reclamation.

40.30(4) Delete from 30 CFR 772.12, 772.12(a), and 772.12(b)(7) the words "250 tons" and insert the words "50 tons".

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.31(207) Requirements for permits and permit processing. The following is incorporated by reference: 30 CFR Part 773, as in effect on July 1, 2010, with the following exceptions:

40.31(1) Delete the second sentence of 30 CFR 773.4(a).

40.31(2) Add at the end of the last sentence of 30 CFR 773.6(a)(1)(ii) the words "and the scale of the map", and the following paragraph:

"The legal description shall include popular township, county, township, range, section, and the United States Geological Survey map identification by property owners. Section lines shall be marked and the sections shall be identified on the map. The total acreage of the proposed permit area shall be given to the nearest acre."

40.31(3) Delete from 30 CFR 773.7(a) the words "a reasonable time set by the regulatory authority" and insert the words "90 days following the completion of the adequacy review".

40.31(4) Delete 30 CFR 773.3, 773.4(c) and (d).

40.31(5) Delete from 30 CFR 773.4(b)(2) the words "section 502 of the Act" and insert the words "Iowa Code section 207.4".

40.31(6) Delete from 30 CFR 773.6(a)(3)(ii) the words "section 503(a)(6) or 504(h) of the Act" and insert the words "Iowa Code section 207.5".

40.31(7) Delete the first sentence from 30 CFR 773.6(c)(2)(iv).

40.31(8) Delete from 30 CFR 773.6(d)(3)(ii) the words "section 508 of the Act" and insert the words "Iowa Code section 22.7, subsection 6".

40.31(9) The general word substitution for "Act" at rule 27—40.1(17A,207) does not apply to 30 CFR 773.11(a).

40.31(10) The general word substitution for "secretary" at rule 27—40.1(17A,207) does not apply to 30 CFR 773.17(d).

40.31(11) The general word substitution for "OSM" at rule 27—40.1(17A,207) does not apply to 30 CFR 773.19(b)(3).

40.31(12) Add the following paragraph (h) to 30 CFR 773.17:

(h) The permittee shall ensure and the permit shall contain specific conditions requiring that, as a condition of the permit, the permittee shall not, except as permitted by law, willfully resist, prevent, impede, or interfere with the division or any of its agents in the performance of their duties.

40.31(13) Delete from 30 CFR 773.6(b)(1) the words "a reasonable time established by the regulatory authority" and insert the words "60 days of the notification".

40.31(14) Reserved.

40.31(15) Delete 773.23(d) and insert in lieu thereof the following:

(d) Right to appeal. The permittee may file an appeal for administrative review of the notice of proposed suspension or rescission under Part 9 of these rules.
[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.32(207) Revision or amendment; renewal; and transfer, assignment, or sale of permit rights. The following is incorporated by reference: 30 CFR Part 774, as in effect on July 1, 2010, with the following exceptions:

40.32(1) 30 CFR 774.10(b) and (c) are deleted.

40.32(2) 30 CFR 774.13 is deleted, with the exception that the notice, public participation, and notice of decision requirements of 30 CFR 773.6, 773.19(b), and 778.21 shall apply to all revisions.

These rules utilize the term "revision" to describe a change to a permit that constitutes a significant departure from the approved permit and the term "amendment" to describe a change that does not constitute a significant departure. A significant departure shall be any change in permit area, mining method or reclamation procedure, which would, in the opinion of the division, significantly change the effect that mining operations would have on persons impacted by the permitted operation, on cultural resources, or on the environment.

40.32(3) Permit revisions and amendments.

a. During the term of a permit, the permittee may submit an application to the division for revision or amendment of the permit.

(1) A revision or amendment is required for any changes in the approved permit. All information related to approved revisions or amendments shall be updated in all public copies of the permit.

(2) When a permit is reviewed at any time, including midterm review, the division may, by order, require revision or amendment of the approved permit to ensure compliance with the Act and these rules. Any order of the division requiring revision or amendment of permits shall be based upon written findings, and the order shall be subject to the provisions for administrative and judicial review of Part 9 of this chapter.

(3) A revision or amendment shall be obtained in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the approved permit was issued.

(4) A revision or amendment shall also be obtained as otherwise required under the Act or these rules.

b. An application for a permit revision will be approved or disapproved within 90 days following a determination of completeness for the revision application by the division. An application for an amendment will be approved or disapproved within 60 days of submittal of the application to the division.

c. Any application for an amendment or a revision under these rules shall, at a minimum, be subject to the requirements of Part 9 of these rules and must provide replacement documentation fully describing changes to be made in the same detail as required in the original permit.

d. Criteria for approval. No application for a permit revision or amendment shall be approved unless the application demonstrates and the division finds that the reclamation as required by the Act and the regulatory program can be accomplished, that the application complies with all requirements of the Act and the regulatory program, and any applicable requirements of written findings for the permit have also been met.

e. Extensions to permit area.

(1) Any increase in permit area, except for incidental boundary revisions, shall not be approved under this subrule, but shall be treated as a new permit application.

(2) Incidental boundary revisions are considered significant departures and as such shall be treated as revisions. A total of 20 acres of incidental boundary changes will be allowed over the life of a permit with individual increments being subject to approval by the division. Application for an incidental boundary revision shall include demonstration by the applicant that the area for which mining operations are proposed is contiguous to the approved permit.

40.32(4) Delete 30 CFR 774.9 and 774.15(c)(3).

40.32(5) Add at the end of 30 CFR 774.15(a) the sentence "Renewal is not required if the division determines that the phase II bond was released over the entire permit area before the expiration of the permit term."

40.32(6) Delete from 30 CFR 774.15(b)(2)(i) the word "and" in the third line, and add at the end the words "and current status of the mine plan, other details and the time table—if different from the one previously approved—of the remaining phases of the operation and reclamation plans."

40.32(7) The general word substitution for "OSM" at rule 27—40.1(17A,207) does not apply to 30 CFR 774.17(e)(1).

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.33(207) General content requirements for permit applications. The following is incorporated by reference: 30 CFR Part 777, as in effect on July 1, 2010, with the following exceptions:

40.33(1) Delete 30 CFR 777.11(a)(3) and insert the following:

(3) Be filed in three copies with the format addressed by subrule and subject title.

40.33(2) Delete from 30 CFR 777.14(a) the scale of "1:6000" and insert the scale of "1:2400". Also delete the words "be in a scale determined by the regulatory authority, but in no event" and insert in lieu thereof "shall have a scale no".

40.33(3) Delete 30 CFR 777.17 and insert in lieu thereof the following:

777.17 Permit fees.

An application for a surface coal mining and reclamation permit shall be submitted to the division and accompanied by the appropriate fee. All checks shall be made payable to the Treasurer of the State of Iowa.

(1) New permits require a fee of $15 per acre to be permitted with a minimum fee of $100.

(2) Permit revisions within present permit boundaries require a fee of $2 per acre for the total permit area with a minimum of $40. Permit revisions which include additional area require the revision fee plus $5 per acre for the additional area, with a minimum of $40.

(3) Permit renewals require a fee of $100.

(4) Transfer, assignment, or sale by the permit holder requires a fee of $50.

40.33(4) Delete 30 CFR 777.10.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.34(207) Permit application—minimum requirements for legal, financial, compliance, and related information. The following is incorporated by reference: 30 CFR Part 778, as in effect on July 1, 2010, with the following exceptions:

40.34(1) Amend 30 CFR Part 778 by adding the following section:

778.23 Identification of other licenses and permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

1. Type of permit or license;
2. Name and address of issuing authority;
3. Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses;
4. If a decision has been made, the date of approval or disapproval by each issuing authority; and
5. Date of expiration of permits.

40.34(2) Delete 30 CFR 778.8.

40.34(3) Reserved.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.35(207) Surface mining permit applications—minimum requirements for information on environmental resources. The following is incorporated by reference: 30 CFR Part 779, as in effect on July 1, 2010, except as modified by subrule 40.1(3) and with the following exceptions:

40.35(1) Delete from 30 CFR 779.19(a) the words "if required by the regulatory authority, contain a map" and insert the words "contain a map at a scale of 1:2400 or larger".

40.35(2) Delete from 30 CFR 779.19(b) the words "When a map or aerial photograph is required, sufficient adjacent areas shall be included" and insert the words "A map at a scale of 1:2400 or larger or an aerial photo shall include sufficient adjacent areas".

40.35(3) Reserved.

40.35(4) Amend the first sentence of 30 CFR 779.25(a) to read: "The permit application shall include cross sections at a vertical exaggeration of 1:10, maps at a scale of 1:2400 or larger and plans showing—"

40.35(5) Add to 30 CFR 779.25(a)(1) the words "and a survey coordinate net".

40.35(6) Amend 30 CFR 779.25, cross sections, maps and plans, by adding the following paragraphs:

(c) Drill logs must contain the following:

(1) Must have survey coordinates (northing and easting) relating them to the map grid in the permit application.

(2) Must show surface elevation.

(3) Must be detailed enough to show all changes in material encountered in both consolidated and unconsolidated overburden.

40.35(7) Delete 30 CFR 779.1 and 779.10.

40.35(8) Reserved.

40.35(9) Delete from 30 CFR 779.18(a) the words "When requested by the regulatory authority".

40.35(10) Add a new paragraph (c) to 30 CFR 779.18 as follows:

(c) Location of the rain gauges nearest to the permit area, preferably in the same watershed as the permit itself, shall be marked on a map, and these shall be described in the text as well, along with the period of available record at these gauges.

40.35(11) Add a new paragraph (d) to 30 CFR 779.18 as follows:

(d) A brief description shall be provided about the impact of the climatological factors on operation and reclamation plans, specifically what part of the year would be more conducive than others to various mining and reclamation operations.

40.35(12) Delete from 30 CFR 779.24(g) the words "defined by the regulatory authority" and add at the end the words "Hydrologic area is the area that consists of the permit area and the adjacent area."

40.35(13) Insert the words "and its identification" between the words "road" and "located" in 30 CFR 779.24(h).

40.35(14) Insert at the beginning of 30 CFR 779.24(l) the words "Section lines and section identification, and any".

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.36(207) Surface mining permit applications—minimum requirements for reclamation and operation plan. The following is incorporated by reference: 30 CFR Part 780, as in effect on July 1, 2010, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions and clarifications:

40.36(1) Delete 30 CFR 780.1 and 780.10.

40.36(2) The general word substitutions at rule 27—40.1(17A,207) do not apply at 30 CFR 780.21(a).

40.36(3) The determination of probable hydrologic consequence (PHC) made pursuant to these rules as part of a permit application shall address all proposed mining activities associated with the permit area for which authorization is sought as opposed to addressing only those activities expected to occur during the term of the permit.

40.36(4) Delete from 30 CFR 780.12 references to "Subchapter B" and "Subchapter K" and replace with "Part 1B" and "Part 6", respectively.

40.36(5) Insert at the end of 30 CFR 780.21(a) the sentence "The methodology for measurement of the quantity of both surface water and groundwater shall also be described."

40.36(6) Delete from 30 CFR 780.21(d) the words "may be required by the regulatory authority" and insert the words "is required".

40.36(7) Delete from 30 CFR 780.21(i) and (j) the word "approved" and insert the word "proposed".
[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.37(207) Underground mining permit applications—minimum requirements for information on environmental resources. The following is incorporated by reference: 30 CFR Part 783, as in effect on July 1, 2010, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions:

40.37(1) Delete from 30 CFR 783.18(a) the words "When requested by the regulatory authority,".

40.37(2) Delete 30 CFR 783.21(a)(1) and insert the following:

(1) A map, at the scale of 1:2400 or larger, delineating different soils;

40.37(3) Amend the first sentence in 30 CFR 783.24 to read: "The permit application shall include maps at a scale of 1:2400 or larger showing:"

40.37(4) Amend the first sentence in 30 CFR 783.25(a) to read: "The application shall include cross sections at a vertical exaggeration of 1:10, maps at a scale of 1:2400, and plans showing—"

40.37(5) Delete 30 CFR 783.1 and 783.10.

40.37(6) Reserved.
[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.38(207) Underground mining permit applications—minimum requirements for reclamation and operation plan. The following is incorporated by reference: 30 CFR Part 784, as in effect on July 1, 2010, except as modified by subrules 40.1(3) and 40.1(5) and with the following exceptions and clarifications:

40.38(1) Delete from 30 CFR 784.14(d) the words "information may be required" and insert the words "information is required".

40.38(2) Delete from 30 CFR 784.20(b)(4) the words "if any".

40.38(3) Delete from 30 CFR 784.20(b)(6) the words "if any".

40.38(4) Amend the first sentence of 30 CFR 784.23 to read: "Each application shall contain maps at a scale of 1:2400 or larger and plans as follows:"

40.38(5) Delete 30 CFR 784.1 and 784.10.

40.38(6) The general word substitutions at rule 27—40.1(17A,207) do not apply to 30 CFR Part 784.14(a).

40.38(7) Delete from 30 CFR 784.13(a) the words "sections 515 and 516 of the Act" and insert the words "Iowa Code sections 207.7 and 207.19".

40.38(8) The determination of probable hydrologic consequence (PHC) made pursuant to these rules as part of a permit application shall address all proposed mining activities associated with the permit area for which authorization is sought as opposed to addressing only those activities expected to occur during the term of the permit.
[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.39(207) Requirements for permits for special categories of mining. The following is incorporated by reference: 30 CFR Part 785, as in effect on July 1, 2010, with the following exceptions:

40.39(1) Delete 30 CFR 785.10, 785.11, 785.12, 785.14, 785.15, 785.16, 785.17(d)(1), (2), and (3), 785.19, and 785.22.

40.39(2) The general word substitutions for "director" and "department" at rule 27—40.1(17A,207) do not apply at 30 CFR 785.13.

40.39(3) None of the general word substitutions at rule 27—40.1(17A,207) apply at 30 CFR 785.17(c)(1)(i) and (d).

40.39(4) Delete paragraphs (d) and (e) from 30 CFR 785.21 and insert in lieu thereof a new paragraph (d) as follows:

(d) Coal preparation plants are required to obtain permanent program permits under the Iowa regulatory program after April 10, 1981, as approved by the U.S. Office of Surface Mining.

40.39(5) Delete from 30 CFR 785.18(c)(5) the words "section 515(b)(16) of the Act" and insert the words "Iowa Code section 207.7".

40.39(6) Delete from 30 CFR 785.18(c)(7) the words "section 515(b)(22) of the Act" and insert the words "Iowa Code section 207.7".

40.39(7) Delete from 30 CFR 785.18(c)(9) the words "section 515(b) of the Act" and insert the words "Iowa Code section 207.7".

40.39(8) Add the following clarifying sentence to 30 CFR 785.21(a): "An off-site processing plant operated in connection with the mine but off the mine site will be regulated without regard to its proximity to the mine."

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

PART 4
COAL MINING—SMALL OPERATOR ASSISTANCE

27—40.40 Reserved.

27—40.41(207) Permanent regulatory program—small operator assistance program. The following is adopted by reference: 30 CFR Part 795, as in effect on July 1, 2010, with the following exceptions:

40.41(1) Delete 30 CFR 795.4, 795.5 and 795.6(b).

40.41(2) Delete from 30 CFR 795.1 the words "section 507(c) of the Act" and insert the words "Iowa Code section 207.4, subsection 1, paragraph *"d"*."

40.41(3) Eligibility thresholds for annual production in tons at 30 CFR 795.6(a)(2) shall not apply until the same threshold at Iowa Code section 207.4(1)(d) has been amended from 100,000 tons to 300,000 tons.

40.41(4) Program services at 30 CFR 795.9(b)(3) through 795.9(b)(6) shall not apply until Iowa Code section 207.4(1)(d) has been amended to authorize these services.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.42 to **40.49** Reserved.

PART 5
COAL MINING—BONDING AND INSURANCE

27—40.50 Reserved.

27—40.51(207) Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs. The following is incorporated by reference: 30 CFR Part 800, as in effect on July 1, 2010, with the following exceptions:

40.51(1) Add to 30 CFR 800.40(c) a paragraph (4) that shall read as follows:

(4) The maximum liability under performance bonds applicable to a permit which may be released at any time prior to the release of all acreage from the permit area shall be calculated by multiplying the ratio between the acreage on which a reclamation phase has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times 0.6 if reclamation phase I has been completed, or 0.25 if reclamation phase II has been completed.

Acreage may be released from the permit area only after reclamation phase III has been completed. The maximum performance bond liability applicable to a permit which may be released at any time prior to the completion of reclamation phase III on the entire permit area shall be calculated by multiplying the ratio between the acreage on which reclamation phase III has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times 0.15.

40.51(2) Delete from 30 CFR 800.60(a) the words "authorized to do business in the United States" and insert the words "authorized to do business in the State of Iowa".

40.51(3) Delete 30 CFR 800.10, 800.11(e), and 800.70.

40.51(4) Delete from 30 CFR 800.40(a)(1) the words "established in the regulatory program or".

40.51(5) Delete from 30 CFR 800.40(c)(2) the words "sections 515 and 515(b)(10) of the Act" and insert the words "Iowa Code section 207.7". Delete also from 30 CFR 800.40(c)(2) the words "performed

pursuant to section 507(b)(16) of the Act" and insert the words "information included in the permit application and obtained from the official soil survey for the county in which the permit is located,".

40.51(6) Delete from 30 CFR 800.40(h) the words "section 513(b) of the Act" and insert the words "Iowa Code section 207.5".

40.51(7) An application for bond release shall not be considered filed until a written determination of completeness for the bond release application has been provided to the applicant by the division. The division will make a determination of completeness for the bond release application within 30 days following receipt of such application.
[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.52 to **40.59** Reserved.

PART 6
COAL MINING—PERMANENT PROGRAM PERFORMANCE STANDARDS

27—40.60 Reserved.

27—40.61(207) Permanent program performance standards—general provisions. The following is incorporated by reference: 30 CFR Part 810, as in effect on July 1, 2010, with the following exceptions:

40.61(1) Delete 30 CFR 810.3 and 30 CFR 810.4(a).

40.61(2) Delete 30 CFR 810.4(b) and substitute in lieu thereof the following:

(b) The division shall ensure that performance standards and design requirements are implemented and enforced under the Iowa program.

40.61(3) Delete 30 CFR 810.4(c) and substitute in lieu thereof the following:

(c) Each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with the performance standards and design requirements of the approved Iowa program.

40.61(4) Delete the phrase "Parts 818 through 828" at 30 CFR 810.11 and substitute in lieu thereof "Parts 819, 823, and 827".
[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.62(207) Permanent program performance standards—coal exploration. The following is incorporated by reference: 30 CFR Part 815, as in effect on July 1, 2010.
[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.63(207) Permanent program performance standards—surface mining activities. The following is incorporated by reference: 30 CFR Part 816, as in effect on July 1, 2010, except as modified by subrules 40.1(3), 40.1(4), and 40.1(5) and with the following exceptions:

40.63(1) Delete 30 CFR 816.61(c)(1) and insert the following:

(c) Blasters. (1) All blasting operations shall be conducted under the direction of a blaster certified by the division.

40.63(2) Delete 30 CFR 816.101. For "Backfilling and grading: Time and distance requirements," the following shall apply:

a. Except as provided in paragraph *"b"* of this subrule, rough backfilling and grading for surface mining activities shall be completed within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge.

b. The division may extend the time allowed for rough backfilling and grading for the entire permit area or for a specified portion of the permit area if the permittee demonstrates in accordance with 27 IAC 40.36 / 30 CFR 780.18(b)"3" of these rules that additional time is necessary.

40.63(3) Add to 30 CFR 816.131(b) the sentence "The notice shall state a specific date when operations will resume."

40.63(4) Add to 30 CFR 816.131 a paragraph (c) that shall read as follows:

(c) The period of temporary cessation shall be a period of two years after which cessation will become permanent cessation and subject to the conditions of 30 CFR 816.132. The applicant may request

one 12-month extension of the two-year time period. Approval of the extension request shall be at the discretion of the division administrator.

40.63(5) Delete 30 CFR 816.10.

40.63(6) The following is incorporated by reference: "Revegetation Success Standards and Statistically Valid Sampling Techniques," dated April 1999, as approved on December 27, 2001, and as amended December 27, 2004.

40.63(7) Reserved.

40.63(8) Reserved.

40.63(9) Add at the end of 30 CFR 816.49(a)(11)(i) the sentence "Yearly inspection of the impoundments shall be done in the second quarter of each calendar year, and the inspection report shall be submitted to the division with the second quarter water monitoring report."

40.63(10) Reserved.

40.63(11) Reserved.

40.63(12) Delete 30 CFR 816.89 and insert in lieu thereof the following:

816.89 Disposal of noncoal mine wastes.

(a) Noncoal mine wastes including, but not limited to, grease, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a landfill permitted by the Iowa department of natural resources (DNR) pursuant to 561 IAC 101, 102, and 103. Lubricants, paints, and flammable liquids may not be buried in the State of Iowa but, along with other toxic wastes, must be disposed of in the legally prescribed manner. Iowa law prohibits final disposal of noncoal wastes within the permit area.

Pending final disposal at a permitted DNR facility, noncoal mine waste shall be placed and stored in a controlled manner in a designated portion of the permit area so as to ensure that leachate and surface runoff do not degrade surface or groundwater, that fires are prevented and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

Noncoal mine waste shall at no time be deposited in a refuse pile or impounding structure.

No excavation for or storage of noncoal mine waste shall be located within eight feet of any coal outcrop or coal storage area.

(b) Final disposal of noncoal mine wastes shall be in a designated, State-approved solid waste disposal site permitted by the Iowa department of natural resources pursuant to 561 IAC 101, 102, and 103.

(c) Notwithstanding any other provision in this chapter, any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Public Law 94-580 as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.64(207) Permanent program performance standards—underground mining activities. The following is incorporated by reference: 30 CFR Part 817, as in effect on July 1, 2010, except as modified by subrules 40.1(3), 40.1(4), and 40.1(5) and with the following exceptions:

40.64(1) Reserved.

40.64(2) Delete 30 CFR 817.10 and 817.107.

40.64(3) Delete 30 CFR 817.61(c)(1) and insert the following:

(c) Blasters (1) All blasting operations shall be conducted under the direction of a blaster certified by the division.

40.64(4) The following is incorporated by reference: "Revegetation Success Standards and Statistically Valid Sampling Techniques," dated April 1999, as approved on December 27, 2001, and as amended December 27, 2004.

40.64(5) Add to 30 CFR 817.131 a paragraph (c) that shall read as follows:

(c) The period of temporary cessation shall be a period of two years after which cessation will become permanent cessation and subject to the conditions of 30 CFR 817.132. The applicant may request

one 12-month extension of the two-year time period. Approval of the extension request shall be at the discretion of the division administrator.

40.64(6) Reserved.

40.64(7) Reserved.

40.64(8) Reserved.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.65(207) Special permanent program performance standards—auger mining. The following is incorporated by reference: 30 CFR Part 819, as in effect on July 1, 2010.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.66(207) Special permanent program performance standards—operations on prime farmland. The following is incorporated by reference: 30 CFR Part 823, as in effect on July 1, 2010, except for 30 CFR 823.11(a) which is deleted.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.67(207) Permanent program performance standards—coal preparation plants not located within the permit area of a mine. The following is incorporated by reference: 30 CFR Part 827, as in effect on July 1, 2010, except for the following:

40.67(1) Delete 30 CFR 827.1.

40.67(2) Delete 30 CFR 827.13(a) and insert the following:

(a) Persons operating or who have operated coal preparation plants after April 10, 1981, shall comply with the applicable interim or permanent program performance standards for the Iowa program.

40.67(3) Proximity shall not be the decisive factor in deciding to regulate an off-site processing plant.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.68 and **40.69** Reserved.

PART 7
COAL MINING—INSPECTION AND ENFORCEMENT

27—40.70 Reserved.

27—40.71(207) State regulatory authority—inspection and enforcement. The following is incorporated by reference: 30 CFR Part 840, as in effect on July 1, 2010, with the following exceptions:

40.71(1) Delete 30 CFR 840.1, 840.10, and 840.13.

40.71(2) The general word substitution for "director" does not apply in 30 CFR 840.14.

40.71(3) Delete from 30 CFR 840.11(d)(2) the words "section 521(a)(2) of the Act" and insert the words "Iowa Code section 207.14".

40.71(4) Delete from 30 CFR 840.11(g)(3)(ii) the words "section 518(e), 518(f), 521(a)(4) or 521(c) of the Act" and insert the words "Iowa Code subsections 207.15(6), 207.15(7), 207.14(3) and 207.14(8)", respectively.

40.71(5) Delete from 30 CFR 840.15 the words "43 CFR Part 4" and insert the words "Iowa Code section 207.14".

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.72(207) Inspections and monitoring.

40.72(1) *Requests for inspections.*

a. A person may request an inspection under Iowa Code section 207.13 by furnishing to an authorized representative of the administrator a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation exists. The statement shall set forth a phone number and address where the person can be contacted.

b. The identity of any person supplying information to the division relating to a possible violation or imminent danger or harm shall remain confidential with the division, if requested by that person,

unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Iowa Code section 22.7, subsection 18.

c. If an inspection is conducted as a result of information provided to the division by a person as described in paragraph *"a"* of this subrule, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the administrator during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which the person supplied information but only if in the presence of and under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

d. Within 10 days of the inspection or, if there is no inspection, within 15 days of receipt of the person's written statement, the division shall send the person the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person's right, if any, to informal review of the action or inaction of the division under subrule 40.72(3).

e. The division shall give copies of all materials in paragraph *"d,"* subparagraphs (1) and (2), of this subrule, within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of the person's identity is permitted under paragraph *"b"* of this subrule.

40.72(2) *Review of adequacy and completeness of inspections.* Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the administrator or designee in writing of any alleged failure on the part of the division to make adequate and complete or periodic State inspections. The notification shall include sufficient information to create a reasonable belief that these rules are not being complied with and to demonstrate that the person is or may be adversely affected. The administrator or designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The administrator or designee shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

40.72(3) *Review of decision not to inspect or enforce.*

a. Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the administrator or designee to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under subrule 40.72(1). The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

b. The administrator or designee shall conduct the review and inform the person, in writing, of the results of the review within 30 days of receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under Iowa Code section 22.7, subsection 18.

c. Informal review shall not affect any right to formal review under Iowa Code section 207.14 or to a citizen's suit under Iowa Code section 207.17.

d. Any determination made under paragraph *"b"* of this subrule shall constitute a decision of the division within the meaning of Iowa Code section 207.14 and shall contain a right of appeal to the division in accordance with Iowa Code section 207.14.

27—40.73(207) Enforcement.

40.73(1) *Definitions.* As used in this Part 7, the following terms have the specified meanings:

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of the permit or any requirement of Iowa Code chapter 207 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of Iowa Code chapter 207 due to indifference, lack of diligence, or lack of reasonable care.

"Willful violation" means an act or omission which violates Iowa Code chapter 207, these rules or any permit condition required by Iowa Code chapter 207 or these rules, committed by a person who intends the result which actually occurs.

40.73(2) *Cessation orders.*

a. Cessation orders following State inspections:

(1) An authorized representative of the administrator shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if the representative finds, on the basis of any State inspection, any condition or practice, or any violation of Iowa Code chapter 207, these rules or any condition of an exploration approval or permit imposed under any such program, Iowa Code chapter 207 or these rules which:

- Creates an imminent danger to the health or safety of the public; or
- Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations:

- Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or
- Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the division.

(3) If the cessation ordered under paragraph *"a,"* subparagraph (1), of this subrule will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the administrator shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

b. Cessation orders following expiration of abatement period:

(1) When a notice of violation has been issued under 40.73(3)*"a"* and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the administrator shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph *"b"* shall require the permittee to take all steps the authorized representative of the administrator deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

c. A cessation order issued under paragraphs *"a"* or *"b"* of this subrule shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the condition, practice or violation;

(2) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

(3) The time established for abatement if appropriate; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the administrator, or until the order expires pursuant to Iowa Code section 207.14(6) and subrule 40.73(6).

d. Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

e. An authorized representative of the administrator may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

f. An authorized representative of the administrator shall terminate a cessation order by written notice to the permittee when the representative determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the division to assess civil penalties for those violations under rule 27—40.74(207).

g. Within 60 days after the issuance of a cessation order, the division shall notify in writing any person who has been identified under 27—40.32(207), 30 CFR 774.12, and 27—40.34(207), 30 CFR 778.11(c) and (d), as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

40.73(3) *Notices of violation.*

a. An authorized representative of the administrator shall issue a notice of violation if, on the basis of a State inspection carried out during the enforcement of a State program, the representative finds a violation of Iowa Code chapter 207, these rules, or any condition of a permit or an exploration approval imposed under such program, Iowa Code chapter 207, or these rules, which does not create an imminent danger or harm for which a cessation order must be issued under subrule 40.73(2).

b. A notice of violation shall be in writing signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the violation;

(2) The remedial action required, which may include interim steps;

(3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

c. An authorized representative of the administrator may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph *"f"* of this subrule. An extended abatement date pursuant to this subrule shall not be granted when the permittee's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required.

d. If the permittee fails to meet the time set for abatement the authorized representative shall issue a cessation order under 40.73(2)*"b."*

If the permittee fails to meet the time set for accomplishment of any interim step, the authorized representative may issue a cessation order under 40.73(2)*"b."*

e. An authorized representative of the administrator shall terminate a notice of violation by written notice to the permittee when it is determined that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the division to assess civil penalties for those violations under rule 27—40.74(207).

f. Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which the permittee has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

g. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

h. If any of the conditions in paragraph *"f"* of this subrule exist, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the administrator or designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that the permittee is entitled to an extension under the provisions of 40.73(3)*"c"* and *"f."* In determining whether or not to grant an abatement period exceeding 90 days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file the reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for concurrence or disapproval in the file.

i. Any determination made under paragraph *"h"* of this subrule shall contain a right of appeal to the division in accordance with Iowa Code section 207.14.

j. No extension granted under paragraph *"h"* of this subrule may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph *"h"* of this subrule.

40.73(4) *Suspension or revocation of permits.*

a. Order for show cause:

(1) The administrator shall issue an order to a permittee requiring the permittee to show cause why the permit and right to mine under Iowa Code chapter 207 should not be suspended or revoked, if the administrator determines that a pattern of violations of any requirements of Iowa Code chapter 207, these rules, or any permit condition required by Iowa Code chapter 207 exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The administrator may determine that a pattern of violations exists or has existed, based upon two or more State inspections of the permit area within any 12-month period, after considering the circumstances, including:

- The number of violations, cited on more than one occasion, of the same or related requirements of Iowa Code chapter 207, these rules, or the permit;
- The number of violations, cited on more than one occasion, of different requirements of Iowa Code chapter 207, these rules, or the permit; and
- The extent to which the violations were isolated departures from lawful conduct.

(3) The administrator shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of Iowa Code chapter 207, these rules, or the permit during three or more State inspections of the permit area within any 12-month period. If, after such review, the administrator determines that a pattern of violations exists or has existed, the administrator shall issue an order to show cause as provided in paragraph *"a,"* subparagraph (1), of this subrule.

b. If the permittee files an answer to the show cause order and requests a hearing under Iowa Code section 207.14, a public hearing shall be provided. The division shall give 30 days' written notice of

the date, time and place of the hearing to the permittee, and any intervenor. Upon receipt of the notice, the administrator shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations and shall post it in the division.

c. Within 60 days after the hearing, and within the time limits set forth in Iowa Code section 207.14, the division shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the division revokes or suspends the permit and the permittee's right to mine under Iowa Code chapter 207, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under Iowa Code chapter 207 are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under Iowa Code chapter 207 are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

d. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the administrator shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this subrule, and shall issue an order to show cause as appropriate pursuant to subrule 40.73(4), paragraph *"a,"* subparagraph (1).

40.73(5) *Service of notices of violation, cessation orders, and show cause orders.*

a. A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or the person's designated agent promptly after issuance as follows:

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph *"a,"* subparagraph (1), of this subrule, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

b. Designation by any person of an agent for service of notices and orders shall be made in writing to the division.

c. The division may furnish copies of notices and orders to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

40.73(6) *Informal public hearing.*

a. Except as provided in paragraphs *"b"* and *"c"* of this subrule, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The purpose of the hearing is to provide the division with information needed to decide whether or not to extend the cessation of mining. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the division and the person to whom the notice or order was issued. The division office shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the division. Expiration of a notice or order shall not affect the division's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this subrule only, "mining" includes (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.

b. A notice of violation or cessation order shall not expire as provided in paragraph *"a"* of this subrule if the informal public hearing has been waived, or if, with the consent of the person to whom the

notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subrule:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:

- Is informed, by written notice served in the manner provided in paragraph *"b,"* subparagraph (2), of this subrule, that the person will be deemed to have waived an informal public hearing unless one is requested within 30 days after service of the notice; and
- Fails to request an informal public hearing within that time.

(2) The written notice referred to in subrule 40.73(6)*"b"*(1) shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if a request is received on or after the twenty-first day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the twenty-first day.

c. The division shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to that notice or order.

d. The division shall also post notice of the hearing in the division and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

e. Iowa Code chapter 17A regarding requirements for formal adjudicatory hearings shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the division, who may accept oral or written arguments and any other relevant information from any person attending.

f. Within five days after the close of the informal public hearing, the division shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to the notice or order.

g. The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Iowa Code section 207.14 or 207.15.

h. The person conducting the hearing for the division shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

40.73(7) *Formal review of citations.*

a. A person issued a notice of violation or cessation order under subrule 40.73(2) or 40.73(3), or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under Iowa Code section 207.14 within 30 days after receiving notice of the action.

b. The filing of an application for review and request for a hearing under this subrule shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

40.73(8) *Inability to comply.*

a. No cessation order or notice of violation issued under this Part 7 may be vacated because of inability to comply.

b. Inability to comply may not be considered in determining whether a pattern of violations exists.

c. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under rule 27—40.74(207) and of the duration of the suspension of a permit under 40.73(4)*"c."*

40.73(9) *Compliance conference.*

a. A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of Iowa Code section 207.13.

b. The division may accept or refuse any request to conduct a compliance conference under paragraph *"a"* of this subrule. Where the division accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

c. The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of Iowa Code chapter 207 or any applicable permit or exploration approval.

d. Neither the holding of a compliance conference under this subrule nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

27—40.74(207) Civil penalties. The following is incorporated by reference: 30 CFR Part 845, as in effect on July 1, 2010, with the following exceptions:

40.74(1) Delete from 30 CFR 845.13(b)(1) the words "One point shall be assigned for each past violation contained in a notice of violation" and insert the words "One point shall be assigned for each past notice of violation of a similar nature".

40.74(2) Delete 30 CFR 845.1.

40.74(3) Delete from 30 CFR 845.2 the words "section 518 of the Act" and insert the words "Iowa Code section 207.15".

Delete from 30 CFR 845.15(b) the words "section 521(a) of the Act" and insert the words "Iowa Code section 207.14".

Delete from 30 CFR 845.15(b)(1)(i) the words "section 525(c) of the Act" and insert the words "Iowa Code section 207.14, subsection 7".

Delete from 30 CFR 845.15(b)(1)(ii) the words "section 526 of the Act" and "section 526(c) of the Act" and insert the words "Iowa Code section 207.15".

Delete from 30 CFR 845.15(b)(2) the words "section 518(e), 518(f), 521(a)(4), or 521(c) of the Act" and insert the words "Iowa Code sections 207.15(6), 207.15(7), 207.14(3) or 207.14(8)", respectively.

Delete from 30 CFR 845.15(b)(1)(i) the words "Office of Hearings and Appeals" and insert the word "division".

40.74(4) Delete from 30 CFR 845.17(c) the phrase "Unless a conference has been requested," and add a new sentence to the end of the paragraph that reads "The reassessment shall be served as a Notice of Assessment."

40.74(5) "Procedures for assessment conference" are created by deleting 30 CFR 845.18 and establishing procedures for the same in this subrule.

a. The division will arrange for an assessment conference to review the Notice of Assessment, upon written request of the person to whom notice or order was issued, if the request is received within 30 days from the date the Notice of Assessment is mailed.

b. The division administrator or the administrator's designee shall hold the assessment conference.

(1) The assessment conference shall be considered an informal proceeding and shall not be governed by Iowa Code chapter 17A, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days of the date the conference request is received or the end of the abatement period, whichever is later. However, failure by the division to hold such a conference within 60 days from the date of the conference request shall not be grounds for dismissal of

all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The division shall post notice of the time and place of the conference at least five days prior to the conference. Any person shall have a right to attend and participate in the conference.

(3) The division administrator or the administrator's designee shall consider all relevant information on the violation. Within 30 days after the conference is held, the division shall either:

- Settle the issues, in which case a settlement agreement shall be prepared and signed by the permittee and the division; or
- Affirm, raise, lower, or vacate the penalty.

c. The division shall promptly serve the person assessed with a notice of the agency's action in the manner provided in 30 CFR 845.17(b), and shall provide a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's actions shall be fully documented in the file.

d. Terms of settlement agreement.

(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the division within 30 days after the date of signing the settlement agreement, the division may enforce the agreement or rescind it and either affirm, raise, lower, or vacate the penalty within 30 days from the date of the recision.

e. The division may terminate the conference when the administrator or the administrator's designee determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

f. No evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness at a subsequent contested case or judicial proceeding.

40.74(6) Procedures to prepare a Request for a Hearing are created by deleting 30 CFR 845.19 and establishing procedures for the same in this subrule.

a. The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty, or if a conference has been held, the reassessed or affirmed penalty to the division (to be held in escrow as provided for in paragraph *"b"* of this subrule) within 30 days of receipt of the proposed assessment or reassessment or 30 days from the date of service of the division's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under subrule 40.73(7).

b. The division shall hold all funds submitted under paragraph *"a"* of this subrule in an interest-bearing escrow fund, pending completion of the administrative and judicial review process, at which time funds shall be disbursed as provided in subrule 40.74(7). Interest shall accrue at the prevailing earnings rate for the fiscal year for the pooled investment fund of the State of Iowa.

40.74(7) Procedures for determining Final Assessment are created by deleting 30 CFR 845.20 and establishing procedures for the same in this subrule.

a. If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 40.74(6)*"a,"* the Notice of Assessment shall become a final order of the division and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

b. If any party requests judicial review of a final order of the division, the proposed penalty shall continue to be held in escrow until completion of the review.

c. If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this subrule, the division shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund.

d. If the review results in an order increasing the penalty, the person or entity to whom the notice or order was issued shall pay the difference to the division within 15 days after the order is mailed to such person.

40.74(8) Use of civil penalties for reclamation. In accordance with Iowa Code section 207.10(6), the division may expend funds collected from civil penalties to perform reclamation work on sites where the bond has been forfeited and additional funds are needed to complete the reclamation of the site.

40.74(9) Delete 845.21.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.75(207) Individual civil penalties. The following is adopted by reference: 30 CFR Part 846, as in effect on July 1, 2010, with the following exceptions:

40.75(1) Delete 30 CFR 846.1.

40.75(2) Reserved.

40.75(3) Delete 30 CFR 846.17(b)(1) and insert in lieu thereof:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the administrator; or

40.75(4) Delete 30 CFR 846.17(c) and insert in lieu thereof the following:

(c) Service. For purposes of this subrule, service is sufficient if it would satisfy Division III of the Iowa rules of civil procedure for service of an original notice and petition.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.76 to **40.79** Reserved.

PART 8
COAL MINING—BLASTER CERTIFICATION

27—40.80 Reserved.

27—40.81(207) Permanent regulatory program requirements—standards for certification of blasters. The following is incorporated by reference: 30 CFR Part 850, as in effect on July 1, 2010, with the following exceptions:

40.81(1) Amend 30 CFR 850.15 by adding paragraph (f) as follows:

(f) Reciprocal certification.

(1) The division may issue an Iowa blaster certificate to a qualified applicant who holds a valid blaster's certification granted by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

(2) The division may issue an Iowa blaster certificate through reciprocity to a qualified applicant that holds a valid State blaster's certification granted by a State regulatory authority under OSMRE approved blaster certification and regulatory program.

(3) A reciprocal blaster's certification issued in Iowa will expire on the same date as the expiration of the original State's certification. Renewal will be by reexamination.

(4) Blaster's certification from other states will not be honored or recognized in Iowa except by reciprocal issuance as outlined in this rule. Blasters from states without OSMRE approved blaster certification may become certified in Iowa by passing the Iowa certification test.

40.81(2) Delete 30 CFR 850.10.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.82(207) Certification of blasters. The following is incorporated by reference: 30 CFR Part 955, as in effect on July 1, 2010, with the following exceptions:

40.82(1) Delete 30 CFR 955.1 and 955.2.

40.82(2) Delete 30 CFR 955.13(a)(1) and (2).

40.82(3) Delete 30 CFR 955.10.

40.82(4) Delete from 30 CFR 955.5 the definition of "Reciprocity" and delete 30 CFR 955.16.

40.82(5) Delete from 30 CFR 955.17(c) the phrase "to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 and 4.1286" and insert in lieu thereof the phrase "as a contested case action pursuant to Iowa Code chapter 17A".

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.83 to **40.89** Reserved.

PART 9
COAL MINING—CONTESTED CASES AND PUBLIC HEARINGS

27—40.90 Reserved.

27—40.91(17A,207) Procedural rules—contested cases and public hearings. These rules shall govern procedures in contested cases, as defined in Iowa Code section 17A.2(2), and public hearings required to be held pursuant to the provisions of Iowa Code chapter 207.

27—40.92(17A,207) Contested cases. Contested cases include, but are not limited to, the following:

40.92(1) An appeal of a decision to grant or deny a permit pursuant to Iowa Code sections 207.4 and 207.5; approval or failure to approve a transfer pursuant to Iowa Code section 207.12(5); appeal of a decision of the division on an application for coal exploration pursuant to Iowa Code section 207.18.

40.92(2) Permit suspension or revocation proceedings pursuant to Iowa Code sections 207.14(3) and 207.14(4).

40.92(3) Review of a notice or order pursuant to Iowa Code section 207.14(7).

40.92(4) Employee discrimination complaints pursuant to Iowa Code section 207.28.

40.92(5) Suspension or revocation of a mining license pursuant to Iowa Code section 207.3.

40.92(6) Bond forfeiture proceedings pursuant to Iowa Code section 207.14.

40.92(7) Appeal of the determination by the division of the amount of a bond pursuant to Iowa Code section 207.10.

40.92(8) A request to conduct mining in areas where otherwise prohibited by Iowa Code section 207.8 and 30 CFR 761.11, revised July 1, 2010.

40.92(9) A petition requesting designation of an area as unsuitable for mining, or termination of such a designation, pursuant to Iowa Code section 207.8 and rule 27—40.23(207).

40.92(10) Review of a civil penalty pursuant to Iowa Code section 207.15.

[**ARC 9575B**, IAB 6/29/11, effective 8/3/11]

27—40.93(17A,207) Commencement of proceeding. A notice of order by the division shall be served as in civil actions, delivered by certified mail, or personally served by a division employee with a signed acknowledgment of receipt being taken from an employee or agent of the permittee. In bond forfeiture, the surety shall also be served.

27—40.94(17A,207) Appeals of division notices and orders.

40.94(1) An appeal of a notice or order for which a contested case hearing is requested shall be mailed or personally delivered to the administrator and:

a. Shall be made in writing and signed by the requesting party or representative;

b. Shall identify the notice or order being appealed;

c. Shall be served in a timely manner as stated in Iowa Code section 207.14;

d. May state other relevant information as desired by the requesting party.

40.94(2) In a bond forfeiture proceeding a copy of the notice of appeal shall be served to the surety.

40.94(3) Upon receipt of an appeal, the administrator shall assign a docket number to the appeal as follows: D.S.C. (coal) (State fiscal year in which received)—(number, being consecutively numbered in each year).

27—40.95(17A,207) Prehearing motions. To the greatest extent possible and not inconsistent with Iowa Code chapters 17A and 207, prehearing motions may be filed and ruled upon in a manner consistent with the Iowa rules of civil procedure. In considering a prehearing motion, the administrative law judge may consider the practicality of receiving evidence or consolidating the motion into the full evidentiary hearing.

27—40.96(17A,207) Issuance of notices of hearing.

40.96(1) A hearing date shall be set upon the request of the division or any party and shall be arranged by the division through the department of inspections and appeals. The department of inspections and appeals shall assign an administrative law judge to the proceeding. The request shall be served to all parties of record.

40.96(2) The administrative law judge shall issue notice of hearing to all parties at least 30 days prior to the date of hearing, unless an earlier date is agreed to by all parties.

40.96(3) The notice of hearing shall conform to Iowa Code section 17A.12(2).

27—40.97(17A,207) Hearing procedures.

40.97(1) An administrative law judge selected pursuant to Iowa Code section 17A.11 shall preside at all contested cases.

40.97(2) Oral proceedings of a contested case shall be recorded by electronic or mechanized means or by certified shorthand reporters.

27—40.98(17A,207) Posthearing procedures.

40.98(1) Within 20 days of the conclusion of the hearing, each party may file with the administrative law judge and all parties of record proposed findings of fact, conclusions of law, a proposed order, or a brief in support of specified findings and conclusion. Said brief shall contain all arguments concerning evidentiary rulings made during hearing or challenges to the jurisdiction of the division to conduct the hearing and order the relief requested by the division or a party of record.

40.98(2) Within 20 days of receipt of proposed findings of fact, conclusions of law, order, or brief, parties may file a brief responding to opposing briefs, and may submit additional proposed findings of fact, conclusions of law, or order.

27—40.99(17A,207) Decision of the administrative law judge, procedure in appeals before the committee, extensions of time, public hearings, and judicial review of the committee decision.

40.99(1) *Decision of the administrative law judge.*

a. Decisions of the administrative law judge shall conform to the provisions of Iowa Code section 17A.16(1).

b. A decision of the administrative law judge is a proposed decision pursuant to Iowa Code section 17A.15(2).

c. An appeal to the committee may be initiated by the division or a party of record by filing with the administrator, and serving on all parties, a written statement captioned "Notice of Appeal to the State Soil Conservation Committee," which shall also state the number of the notice or order involved in the hearing and the docket number assigned by the administrator to the contested case proceeding.

d. Appeal of the decision of the administrative law judge shall be made pursuant to Iowa Code section 17A.15(3). If an application for a rehearing has been filed, appeal to the committee shall be made within 30 days after the issuance of a decision after rehearing, a decision denying a rehearing, or the date on which the rehearing is deemed denied pursuant to Iowa Code section 17A.16(2).

40.99(2) *Procedure in appeals before the committee.*

a. An appeal before the committee shall be conducted according to the provisions of Iowa Code section 17A.15(3).

b. The administrator shall set a date for the committee hearing at least 30 days after receipt of the notice of appeal to the committee.

c. A decision of the committee shall be issued within 60 days of the close of the hearing before them.

40.99(3) *Extensions of time.* The period of time in which an action is required by Part 9 of these rules may be extended for good cause by the administrative law judge or the committee, as appropriate.

40.99(4) *Public hearings.* Public hearings, also referred to as informal conferences, are held by the division to gather information prior to making a decision regarding the approval of a permitting action, issues relating to lands unsuitable for mining, or the extension of cessation of mining.

The administrator or designee shall act as the administrative law judge.

The division will provide notice to the public by publishing in a newspaper of local circulation at least 14 days prior to the hearing the following: purpose of the hearing, the place, date, and time of the hearing.

40.99(5) *Judicial review of committee decision.* Judicial review of a decision of the committee shall be in accordance with Iowa Code chapter 17A. In the case of judicial review of a civil penalty assessment, the petitioner shall post a bond in the district court equal to the amount of the assessed penalty or shall deposit a sum equal in amount to the assessed penalty in an interest-bearing escrow fund approved by the division, as required under Iowa Code section 207.15.

PART 10
COAL MINING—FORMS

Reserved

These rules are intended to implement Iowa Code chapter 207.

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CHAPTER 50
IOWA ABANDONED MINED LAND RECLAMATION PROGRAM

[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 27]

27—50.1 to **50.9** Reserved.

27—50.10(207) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee, to participate in the federal abandoned mined land and reclamation program as established in the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, and Iowa Code chapter 207.

These rules will also provide for the establishment of a state abandoned mined land fund for use in conducting the Iowa abandoned mined land reclamation program, and will also establish authority for the division to request, receive and administer grant moneys for use in the program.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—50.11(207) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—50.12 to **50.19** Reserved.

27—50.20(207) Definition of terms.

50.20(1) *"Emergency"* means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety or general welfare of people before the danger can be abated under normal program operation procedures.

50.20(2) *"Extreme danger"* means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

50.20(3) *"Reclamation activities"* means restoration, reclamation, abatement, control or prevention of adverse effects of mining.

50.20(4) *"State reclamation program"* or *"program"* means a program established by the division in this chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

50.20(5) *"State abandoned mined land fund"* or *"fund"* means a separate fund established by the division for the purpose of accounting for moneys granted by the director of the office of surface mining reclamation and enforcement (OSM) under an approved state reclamation program and other moneys authorized by these rules to be deposited in the fund.

50.20(6) *"Left or abandoned in either an unreclaimed or inadequately reclaimed condition"* means land and water:

a. Where all mining processes ceased and no current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, but all mining processes had ceased, it has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance; and

b. Which continue in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of the land or water resources, or endanger the health or safety of the public.

27—50.21 to **50.29** Reserved.

27—50.30(207) State abandoned mined land fund. Revenue to the fund shall include:

50.30(1) Amounts granted to the state by OSM for purpose of conducting the Iowa reclamation plan.

50.30(2) Moneys collected by the state from charges for uses of land acquired or reclaimed with moneys from the fund.

50.30(3) Moneys recovered by the state through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the fund.

50.30(4) Moneys recovered by the state from the sale of lands acquired with moneys from the fund.

50.30(5) Such other moneys as the state decides should be deposited in the fund for use in carrying out the Iowa abandoned mined land program.

27—50.31 to **50.39** Reserved.

27—50.40(207) Eligible lands and water.

50.40(1) Coal mined lands and associated waters are eligible for reclamation activities if:

a. They were mined or affected by mining processes;

b. They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

c. There is no continuing responsibility for reclamation by the operator, permittee or agent of the permittee under statutes of the state or federal government, or the state as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

50.40(2) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities if:

a. The conditions of subrule 50.40(1) have been met;

b. The reclamation has been requested by the governor;

c. All reclamation with respect to abandoned coal mined land and water has been accomplished within the state or the reclamation is necessary for the protection of the public health and safety.

27—50.41 to **50.49** Reserved.

27—50.50(207) Reclamation objectives and priorities.

50.50(1) Reclamation projects shall reflect the priorities set out in Section 403 of Public Law 95-87 (30 U.S.C. 1233) and should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980).

50.50(2) Reclamation of eligible noncoal mined lands and waters shall comply with the provisions of Section 409 of Public Law 95-87 (30 U.S.C. 1239).

27—50.51 to **50.59** Reserved.

27—50.60(207) Reclamation project evaluation. Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this rule. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective as 27—50.50(207). Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:

50.60(1) The need for reclamation work to accomplish one or more specific reclamation objectives.

50.60(2) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.

50.60(3) The specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include but are not limited to:

a. Protection of human life, health, or safety.

b. Protection of the environment, including air and water quality, abatement of erosion sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources.

c. Protection of public or private property.

d. Abatement of adverse social and economic impacts of past mining on persons or property including employment, income, and land values or uses, or assistance to persons disabled, displaced or dislocated by past mining practices.

e. Improvement of environmental conditions which may be considered to generally enhance the quality of human life.

f. Improvement of the use of natural resources, including postreclamation land uses which:

1. Increase the productive capability of the land to be reclaimed.
2. Enhance the use of surrounding lands consistent with existing land use plans.
3. Provide for construction or enhancement of public facilities.
4. Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.

g. Demonstration to the public and industry of methods and technologies which can be used to reclaim areas disturbed by mining.

50.60(4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.

50.60(5) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.

50.60(6) The availability of additional coal or other mineral or material resources within the project area which:

a. Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or

b. Requires special consideration to ensure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.

50.60(7) The acceptability of postreclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable state, regional, and local land use plans and laws, and the needs and desires of the community to which the project is located.

50.60(8) The probability of postreclamation management, maintenance and control of the area consistent with the reclamation completed.

27—50.61 to **50.69** Reserved.

27—50.70(207) Consent to entry. The division shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record or their authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. This statement shall not include any commitment by the division to perform reclamation work nor to compensate the owner for entry.

27—50.71 to **50.79** Reserved.

27—50.80(207) Entry for studies or exploration.

50.80(1) The division or its agents, employees, or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

50.80(2) If the owner of the land to be entered under this section will not provide consent to entry, the division shall give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the

owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.

27—50.81 to **50.89** Reserved.

27—50.90(207) Entry and consent to reclaim.

50.90(1) The division or its agents, employees, or contractors, may enter upon land to perform reclamation activities if the consent of the owner cannot be obtained.

50.90(2) Prior to entry under this rule, the division shall find in writing with support reasons that:

a. Land or water resources have been adversely affected by past coal mining practices;

b. The adverse effects have advanced, so that in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control or prevent should be taken; and

c. The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available; or

d. The owner will not give permission for the division, its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

50.90(3) The division shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this rule. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this rule may be inspected or obtained.

27—50.91 to **50.99** Reserved.

27—50.100(207) Land eligible for acquisition.

50.100(1) Land adversely affected by past coal mining practices may be acquired with moneys from the fund if approved in advance by OSM. OSM will determine if:

a. The acquired land will serve recreation, historic, conservation, or reclamation purposes, or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

b. Permanent facilities such as a mine drainage treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

50.100(2) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the fund if approved in advance by OSM and if the acquisition of the land is necessary for successful reclamation and will serve the purposes of the program or if public ownership is desirable to meet an emergency situation and prevent reoccurrence of adverse effects of past coal mining practices.

50.100(3) The division shall acquire only such interests in the land as are necessary for the reclamation work planned or the postreclamation use of the land. Interest in improvements on the land, mineral rights, or associated water rights may be acquired if:

a. The interests are necessary to the reclamation work planned or the postreclamation use of the land; and

b. Adequate written assurance cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

27—50.101 to **50.109** Reserved.

27—50.110(207) Procedures for acquisition.

50.110(1) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Interagency Land Acquisition Conference, 1973).

50.110(2) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

50.110(3) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

27—50.111 to **50.119** Reserved.

27—50.120(207) Acceptance of gifts of land.

50.120(1) The division may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

50.120(2) Offers to make a gift of the land or interests in land shall be in writing and shall include:

a. A statement of the interest which is being offered.

b. A legal description of the land and a description of any improvements on it.

c. A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.

d. A statement that:

1. The donor is the record owner of interest being offered.
2. The interest offered is free and clear of all encumbrances except as clearly stated in the offer.
3. There are no adverse claims against the interest offered.
4. There are not unredeemed tax deeds outstanding against the interest offered.
5. There is no continuing responsibility by the operator under state or federal statutory law for reclamation.

e. An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

50.120(3) If the offer is accepted, a deed of conveyance shall be executed, acknowledged and recorded. The deed shall state that it is made "as a gift under the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, and Iowa Code chapter 207." Title to donated land shall be in the name of the state of Iowa.

27—50.121 to **50.129** Reserved.

27—50.130(207) Management of acquired lands.

50.130(1) Land acquired under this rule may be used pending disposition under rule 50.140(207) for any lawful purpose that is not inconsistent with the reclamation activities and postreclamation uses for which it was acquired.

50.130(2) Any user of land acquired under this part shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the cost to the state for providing the benefit, whichever is appropriate. The division may waive the fee if found in writing that such a waiver is in the public interest.

50.130(3) All use fees collected shall be deposited in the state abandoned mined land fund, unless previously appropriated or otherwise authorized by the general assembly, for the specific purpose of operating and maintaining improvement of the land.

27—50.131 to **50.139** Reserved.

27—50.140(207) Disposition of reclaimed lands.

50.140(1) Prior to disposition of any acquired land, the division shall publish a notice which describes the proposed disposition of the land in a newspaper of general circulation in the area where the land is located for a minimum of four successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by a person.

50.140(2) The division may transfer administrative responsibility for land acquired under this part to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

a. The purposes for which the land may be used consistent with the authorization under which the land was acquired; and

b. That the administrative responsibility for the land will revert to the division if, at any time in the future, the land is not used for the purposes specified.

50.140(3) The division may transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by OSM, and maintain a preference right to purchase land from OSM after reclamation is completed. The price shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the division.

50.140(4) The division may sell land acquired under this part by public sale if the land is suitable for industrial, commercial, residential, or recreational development and if the development is consistent with local, state or federal land use plans for the area in which the land is located.

a. Land shall be sold by public sale only if it is found that retention by the state or disposal under other paragraphs of this rule is not in the public interest.

b. Land shall be sold for not less than the fair market value under a system of competitive bidding which includes at a minimum:

1. Publication of a notice once a week for four weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale.

2. Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

50.140(5) All moneys received from the disposal of land under this rule shall be deposited in the state abandoned mined land fund.

27—50.141 to **50.149** Reserved.

27—50.150(207) Operations on private land. Reclamation activities may be carried out on private land if a consent to enter is obtained or if entry is required and made.

27—50.151 to **50.159** Reserved.

27—50.160(207) Appraisals.

50.160(1) A notarized appraisal of the fair market value of private land to be reclaimed shall be obtained from an independent professional appraiser, with exceptions as noted in 50.160(4). Such appraisal shall meet the quality of appraisal practices found in the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Interagency Land Acquisition Conference, 1973). The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. Where an emergency exists, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past mining.

50.160(2) An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with 50.160(1) and shall state the market value of the land reclaimed.

50.160(3) The landowner shall receive a statement of the increase in market value, an itemized statement of reclamation expenses and notice that a lien will or will not be filed against the property.

50.160(4) Appraisals for privately owned land which fall under subrule 50.170(1) shall be obtained from an independent professional appraiser.

27—50.161 to **50.169** Reserved.

27—50.170(207) Liens.

50.170(1) The division shall place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the pre- and postreclamation appraisals.

a. A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operations which necessitated the reclamation work.

b. The division may waive the lien if the cost of filing it, including indirect costs, exceeds the increase in fair market value as a result of reclamation activities.

c. The lien may be waived if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

50.170(2) If a lien is to be filed, the division shall, within six months after completion of the reclamation work, file a statement in the district court of the county for the lands to be liened. Such statement shall consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained. The amount reported to be the increase in value of the property shall constitute the amount of the lien recorded and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

50.170(3) Within 60 days after the lien is filed by the division, the landowner may bring civil action in the district court of the county in which the reclaimed land lies to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by law.

27—50.171 to **50.179** Reserved.

27—50.180(207) Satisfaction of liens.

50.180(1) A lien placed on private property shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this paragraph. Testate and intestate transfers are excluded from this rule if the entire parcel of land subject to the lien is transferred and the transferee is related to the transferor within the second degree of consanguinity or affinity.

50.180(2) The department shall maintain or renew liens from time to time as may be required.

50.180(3) Moneys derived from the satisfaction of liens established under this part shall be deposited in the state abandoned mined land fund.

These rules are intended to implement Iowa Code chapter 207.

27—50.181 to **50.189** Reserved.

27—50.190(207) Abandoned mined land (AML) program forms.

50.190(1) *Availability of forms.* Copies of forms utilized in the AML program are available at the following address: Division of Soil Conservation and Water Quality, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

50.190(2) *Bidding forms for construction projects.*

Form number	Description
AML-001	*Proposal.* This form is used to document bid proposals from potential contractors for conducting reclamation work on abandoned mined lands. The form also includes a noncollusion affidavit. 2 pages.
AML-002	*Proposal Guarantee Bond.* This form identifies the bidder and the surety, lists the amount of the bid guarantee bond and provides for notarization of the signatures of the bound parties. 1 page.
AML-003	*Nondiscrimination Clause.* This form is used to document that the contractor is morally and legally committed to nondiscrimination in employment. 1 page.
AML-004	*Minority and Women Business Enterprise Solicitation Reporting Form.* This form is used to document the contractor's solicitation of subcontract or subsubcontract bids from minority or women business enterprises. 1 page.
AML-005	*Certificate of Nonsegregated Facilities.* This form is used to certify that the construction contractor does not maintain or provide employees any segregated facilities at any of contractor's establishments. 1 page.
AML-006	*Contract.* This form documents the agreement between the contractor and the division for the fulfillment of work in accordance with performance set forth and the payment therefor in accordance with the agreed-upon price. 2 pages.
AML-007	*Performance Bond.* This form identifies the contractor and the surety and binds them to the state of Iowa performing the contract in accordance with the plans, specifications, and contract documents. The form lists the amount of the bond and provides for notarization of the signatures of the contractor and surety. 2 pages.

This rule is intended to implement Iowa Code section 207.21.

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CHAPTER 60
MINERALS PROGRAM

27—60.1 to **60.9** Reserved.

27—60.10(208) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee, in implementing the requirements of Iowa Code chapter 208 to ensure reclamation upon completion of mining operations for gypsum, clay, stone, sand, gravel, and other ores or mineral solids, except coal.

Information and forms can be obtained by contacting: Mines and Minerals Bureau, Division of Soil Conservation and Water Quality, Wallace State Office Building, Des Moines, Iowa 50319. Telephone: (515)242-5003 or (515)281-6142.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—60.11(208) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without the invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—60.12(208) Definitions. When used in this chapter, the following definitions apply:

"Acceptable species" means plant species recognized as desirable permanent species and normally used in conjunction with agriculture, forestry, wildlife or similar plans for reclamation.

"Administrator" means the administrator of the division of soil conservation and water quality, or a designee.

"Affected land" means the area of land from which overburden has been removed or upon which overburden has been deposited, or land which has otherwise been disturbed, changed, influenced, or altered in any way in the course of mining, including processing and stockpile areas but not including roads.

"Angle of repose" means the maximum angle of slope (measured from horizontal) at which loose cohesion materials will come to rest on a pile of similar material.

"Committee" means the state soil conservation committee.

"Critical slope angle" means the maximum slope incline which the soil and rock materials underlying the slope can support, without failure, under existing climate, vegetation, and land use.

"Department" means the department of agriculture and land stewardship.

"Division" means the division of soil conservation and water quality within the department of agriculture and land stewardship.

"Dredge operation" means an operation to mine sand, gravel, or other nonfuel minerals for sale or for processing or consumption in the regular operation of a business by removing the product directly from its natural state beneath the surface of a river, lake or other body of water.

"Exploration" means the excavation of limited amounts of any mineral to determine the location, quantity, or quality of the mineral deposit.

"Highwall" means the unexcavated face of exposed overburden and mineral in a surface mine.

"Mine" or *"mine site"* means a site where mining is being conducted or has been conducted in the past.

"Mineral" means gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal.

"Mining" means the excavation of gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal, for sale or for processing or consumption in the regular operation of a business and shall include surface mining and underground mining.

1. "Surface mining" means mining by removing the overburden lying above the natural deposits and excavating directly from the natural deposits exposed, or by excavating directly from deposits lying exposed in their natural state, and shall include dredge operations conducted in or on natural or artificially created waterways within the state.

2. "Underground mining" means mining by digging or constructing access tunnels, adits, ramps, or shafts and excavating directly from the natural mineral deposits exposed.

"Mining operation" means activities conducted by an operator on a mine site relative to the excavation of minerals and shall include disturbing overburden, excavation and processing of minerals, stockpiling and removal of minerals from a site, and all reclamation activities conducted on a mine site.

"Official notice" means service of a written notice or order to an operator via personal service or certified mail to the last-known address. Service shall not be deemed incomplete because of refusal to accept.

"Operator" means any person, firm, partnership, corporation, or political subdivision engaged in and controlling a mining operation.

"Overburden" means all of the earth and other materials which lie above natural mineral deposits and includes all earth and other materials disturbed from their natural state in the process of mining.

"Pit floor" or *"quarry floor"* means the lower limit of a surface excavation to extract minerals.

"Political subdivision" means any county, district, city, or other public agency within the state of Iowa.

"Reclamation" means the process of restoring disturbed lands to the premined uses of the lands or other productive uses.

"Registered site" means a site which meets the requirements of Iowa Code section 208.13 and for which the operator has received a valid registration certificate from the division.

"Topsoil" means the natural medium located at the surface of the land which contains favorable characteristics for the growth of vegetation.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—60.13 to **60.19** Reserved.

27—60.20(208) License.

60.20(1) *Application for mining license.* All operators wanting to mine minerals in Iowa shall apply for a mining license. The application shall be complete only if submitted on the form supplied by the division, signed by the operator or an authorized representative, and accompanied by a license application fee.

60.20(2) *Fees.* Licensing and license renewal fees are established by Iowa Code section 208.7 at $50 for a new license and $10 for a license renewal.

60.20(3) *License term and expiration.* A license shall be maintained by the operator until all sites have been properly reclaimed or transferred to another licensed operator.

The license shall expire on December 31 of the year in which the license was obtained. Any applications for renewal received within 30 days of the expiration date shall be accepted as renewals for the previous license. New licenses obtained after November 1 shall remain valid for a period to include the next calendar year.

60.20(4) *License renewal.* Any operator who fails to renew the mining license within the 30-day period following the expiration deadline established in subrule 60.20(3) will be required to apply for a new license. Failure to renew a license within 30 days after official notice will invalidate all registrations.

60.20(5) *Valid license.* A license to mine is valid only if approved by the division and acknowledged by a license certificate which has been signed by the administrator and lists the operator and the assigned license number.

27—60.21 to **60.29** Reserved.

27—60.30(208) Registration.

60.30(1) *Registration required.* All mine sites shall be registered at least seven days prior to the beginning of mining or the removal of overburden. Exploration activities are exempt from registration requirements unless they affect more than 10,000 square feet of surface area.

60.30(2) *Application fee.* The registration application fee shall be $50 per site.

60.30(3) *Application for registration.* An application for registration shall be acceptable only if completed on the form provided by the division and signed by the operator or an authorized representative and accompanied by a bond or bond increase, a map of the area to be mined, and the registration fee. The completed registration application, registration fee, map, and the bond or bond increase shall be received at least seven days prior to the removal of overburden.

60.30(4) *Valid registration.* A registration is valid only if approved by the division and acknowledged by a registration certificate signed by the division administrator, listing site name, location, and operator to which the site is registered.

Failure to fulfill the requirements of this rule or chapter may result in the invalidation of a site registration following notification to the operator by the division.

The division may request additional information or materials to further distinguish a site from other sites.

A single registration shall consist of contiguous describable tracts of land which can be enclosed by a single unbroken boundary line and including only that property upon which the operator has a legal right to conduct mining.

60.30(5) *Registration conflicts.* If more than one operator is extracting minerals from a given contiguous site within the same time frame, then each operator shall file with the division a statement signed by the operator, including a map defining the scope of operations and bond responsibility of each operator in regard to the final reclamation of the site.

60.30(6) *Registration information.* It shall be the responsibility of the operator to ensure that all information in connection with the application for registration and the registration certificate is correct.

60.30(7) *Registration exclusion.* No site or portion thereof will be released by exclusion from registration under subrules 60.30(1) to 60.30(6).

60.30(8) *Sign.* Any signs required by other governmental bodies may be used to comply with Iowa Code section 208.9(2) provided that the sign is posted at the main entrance of the site or at the scale house, if the scale house is visible from the nearest roadway, and includes the operator's name, telephone number, and the site registration number.

60.30(9) *Duration of registration.* A valid registration shall be maintained by the operator until approval for release has been granted by the division.

27—60.31(208) Registration renewal and fee.

60.31(1) *Registration renewal.* All site registrations shall expire on December 31 of each year. Registrations shall be renewed by the division upon submittal of renewal fee by the operator within 30 days of the expiration date.

60.31(2) *Notice of registration renewal and fee.* All registrations shall be renewed by the operator upon receipt of a fee statement from the division.

The registration renewal fee shall be $35 per site.

60.31(3) *Changes in a registration.* If, in the course of operation, any changes in the description, size or boundaries of a site become necessary the licensee shall be required to file a new registration application in accordance with rule 27—60.30(208).

27—60.32 to **60.39** Reserved.

27—60.40(208) Bonding. Bond is required by these rules and by Iowa Code chapter 208 to ensure that all applicable mineral operations are properly reclaimed. Failure on the part of an operator to accomplish required reclamation may result in forfeiture of the bond by the division.

60.40(1) *Bonding requirements.* Each registration application shall be accompanied by a bond or a bond endorsement increasing an already existing bond. The bond or bond increase shall be equal to the amount set forth by a representative of the division or, if no amount is stipulated, the minimum set forth in subrule 60.40(6).

60.40(2) *Bond form.* All surety bonds shall be written on the form provided and approved by the division. In lieu of a surety bond, the operator may deposit cash or certificates of deposit with the division on the same conditions as prescribed by Iowa Code section 208.23.

60.40(3) *Surety bond.* A surety bond shall be written by a company authorized to do business in Iowa and shall be made on a form provided by the division. A surety bond shall be signed by the operator or an authorized representative of the operator as well as a representative of the surety.

The surety bond shall be written to cover all acres affected by the mining process pursuant to Iowa Code chapter 208. An attachment shall be included as part of the bond document which lists the sites by name and location (county, township, range, section, and legal description). This attachment shall be signed by representatives of the surety and the principal.

60.40(4) *Certificates of deposit.* Certificates of deposit posted as bond shall be made payable to the State of Iowa, Division of Soil Conservation and Water Quality AND (Operator). All interest earned shall be paid to the operator.

60.40(5) *Cash.* Cash deposited as bond does not pay interest to the operator.

60.40(6) *Minimum bond.* The minimum required bond on each site shall be the greater of $2,000 per site or $500 per affected acre on the site.

Actual bond shall be based on factors including, but not limited to, size of the site, thickness of overburden, type of mineral extracted, type of mining process, and stockpiling procedures for topsoil, overburden and product.

60.40(7) *Interest-bearing account.* Penalties, interest, bond reversions and bond forfeitures collected under the provisions of Iowa Code chapter 208 or these rules shall be deposited in an interest-bearing account and may be used for the cost and administrative expense of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—60.41(208) Bond release.

60.41(1) *Release of bond.* No bond shall be released unless the bonded area has met reclamation requirements of Iowa Code section 208.17, a replacement bond has been filed, or the site has been registered by another licensed operator who agrees, in writing, to complete all remaining required reclamation and has a valid registration for the site(s) in question.

60.41(2) *Bond release request.* When a bond needs to be decreased, replaced, or is no longer needed, a Request for Bond Release form shall be filed by the operator, a registered agent, or an authorized representative. One Request for Bond Release form shall be filed for each bond.

60.41(3) *Return of bond.* Upon release of a certificate of deposit or cash posted as bond, the certificate of deposit or cash payment shall be returned to the operator.

Upon the release of a surety bond, the original bond shall be returned to the surety company and the operator shall be notified of the action by the mailing of a courtesy copy.

60.41(4) *Reverting of cash bond.* If the operator fails to request a release of cash bond after termination or expiration of a mining license, cash bond funds held shall revert to an interest-bearing account maintained by the division, provided a period of at least five years has elapsed since the license expiration. These funds may be used for the cost and administrative expenses of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

27—60.42 to **60.49** Reserved.

27—60.50(208) Transfers.

60.50(1) *Registration transfer request.* If control of a registered site is acquired by an operator other than the operator holding authorization to conduct surface mining on the site, then both operators shall fill out the required portions of a Transfer Application form. The completed form shall then be filed with the division within 30 days of the actual transfer and prior to the start of any work by the new operator.

60.50(2) *Transfer information.* In addition to the Transfer Application form, the new operator shall file a Registration Application form in accordance with rule 27—60.30(208). A Request for Bond Release may be filed by the original operator in accordance with rule 27—60.41(208).

60.50(3) *Transfer action.* No action shall be taken in relation to bond releases for the original operator or registration of the new operator regarding the site in question until the transfer request has been filed with the division and approved.

60.50(4) *Other agreements.* A transfer request does not prevent the new operator from making any agreement with the previous operator or any other party dealing with reclamation or mining of the site.

27—60.51 to **60.59** Reserved.

27—60.60(208) Registration cancellation.

60.60(1) *Reclamation approval request.* Upon completion of reclamation activities on a mine site or any part thereof, the operator may file a Reclamation Approval Request with the division. The form shall be completed and signed by the operator.

60.60(2) *Inspection for approval.* Upon receiving a request the division shall, within 12 months, visit the site in question and shall respond, in writing, to the operator indicating either the approval or disapproval of the site condition.

60.60(3) *Approval denied.* If the site condition is not approved, the division shall notify the operator, in writing, and explain the reason for the disapproval. The operator shall then complete the reclamation specified by the division and reapply for approval.

27—60.61 to **60.64** Reserved.

27—60.65(208) Enforcement actions.

60.65(1) *Notice of violation.* Notice to an operator of violations of these rules or Iowa Code chapter 208 shall include:

a. A description of the violation, including a citation of the rule or statute violated,

b. A description of the action required to abate the violation, and

c. A deadline for abatement.

60.65(2) *Issuance of administrative order.* If an operation fails to complete abatement measures in the time allowed, the division may initiate an administrative order in accordance with these rules and Iowa Code chapter 208.

60.65(3) *Referral to attorney general.* Pursuant to Iowa Code section 208.10A, the division may also notify the attorney general in the event of noncompliance by the operator following notice. The attorney general shall institute a civil action in district court for injunctive relief and for the assessment of a civil penalty not to exceed $10,000. The division may make such referral either in lieu of or in conjunction with the issuance of an administrative order.

27—60.66 to **60.69** Reserved.

27—60.70(208) Annual mining report.

60.70(1) *Annual reports—surface operations.* Annual reports shall be filed for each site on the form provided by the division. These reports may include, but shall not be limited to, information concerning the location of the mine site, types of material mined, thickness and types of overburden materials, area of land disturbed during the report year, area of land reclaimed during the report year, as well as any other pertinent information concerning the mining operation and deemed necessary by the division.

60.70(2) *Underground mine maps.* The state geologist shall provide the division with copies of each map and map extension received pursuant to Iowa Code section 460A.12.

60.70(3) *Filing date.* Reports shall be filed by January 31 for the previous year. Reports not received within 30 days after the specified date shall invalidate the registration of a site.

60.70(4) *Final report.* Upon conclusion of mining at any site the operator shall file a mining report indicating that all mining activity is completed. This report shall be filed regardless of any other reports filed in connection with subrule 60.70(3).

27—60.71 to **60.74** Reserved.

27—60.75(208) General mining activities.

60.75(1) *Topsoil and overburden stockpiles.* Topsoil shall not be buried or mixed with nontopsoil materials. All stockpiles (topsoil and overburden) shall be seeded and stabilized if they are to remain in place for a period of time in excess of 12 months.

60.75(2) *Erosion control.* Affected areas which will not be disturbed by future operations shall be graded, disked, mulched, fertilized, and seeded as necessary within a period of nine months to attain substantial and appropriate grass, legume, shrub, tree, crop, or other acceptable species and to ensure viable erosion control.

60.75(3) *Setback.*

a. A minimum excavation setback distance of 25 feet shall be maintained from all registered site boundaries to protect the adjacent property from erosion or damage which might result from mining activities.

b. In areas where excavation depth exceeds 25 feet, a minimum excavation setback distance of at least 50 feet shall be maintained from registered site boundaries.

c. A minimum excavation setback distance of 50 feet shall be maintained from all buildings, dwellings, public right-of-way boundaries and other man-made structures not associated with the mining operation.

d. Excavation on a registered site found to be closer than the allowable minimum setback shall be in violation of this subrule. The operator shall be required to backfill, slope and stabilize to the required limits.

e. The requirements of this subrule shall not apply to registered operations where mining has exceeded the setback limitation as of January 1, 1991, provided that the operator has filed adequate documentation as of July 1, 1991, detailing the area being grandfathered into these requirements.

The operator shall be responsible for maintaining a permanent record of all documentation once approved by the division.

f. The division may grant a variance from this subrule, provided the operator submits a complete application that meets the requirements of rule 27—60.85(208) at least 60 days prior to the proposed starting date of any mining within the setback limitations.

27—60.76 to **60.79** Reserved.

27—60.80(208) Reclamation.

60.80(1) *Schedule.* The operator, upon filing a mine report indicating the conclusion of all mining activities, will have a period of three years to complete all reclamation activities.

60.80(2) *Requirements.* The operator shall grade all remaining affected lands, except stockpiles, processing areas, pit floors, and highwalls, to allowable slopes within six months following the filing of the final report. Stockpiles and processing areas shall be graded or the material exported from the site within one year following the final report.

60.80(3) *Extension of time.* The operator shall be allowed a three-month extension of time on subrule 60.80(2) provided a written request is filed at least 30 days (or 20 working days) prior to the original deadline. Only one extension will be allowed the operator per release request.

60.80(4) *Grading.* All lands affected by the mining process, with the exception of pit floors, highwalls and water impoundments, shall be graded to slopes having a maximum one-foot vertical rise for every four feet horizontal distance or graded to blend with the surrounding terrain.

60.80(5) *Waste disposal.* In grading the site all mining-related waste products and machinery incompatible with the care and growth of vegetation shall be removed from the site and disposed of in

a manner consistent and acceptable with state law. Materials acceptable for on-site disposal, such as concrete and clay products free of reinforcing shall be buried a minimum of three feet below final grade.

Boulders and stones incompatible with the proposed postmining use of the site shall be buried or removed from the site.

60.80(6) *Vegetation.* Seeding of an area with grasses and legumes shall be accomplished within three months following the conclusion of all earthwork, weather permitting. Erosion control methods shall be used where necessary to prevent rill and gully formation. The operator shall be responsible for attaining a ground cover of acceptable species of grass, legume, shrub, tree or crop.

The vegetation shall be allowed at least one growing season to become established prior to the filing of a release request by the operator.

If necessary, additional seedings shall be performed to establish a viable vegetative cover.

60.80(7) *Failure to comply.* Failure to adhere to the reclamation schedule may be grounds for an administrative order, revocation of the operator's license to mine, or initiation of bond forfeiture proceedings.

60.80(8) *Variance.* The division may grant a variance from rule 27—60.80(208) provided the operator submits a complete application that meets the requirements of rule 27—60.85(208). Examples of variances would include wetland areas, building sites, or use of overburden materials for protective berms and screens.

27—60.81 to **60.84** Reserved.

27—60.85(208) Criteria for variance application and approval.

60.85(1) *Application for variance.* A complete application for a variance must include:

a. Site name, registration number, and location by county, township, range, section and quarter section.

b. A copy of an aerial photograph or a topographic map of the site on an 8½- × 11-inch page, in a scale not less than 1 to 24,000 (2½″ to the mile), showing the areas to be affected by the proposed encroachment.

c. A reclamation plan which will address the final grading and revegetation for the area in question and a statement as to the postmining land use.

d. Name, address, and telephone number for current owner or owners of property adjacent to the area for which the variance is being requested.

e. Estimated time period when the mineral extraction will occur.

f. A brief narrative stating why the variance is being sought and how adverse effects of mining will be mitigated.

g. Other information requested by the division as needed for clarification.

h. Additional bond, if determined to be necessary by the division.

60.85(2) *Criteria for approval of a variance.* A variance filed with the division shall be approved or disapproved within 30 days of receiving a completed application for a variance.

In either approving or disapproving the variance request, the division will consider the reclamation plan, the postmining land use, the effects on the adjacent properties, the extent to which reclamation requirements are being met, and other relevant factors.

27—60.86 to **60.89** Reserved.

27—60.90(208) Administrative orders and assessment of penalties. The division may issue an administrative order directing an operator to desist in an activity or practice which constitutes a violation of these rules or to take corrective action to abate the violation.

60.90(1) *Issuance of administrative order.* Any administrative order issued by the division shall be signed by the division administrator and shall include:

a. A description of the violation or violations being addressed, including a citation to each rule or provision being violated, a summary of the facts and legal requirements, and a general rationale for the prescribed penalty.

b. A description of corrective measures or actions required to abate the violation or violations.

c. A time period for commencing and completing corrective actions called for in the administrative order.

d. A proposed penalty assessment.

e. The time allowed for filing an appeal to contest the order.

60.90(2) *Assessment of penalty.* An administrative order issued by the division shall include a proposed penalty assessment for the violation or violations being cited. The proposed penalty called for in the order shall not exceed $5,000 for each violation.

a. A point system will be used in assessing each violation. Criteria for assigning points shall be as follows:

(1) For history, up to 20 points may be assigned based on the history of previous violations.

(2) For seriousness,

1. Up to 20 points may be assigned based on the seriousness of the violation in terms of its potential or actual damage, or

2. Up to 15 points may be assigned for a violation of the administrative requirements of these rules. Administrative requirements would include items such as license and registration, payment of fees, posting of signs, and submittal of reports.

(3) For negligence, up to 10 points may be assigned on the basis of negligence on the part of the operator to whom the order is issued for failing to correct the cause of the violation. Up to 25 points may be assigned for a violation that occurs through a greater degree of fault than negligence, which means reckless, knowing, or intentional conduct. The division may also consider the degree to which the operator gained an economic benefit as a result of failing to comply with these regulations.

A reduction of the assigned points by up to 20 points may be allowed for good-faith efforts by the operator to achieve better than normal compliance.

b. The dollar value for points assigned shall be $20 for each point from 1 to 25 and $100 for each point thereafter to a maximum of 70 points. An abridged table summarizing dollar values for point assessments is as follows:

Points	$		Points	$
5	100		40	2,000
10	200		45	2,500
15	300		50	3,000
20	400		55	3,500
25	500		60	4,000
30	1,000		70 and above	5,000
35	1,500			

c. When a penalty will be assessed.

(1) The division may assess a penalty for a proposed order that becomes a final order when 30 or fewer points are assigned to the administrative order.

(2) The division shall assess a penalty for a proposed assessment that becomes a final order when 31 or more points are assigned to the administrative order.

d. A proposed assessment worksheet shall accompany each administrative order issued by the division.

60.90(3) *Waiver of point system.* Upon the division administrator's own initiative or upon written request from an operator within 15 days of receipt of an administrative order, the division may waive the use of the point system as a means of determining a proposed penalty. In so doing, the administrator must determine that the penalty is demonstrably unjust based upon factors present in the particular case.

When the division has waived the use of the point system in determining a penalty, the division administrator shall document the basis for the waiver in the case record and shall also provide a written explanation of the basis for the assessment made to the operator to whom the administrative order was issued.

60.90(4) *Submittal of information.* Within 15 days of receipt of an administrative order, an operator may provide the division information about the violation or violations addressed in the order. The division will consider any such information in determining the facts of the violation or violations and the amount of the final penalty.

60.90(5) *Final assessment and payment of penalty.*

a. Unless an appeal contesting the administrative order has been received, the proposed assessment shall become a final order within 30 days following service of the administrative order and the penalty assessed shall become due and payable. If the administrative order is appealed, the proposed assessment shall become a final order and the penalty assessed due and payable within 30 days following service of a final decision on the appeal.

b. All penalties shall be paid within 30 days of the date that the order assessing the penalty becomes final. An operator who fails to pay an administrative penalty assessed by a final order of the division shall pay, in addition, interest at the rate of 1½ percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

(1) Failure to pay all penalties within 30 days of the date that the order assessing the penalty becomes final shall constitute a violation of these rules.

(2) The division may request the attorney general to institute proceedings to recover all penalties assessed in the event of failure of the operator to make payment.

60.90(6) *Deposit of penalty moneys.* Penalties collected under the provisions of these rules shall be deposited in an interest-bearing account and may be used for the cost and administrative expenses of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

27—60.91 to **60.94** Reserved.

27—60.95(208) Forms.

Annual Mine Report. This two-sided, one-page form requires identification of the operator and legal description of the mine site. This form requests a listing of the number of acres affected during the report year, the number of acres reclaimed, the number of acres estimated to be affected in the coming year and the number of acres presently bonded.

Assignment Form. This one-page form will be used by the operator to assign a certificate of deposit (CD) to the division when the CD is used in lieu of a surety bond or by the division to assign a CD to the operator, when the division is releasing a CD to the operator.

Bonding Form. This one-page form identifies the operator and the bonding company, lists the amount of the bond, the operator's license number, the bond number, the enforcement date, the surety's mailing address and provides for notarization of the signature for the surety.

Interest Release Form. This one-page form is used by the division to authorize banking authorities to release interest accumulated on a certificate of deposit, held in lieu of bond, to the operator.

License Application. This one-page form is used for both new applications and annual license renewals. This form serves to identify the person, firm, partnership or corporation applying for or renewing the license to mine minerals.

License Certificate. This one-page form is issued by the division upon successful application by the person, firm, partnership or corporation for a mining license.

Reclamation Approval Request. This one-page form identifies the operator and the name and location of the site. This form also requires operator certification that all reclamation work has been completed as set forth in Iowa Code sections 208.17 and 208.19 and rule 27—60.80(208) of the Iowa Administrative Code.

Registration Application. This one-page form is used by the applicant desiring to engage in surface mining. This form includes the name of the licensee, the site name and location, the material produced, the source of the operator's legal right to mine the described area and the owner(s) of the mineral rights and the land to be surface mined.

Registration Certificate. This one-page form is issued by the division upon successful application by an operator for site registration or updated registration.

Request for Bond Release. This one-page form identifies the operator and the bonding company, lists the amount of bond and the bond number, states the reason for the release request, and provides for an approval signature by the division.

Transfer Application. This one-page form identifies the transferee and the transferor and their respective surety companies, lists the site and site location, and provides a prewritten agreement for transfer of all bonding and site reclamation responsibilities to the transferee.

27—60.96 to **60.99** Reserved.

27—60.100(208) Political subdivisions engaged in mining. Any political subdivision of the state of Iowa which engages in or intends to engage in operating a mine as defined under rule 27—60.12(208) shall meet all requirements of this chapter except that the subdivision shall not be required to pay the license fee under rule 27—60.20(208) and shall not be required to post bonds as required under rule 27—60.40(208). An official representative of the political subdivision shall complete a license application form for informational purposes only.

These rules are intended to implement Iowa Code chapter 208.

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DIVISION II
WATERSHED IMPROVEMENT REVIEW BOARD

CHAPTER 101
ORGANIZATION AND PURPOSE

27—101.1(466A) Watershed improvement review board composition. The watershed improvement review board shall be comprised of one member from each of the following entities: the Agribusiness Association of Iowa; the Iowa Association of Water Agencies; the Iowa Environmental Council; the Iowa Farm Bureau Federation; the Iowa Pork Producers Association; the Iowa Rural Water Association; the Iowa Soybean Association; the soil and water conservation districts of Iowa; the Iowa Association of County Conservation Boards; the department of agriculture and land stewardship; and the department of natural resources.

Two state senators shall be appointed, one by the majority leader of the senate and one by the minority leader of the senate. Two state representatives shall be appointed, one by the speaker of the house of representatives and one by the minority leader of the house of representatives. The four members of the general assembly serve as ex officio, nonvoting members.

These members are appointed according to Iowa Code section 466A.3. The board awards grants and monitors the progress, assists with the development of monitoring plans for local watershed improvement projects, and reviews costs and benefits of mitigation practices utilized by a project.
[**ARC 1053C**, IAB 10/2/13, effective 1/1/14]

27—101.2(466A) Officers. The officers of the board shall be the chairperson and vice chairperson. Each officer shall be elected by vote of the board for a term of one year and may be reelected by vote of the board to serve one subsequent term in the same office. Members representing the department of agriculture and land stewardship, the department of natural resources and the general assembly are not eligible to serve as an officer of the board.

101.2(1) The chairperson shall set the date for meetings, preside at meetings, and sign documents approved by the board.

101.2(2) The vice chairperson shall act in the chairperson's place when the chairperson is unable to act.

27—101.3(466A) Staff. The division of soil conservation and water quality of the department of agriculture and land stewardship shall provide administrative support to the board to aid in the completion of its duties.
[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—101.4(466A) Meetings. The board shall meet at the time designated by the chairperson at least once annually and at other times the board determines are necessary. All meetings shall be held at such locations as are determined by the board.

27—101.5(466A) Quorum. A majority of the voting members of the board shall constitute a quorum. A majority of the voting members present during a meeting is necessary to carry out the duties and exercise the powers of the board as provided in this chapter.

27—101.6(466A) Conflict of interest. A voting member of the board shall abstain from participating on any issues relating to a local watershed improvement grant application submitted by a local watershed improvement committee or soil and water conservation district of which the person is a member. A member of the general assembly shall abstain from participating on any issues relating to a watershed which is in the member's legislative district.

27—101.7(466A) Board responsibilities. The board shall do all of the following:

1. Award local watershed improvement grants and evaluate and review through reports the progress of local watershed improvement projects awarded grants.

2. Assist with the development of monitoring plans for local watershed improvement projects.

3. Review monitoring results before, during, and after completion of a local watershed improvement project.

4. Review costs and benefits of mitigation practices utilized by a project.

5. By January 31, annually, submit an electronic report to the governor and the general assembly regarding the progress of the watershed improvement projects during the previous calendar year.

6. Develop and adopt administrative rules pursuant to Iowa Code chapter 17A to administer this chapter.

27—101.8(466A) Technical assistance. The board shall elicit the expertise of other organizations for technical assistance in the work of the board. The organizations may include but are not limited to all of the following: the State University of Iowa; the Iowa State University of Science and Technology; the U.S. Geological Survey; the U.S. Department of Agriculture, Agricultural Research Service, National Laboratory for Agriculture and the Environment; the U.S. Department of Agriculture, Natural Resource Conservation Service; the Leopold Center for Sustainable Agriculture; the Iowa Association of Municipal Utilities; the Iowa chapter of the American Waterworks Association; the Iowa Water Pollution Control Association; the Iowa League of Cities; the Iowa Cattlemen's Association; the Iowa Association of Business and Industry; the Iowa Environmental Health Association; the Iowa Corn Growers Association; the Iowa Poultry Association; the Iowa Farmers' Union; and the Iowa Land Improvement Contractors Association.

[**ARC 1053C**, IAB 10/2/13, effective 1/1/14]

These rules are intended to implement Iowa Code chapter 466A.

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CHAPTER 102
RULES OF PRACTICE

27—102.1(466A) Definitions. All words and terms defined in Iowa Code Supplement chapter 466A and employed in these rules are given the definitions found in that legislation. The following words and terms used in these rules shall have the meanings hereafter ascribed to them:

"Auditor" means the auditor of the state of Iowa.

"Board" means the watershed improvement review board as established in Iowa Code Supplement section 466A.3.

"Committee" means a local watershed improvement committee as provided in Iowa Code Supplement section 466A.4.

"Division" means the division of soil conservation and water quality within the department of agriculture and land stewardship as established in Iowa Code section 161A.4.

"Eligible applicant" means a nonprofit organization authorized by the secretary of state; a soil and water conservation district; a public water supply utility; a county; a city; or a county conservation board.

"Fund" means the watershed improvement fund as created pursuant to Iowa Code Supplement section 466A.2.

"State" means the state of Iowa.

"Treasurer" means the treasurer of the state of Iowa.

[**ARC 1053C**, IAB 10/2/13, effective 1/1/14; **ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—102.2(466A) Public information. The public is invited to obtain information or make informal requests of the board by addressing these matters, either orally or in writing, to the chairperson of the Iowa Watershed Improvement Review Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319, or from the department's Web site at www.iowaagriculture.gov/IWIRB.asp.

[**ARC 1053C**, IAB 10/2/13, effective 1/1/14]

27—102.3(466A) Informal settlement of controversies. Every possible attempt will be made to handle all complaints and controversies, whether raised by the board or by members of the public, in an informal manner.

102.3(1) In cases of a routine nature, the chairperson shall attempt to settle the matter. In cases indicating a need for interpretation of board policy or legal interpretation, the chairperson may defer action until after consultation with legal counsel, or the chairperson may defer action until after discussion of the subject at a board meeting.

102.3(2) In cases not of a routine nature, or in cases in which the efforts of the chairperson are unsuccessful, the board itself shall act to resolve the matter. In cases indicating a need for legal advice, the board may defer action until after consultation with legal counsel.

27—102.4(466A) Declaratory orders. On petition by an interested party who is aggrieved or adversely affected by the question contained in the petition, the board may issue a declaratory order with respect to the interpretation or applicability of any statutory provision, rule, or other written statement of the law or policy, decision, or order of the board.

102.4(1) Petitions shall be titled "PETITION FOR DECLARATORY ORDER" and shall include the name and address of all petitioners. The body of the petition must state the precise factual situation involved, the exact question to which an answer is desired, and the exact words, passages, sentences, or paragraphs which are the subject of inquiry.

102.4(2) The petition shall be filed at the office of the board at Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319.

102.4(3) The board will refuse to issue a declaratory order if the petition does not state with enough specificity the factual situation or the question presented; if the issuance of the order would not be in the best interests of the public; or for any other reason the board deems just and proper.

102.4(4) The board shall issue an order or dismiss the petition within 60 days of the filing of the petition except that when additional information is requested, the order shall be issued within 60 days following receipt of the requested information.

27—102.5(466A) Petition for adoption of rules. Any interested person may file with the board a written request that the board adopt, amend, or repeal a rule. The petition shall be addressed to the Iowa Watershed Improvement Review Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319, and shall include:

1. The names of those requesting the change.
2. The proposed rule or present rule as it would read following the desired amendment.
3. The reason for the proposed rule or amendment.
4. The statutory authority for the proposed rule or amendment.

Within 60 days following receipt of the petition, the board shall either deny the petition in writing on the merits, stating the board's reason for denial, or initiate rule-making proceedings.

These rules are intended to implement Iowa Code chapter 466A.

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[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

CHAPTER 107
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The Iowa watershed improvement review board hereby adopts, with the following exceptions and amendments, rules of the governor's task force on uniform rules of agency procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

27—107.1(17A,22) Definitions. As used in this chapter:

"Board" in these rules means the Iowa watershed improvement review board.

27—107.3(17A,22) Requests for access to records.

107.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "chairperson". In lieu of the words "(insert agency name and address)", insert "Iowa Watershed Improvement Review Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319".

107.3(2) *Office hours.* In lieu of the words "(insert customary hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

107.3(7) *Fees.*

c. *Supervisory fee.* In lieu of "(specify time period)", insert "one hour".

27—107.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "Iowa watershed improvement review board".

27—107.9(17A,22) Public records; confidential records. All records in the possession of the board other than confidential records are public records. The board shall deem to be confidential those categories of records enumerated in Iowa Code section 22.7 which are in its possession.

27—107.10(17A,22) Personally identifiable information. Agency records include project applications, reports, and board actions to approve or deny payment. This information is collected pursuant to the authority of Iowa Code chapter 466A and is stored in the watershed improvement review board files in the division of soil conservation and water quality. Any personally identifiable information contained in these records shall be confidential.

[**ARC 2192C**, IAB 10/14/15, effective 11/18/15]

27—107.11(17A,22) Data processing. No data processing system collates or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

These rules are intended to implement Iowa Code section 22.11.

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[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

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Former Commerce Commission[250] renamed Utilities Division[199]
under the "umbrella" of Commerce Department[181] by 1986 Iowa Acts, Senate File 2175, section 740.

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CHAPTER 22
SERVICE SUPPLIED BY TELEPHONE UTILITIES
[Prior to 10/8/86, Commerce Commission[250]]

199—22.1(476) General information.

22.1(1) *Application and purpose of rules.* The rules shall apply to any telephone utility operating within the state of Iowa subject to Iowa Code chapter 476 and shall supersede all conflicting rules of any telephone utility which were in force and effect prior to the adoption of their superseding rules. Unless otherwise indicated, "telephone utility" or "utility" shall mean local exchange utility, interexchange utility, or alternative operator services company. These rules shall be construed in a manner consistent with their intent:

a. To allow fair competition in the public interest while ensuring the availability of safe and adequate communications service to the public.

b. To provide uniform, reasonable standards for communications service provided by telephone utilities.

c. To ensure that the provision of service of local exchange utilities and the charges of alternative operator services companies for communications service, and regulated services rendered in connection therewith, will be reasonable and just.

d. To ensure that no telephone utility shall unreasonably discriminate among different customers or service categories.

22.1(2) *Waiver and modification.* If unreasonable hardship to a utility or to a customer or user results from the application of any rule herein prescribed, application may be made to the board for the modification of the rule or for temporary or permanent exemption from its requirements.

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

22.1(3) *Definitions.* For the administration and interpretation of these rules, the following words and terms shall have the meaning indicated below:

"Active account" refers to a customer who is currently receiving telephone service, or one whose service has been temporarily disconnected (vacation, nonpayment, storm damage, etc.).

"Adjacent exchange service" is local telephone service, including extended area service, provided to a customer via direct facility connection to an exchange contiguous to the exchange in which the customer is located.

"Average busy-season, busy-hour traffic" means the average traffic volume for the busy-season, busy-hours.

"Board" means the Iowa utilities board.

"Business service" means the service furnished to customers where the use is substantially of a business, professional, institutional, or occupational nature, rather than a social and domestic nature.

"Busy-hour" means the two consecutive half hours during which the greatest volume of traffic is handled in the office.

"Busy-season" means that period of the year during which the greatest volume of traffic is handled in the office.

"Calls" means telephone messages attempted by customers or users.

"Central office" means a unit in a telephone system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only. There may be more than one central office in a building.

"Central office access line" means a circuit extending from the central office equipment to the demarcation point.

"Channel" means an electrical path suitable for the transmission of communications.

"Check of service" or *"service check"* means an examination, test or other method utilized to determine the condition of customer-provided terminal equipment and existing or new inside station wiring.

"Class of service" means the various categories of service generally available to customers, such as business or residence.

"Competitive Local Exchange Carrier" or *"CLEC"* means a utility, other than an incumbent local exchange carrier, that provides local exchange service pursuant to an authorized certificate of public convenience and necessity.

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

"Customer provision" means customer purchase or lease of terminal equipment or inside station wiring from the telephone utility or from any other supplier.

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

"Demarcation point" means the point of connection provided and maintained by the telephone utility to which inside station wiring becomes dedicated to an individual building or facility. For an individual dwelling, this point of connection will generally be immediately adjacent to, or within 12 inches of, the protector or the dwelling side of the protector. The drop and block, including the protector, will continue to be provided by and remain the property of the telephone utility. In the instance where a physical protector does not exist at the point of cable entrance into the building or facility, the demarcation point is defined as the entrance point of the cable into the building or facility.

"Disconnect" means the disabling of circuitry preventing both outgoing and incoming communications.

"Due date" means the last day for payment without unpaid amounts being subject to a late payment charge or additional collection efforts.

"Exchange" means a unit established by a telephone utility for the administration of communication services.

"Exchange service" means communication service furnished by means of exchange plant and facilities.

"Exchange service area" or *"exchange area"* means the general area in which the telephone utility holds itself out to furnish exchange telephone service.

"Extended area service" means telephone service, furnished at flat rates, between end user customers located within an exchange area and all of the end user customers of an additional exchange area. Extended area service is only for calls both originating and terminating within the defined extended area.

"Foreign exchange service" means exchange service furnished a customer from an exchange other than the exchange regularly serving the area in which the customer is located.

"Former account" refers to a customer whose service has been permanently disconnected, and the final bill either has been paid or has been written off to the reserve for uncollectible accounts.

"Held order for primary service" means an application for establishment of primary service to a local exchange utility using its existing facilities to provide service not filled within five business days of the customer-requested date, or within 15 business days of the customer-requested date, where no facilities are available. During the period a local exchange utility provides equivalent alternative service, the customer's order for primary service shall not be considered a held order.

"Held order for secondary service" means an application for establishment of secondary service to a local exchange utility using its facilities to provide service not filled within 30 business days or the customer-requested date, whichever is later.

"High-volume access service (HVAS)" is any service that results in an increase in total billings for intrastate exchange access for a local exchange utility in excess of 100 percent in less than six months. By way of illustration and not limitation, HVAS typically results in significant increases in interexchange call volumes and can include chat lines, conference bridges, call center operations, help desk provisioning, or similar operations. These services may be advertised to consumers as being free or for the cost of a long-distance call. The call service operators often provide marketing activities for HVAS in exchange for direct payments, revenue sharing, concessions, or commissions from local service providers.

"Inactive account" refers to a customer whose service has been permanently disconnected and whose account has not been settled either by payment or refund.

"Incumbent Local Exchange Carrier" or *"ILEC"* means a utility, or successor to such utility, that was the historical provider of local exchange service pursuant to an authorized certificate of public convenience and necessity within a specific geographic area described in maps approved by the board as of September 30, 1992.

"Interexchange service" is the provision of intrastate telecommunications services and facilities between local exchanges, and does not include EAS.

"Interexchange utility" means a utility, a resale carrier or other entity that provides intrastate telecommunications services and facilities between exchanges within Iowa, without regard to how such traffic is carried. A local exchange utility that provides exchange service may also be considered an interexchange utility.

"InterLATA toll service" means toll service that originates and terminates between local access transport areas.

"IntraLATA toll service" means toll service that originates and terminates within the same local access transport area.

"Intrastate access services" are services of telephone utilities which provide the capability to deliver intrastate telecommunications services which originate from end-users to interexchange utilities and the capability to deliver intrastate telecommunications services from interexchange utilities to end-users.

"Local exchange service" means telephone service furnished between customers or users located within an exchange area.

"Local exchange utility" means a telephone utility that provides local exchange service under an authorized certificate of public convenience and necessity. The utility may also provide other services and facilities such as access services.

"Message" means a completed telephone call by a customer or user.

"Outside plant" means the telephone equipment and facilities installed on, along, or under streets, alleys, highways, and private rights-of-way between customer locations, central offices or the central office and customer location.

"Percentage of fill" means the ratio of circuits and equipment in use to the total available multiplied by 100.

"Premises" means the space occupied by an individual customer in a building, in adjoining buildings occupied entirely by that customer, or on contiguous property occupied by the customer separated only by a public thoroughfare, a railroad right-of-way, or a natural barrier.

"Primary service" means the initial access to the public switched network.

"Protector" means a utility-owned electrical device located in the central office, at a customer's premises or anywhere along any telephone facilities which protects both the telephone utility's and the customer's property and facilities from over-voltage and over-current by shunting such excessive voltage and currents to ground.

"Rates" shall mean amounts billed to customers for local exchange service and alternative operator services.

"Retail services" means those communications services furnished by a telephone utility directly to end-user customers. For an alternative operator services company, the terms and conditions of its retail services are addressed in an approved intrastate tariff. For a local exchange utility, the terms and conditions of its retail services are typically addressed in a retail catalog or other format, which is not subject to board approval.

"Secondary service" means services or facilities not classified as primary service.

"Suspend" means temporary disconnection or impairment of service which shall disable either outgoing or incoming communications, or both.

"Switching service" means switching performed for service lines.

"Tariff" means the entire body of rates, classifications, rules, procedures, policies, etc., adopted and filed with the board by a local exchange utility for wholesale services, not governed by an interconnection

agreement or commercial agreement, or by an alternative operator services company for retail services, in fulfilling its role of furnishing communications services.

"Telephone station" means the telephone instrument connected to the network.

"Telephone utility" or *"utility"* means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing communications service to the public for compensation.

"Terminal equipment" means all telephone instruments, including pay telephone equipment, the common equipment of large and small key and PBX systems and other devices and apparatus, and associated wirings, which are intended to be connected electrically, acoustically or inductively to the telecommunication system of the telephone utility.

"Timely payment" is a payment on a customer's account made on or before the due date shown: (1) On a current bill for rates and charges, or (2) by an agreement between the customer and a utility for a series of partial payments to settle a delinquent account.

"Toll connecting trunks" means a general classification of trunks carrying toll traffic and ordinarily extending between a local office and a toll office.

"Toll message" means a message made between different exchange areas for which a charge is made, excluding message rate service charges.

"Traffic" means telephone call volume, based on number and duration of calls.

"Traffic grade of service" means the decimal fraction representing the probability of a call being blocked by an all-trunks-busy condition during the average busy-season, busy-hour.

"Transitional intrastate access service" means terminating end office access service that was subject to intrastate access rates as of December 31, 2011; terminating tandem-switched transport access service subject to intrastate access rates as of December 31, 2011; and originating and terminating dedicated transport access service subject to intrastate access rates as of December 31, 2011.

"Trouble report" means any call or written statement from a customer or user of telephone service relating to a physical defect or to difficulty or dissatisfaction with the operation of telephone facilities.

"Wholesale services" means those communications services furnished by one telephone utility to another provider of communications services. The terms and conditions of wholesale services may be addressed in a telephone utility's approved intrastate access tariff, local interconnection tariff, interconnection agreement reached under Sections 251 and 252 of the federal Telecommunications Act, or in a commercial agreement reached between the providers.

22.1(4) *Abbreviations.*

AOS—Alternative Operator Services

EAS—Extended Area Service

PBX—Private Branch Exchange

22.1(5) *Basic utility obligations.* Rescinded IAB 10/14/15, effective 11/18/15.

22.1(6) *Deregulation actions.*

a. The board, in the dockets shown in subparagraphs (1) to (14), deregulated the following services. Persons interested in determining the precise extent of deregulation in each docket should refer to the board dockets identified in this list. This list is provided for information only. Subsequent orders in these or other dockets may have modified the scope and manner of deregulation. Exclusion of an order or a statutory provision from this list in no way alters the effectiveness of such order or statutory provision.

(1) Inside station wiring including provisioning, repair, and maintenance. This included a revised definition of "demarcation point" in subrule 22.1(3). Docket No. RMU-81-19. Effective October 8, 1982.

(2) Terminal equipment including provision, installation, repair, and maintenance of all customer premises equipment. Docket No. RMU-82-1. Effective May 11, 1983.

(3) Centrex, Hi-Lo Capacity Intraexchange, and Hi Capacity Interexchange and Private Line. Docket No. RPU-84-8. Effective July 1, 1984.

(4) Coin-operated telephones. Pay telephones were determined to be a subset of deregulated terminal equipment. Docket Nos. RMU-85-6 and INU-84-6. Effective September 18, 1985.

(5) Riser cable (or cable for PBXs on the same premises) was found to be an extension of inside wiring. Ownership was transferred from the telephone utility to the premises owner. The telephone utility was compensated for the cable. Docket No. RMU-85-23. Effective April 30, 1986.

(6) Versanet Alarm Services Equipment. The remote module connecting an alarm panel to the local loop was determined to be deregulated terminal equipment. The Versanet equipment monitoring the signal was found to be competitive and deregulated. Docket No. INU-85-5. Effective May 16, 1986.

(7) Mobile telephone and paging services. Docket No. INU-86-2. Effective August 7, 1986.

(8) Billing and collection services (but not the recording function). Docket Nos. RMU-86-16 and INU-86-10. Effective October 15, 1986.

(9) InterLATA Interexchange Message Telecommunications Service (MTS), Wide Area Telecommunications Service (WATS), Channel Service (Private Line), and Custom Network Service (Software Defined Network Service, Megacom Services, Megacom 800 Service, and AT&T Readyline Service). Docket No. INU-88-2. Effective April 5, 1989, and July 19, 1990.

(10) Speed calling. Docket No. INU-88-8. Effective December 22, 1989.

(11) The recording function of billing and collection services. Docket No. INU-88-9. Effective January 9, 1990.

(12) Competitive IntraLATA Interexchange Services, InterLATA and IntraLATA ISDN, Operator Services, Directory Services, and Voice Messaging Service. Docket No. INU-95-3. Effective June 24, 1996.

(13) Local directory assistance. Docket No. INU-00-3. Effective February 23, 2001.

(14) Local exchange services found to be competitive and deregulated in the following exchanges: Armstrong, Coon Rapids, Council Bluffs, Delmar, Forest City, Harlan, Laurens, Lowden, Mapleton, Oxford, Oxford Junction, Primghar, Saint Ansgar, Solon, Spencer, Stacyville, Stanwood, Storm Lake, Tiffin, and Whiting. Docket No. INU-04-1. Effective December 23, 2004.

b. Deregulation resulting from 2005 Iowa Acts, chapter 9, section 1. Effective July 1, 2005, Iowa Code section 476.1D(1) was amended to deregulate the retail rates for most business and residential local exchange services with the exception of single line flat-rated residential and business service rates, at the election of each telephone utility. The affected utilities opted for deregulation as follows:

(1) Approval of Qwest Corporation's replacement tariff. Qwest's replacement tariff removed the rates for most local exchange services from the tariff, with the exception of single line flat-rated residential and business service rates. Docket No. TF-05-167. Effective September 6, 2005.

(2) Approval of Frontier Communications of Iowa, Inc.'s replacement tariff. This replacement tariff removed the rates for most local exchange services from the tariff, with the exception of single line flat-rated residential and business service rates. Docket No. TF-05-181. Effective September 20, 2005.

(3) Approval of Iowa Telecommunications Services, Inc.'s, d/b/a Iowa Telecom, replacement tariff. This replacement tariff removed the rates for most local exchange services, with the exception of single line flat-rated residential and business service rates. Docket No. TF-05-182. Effective November 5, 2005.

(4) Single line flat-rated residential and business service rates were found to be competitive and deregulated in the following exchanges: Alta, Belle Plaine, Bennett, Cambridge, Carter Lake, Greene, Grundy Center, Guthrie Center, Hartley, Manning, Marble Rock, Marengo, Onawa, Orange City, Osage, Oyens, Paullina, Reinbeck, Slater, and Wapello. Docket No. INU-05-2. Effective December 5, 2005.

(5) Single line flat-rated residential and business service rates were deregulated pursuant to Iowa Code section 476.1D(1). Docket No. INU-08-1. Effective July 1, 2008.

c. Deregulation resulting from the passage of 2014 Iowa Acts, chapter 1099, section 4. Effective July 1, 2014, Iowa Code section 476.4 was amended to require that telephone utilities should only file wholesale tariffs with the board. Amended Iowa Code section 476.4 required local exchange utilities to withdraw their retail tariffs between July 1, 2014, and January 1, 2015. Docket No. RMU-2014-0003.

[**ARC 7826B**, IAB 6/3/09, effective 7/8/09; **ARC 8871B**, IAB 6/30/10, effective 8/4/10; **ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.2(476) Records and reports.

22.2(1) *Evaluation of records.* Each telephone utility has the obligation to continually study and evaluate its records and reports to ensure that any irregularities in service that may cause customer or user dissatisfaction or complaint are corrected expeditiously and that all phases of construction, equipment maintenance or operation are satisfactory.

22.2(2) *Location and retention of records.* Unless otherwise specified in this chapter, all records required by these rules shall be kept and preserved in accordance with the applicable provisions of Chapter 18 of the board's rules, Utility Records.

Where a telephone utility is operated in conjunction with any other enterprise, suitable records shall be maintained so that the results of the telephone operation may be determined upon reasonable notice and request by the board.

22.2(3) *Tariffs to be filed with the board.* The utility, including an alternative operator services company, shall file all required tariffs with the board and shall maintain such tariff filings in a current status. A copy of the same tariffs shall be available upon request.

The tariff shall be classified, designated, arranged, and submitted so as to conform to the requirements of this chapter or board order. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification, and content of tariffs shall be in accordance with these rules unless otherwise provided.

22.2(4) *Form and identification.* All tariffs shall conform to the following rules.

a. The tariff shall be printed so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side. In the case of utilities subject to regulation by any federal agency, the format of sheets of tariff as filed with the board may be the same format as is required by the federal agency, provided that the rules of the board as to title page; identity of superseding, replacing or revising sheets; identity of amending sheets; identity of the filing utility, issuing official, date of issue and effective date; and the words "Filed with the board" shall be applied to modify the federal agency format for the purposes of filing with this board.

b. The title page of every tariff and supplement shall show in the order named:

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

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

(2) When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on its title page that it is a revision of a tariff on file.

(3) When a revision or amendment is made to a filed tariff, the revision or amendment shall show on each sheet the designation of the original tariff or the number of the immediate preceding revision or amendment which it replaces. (See exhibit A)

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

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

—Symbols—

(C)—Changed regulation
(D)—Discontinued rate or regulation
(I)—Increase in rate
(N)—New rate or regulation
(R)—Reduction in rate

(T)—Change in text only

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

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

(2) Issuing official and issue date.

(3) Effective date.

EXHIBIT A

. . . . . Telephone Tariff
(Name of Company)
Filed with board.

Part No. . . . . .
. . . . . Sheet No. . . . . .
Canceling (or revising). . . . . Sheet No. . . . . .
Amending . . . . . Sheet No. . . . . .

EXAMPLE

Issued . . . . . Effective. . . . . .
(Date) (Date)
By . . . . . .

22.2(5) *Content of tariffs.*

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

b. The period during which the billed amount may be paid before the account becomes delinquent shall be specified. Where net and gross amounts are billed, the difference between net and gross is a late payment charge and the amount shall be specified.

c. Forms of standard contracts required of customers for the various types of service available other than those which are defined elsewhere in the tariff.

d. Rules with which prospective customers must comply as a condition of receiving service.

e. Notice by customer required for having service discontinued.

f. Rules on billing periods, bill issuance, notice of delinquency, refusal of service, service disconnection and reconnection and customer account termination for nonpayment of bill.

g. Customer deposit rules which cover when deposits are required, how the amounts of required deposits are calculated, requests for additional deposits, interest on deposits, records maintained, issuance of receipts to customers, replacement of lost receipts, refunds and unclaimed deposit disposition.

h. A separate glossary of all acronyms and trade names used.

i. A general explanation of each service offering included in the tariff.

22.2(6) *Information to be filed with the board.*

a. Each utility shall file with the board the name, title, address, and telephone number of the person who is authorized to receive, act upon, and respond to communications from the board in connection with the following:

(1) General management duties.

(2) Customer relations (complaints).

(3) Engineering operations.

(4) Outages, including those occurring during nonoffice hours, pursuant to paragraph 22.2(8)*"d."*

b. A copy of a new directory being distributed to customers.

22.2(7) *Universal service certification application.* Rescinded IAB 10/25/06, effective 11/29/06.

22.2(8) *Outage reporting requirements.* Rescinded IAB 2/10/10, effective 3/17/10.

This rule is intended to implement Iowa Code section 476.2.

[**ARC 7826B**, IAB 6/3/09, effective 7/8/09; **ARC 8516B**, IAB 2/10/10, effective 3/17/10; **ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.3(476) General service requirements. The requirements of this rule do not apply to intrastate access service.

22.3(1) *Directories.* All directories published after the effective date of these rules shall conform to the following:

a. Telephone directories shall be published not less than annually, except for good cause shown, listing the name, address and telephone number of all customers unless otherwise requested by the customer. A local exchange carrier serving an exchange may choose not to publish a telephone directory if the local exchange carrier makes arrangements for publication in a directory that is commonly available in the local exchange in question.

b. Upon issuance, a copy of each directory shall be distributed without charge to all of the utility's customers locally served by that directory.

c. The year of issue or effective dates shall appear on the front cover and, if space permits, on the binding. Information pertaining to emergency calls, such as for the police and fire departments, for each exchange listed in the directory shall appear conspicuously on the front side of the first page of the directory. The directory shall also show a summary of the names of listed exchanges.

d. The directory shall contain such instructions concerning placing local and long distance calls, calls to repair and information services, and location of telephone utility business offices as may be appropriate to the area served by the directory. A statement shall be included that the utility will verify the condition of a line if requested by a customer and whether any charge will apply. The directory must indicate how to order 900 and 976 blocking and indicate that the first block is without charge. The directory shall contain descriptions of all current N11 services.

e. Directory assistance or intercept operators shall maintain records of all telephone numbers (except telephone numbers not listed or published at customer request) in the area for which they are responsible for furnishing information service.

f. In the event of an error or omission in the name or number listing of a customer, that customer's correct name and telephone number shall be furnished to the calling party either upon request to or interception by the telephone utility.

g. When additions or changes in plant, records, or operations which will necessitate a large group of number changes are scheduled, reasonable notice shall be given to all customers so affected even though the additions or changes may be coincident with a directory issue.

h. For any exchange in which an extended area call can terminate, the terminating exchange telephone utility shall provide all recently compiled directory listings, except listings for nonpublished or nonlisted customers, to the utility from which the extended area call originates. The telephone utility shall provide the directory listing without charge, within 30 days of receipt of a written request for those listings.

i. In addition to the serving exchange directory listing required under 22.3(1)*"a,"* upon the customer's request, an Iowa customer served by an out-of-state exchange shall be included in the directory list of one contiguous Iowa exchange of the customer's choice. Any charge for such Iowa listing shall be paid by the serving exchange.

22.3(2) *Service check.* Upon the individual customer's request, each telephone utility shall perform a service checkup to the demarcation point, without charge to the customer.

22.3(3) *Class of service.* Rescinded IAB 12/21/05, effective 1/25/06.

22.3(4) *Compliance.* Rescinded IAB 12/21/05, effective 1/25/06.

22.3(5) *Pay telephone services and facilities.* All telephone utilities shall make available to customers provisions for the interconnection of pay telephone equipment. A separate access line shall not be required for pay telephone equipment.

22.3(6) *Extension plan.* Each utility shall develop a plan, acceptable to the board, for the extensions of facilities, where they are in excess of those included in the regular rates for service and for which the customer shall be required to pay all or part of the cost. The cost required to be paid by the customer shall be the revenue received by the telephone utility for the extension of plant and shall include a grossed-up amount for the income tax effect of such revenue. The amount of tax shall be reduced by the present value of the tax benefits to be obtained by depreciating the property in determining the tax liability. This plan must be related to the investment that prudently can be made for the probable revenue. No utility shall make or refuse to make any extensions except as permitted by the approved extension plan.

22.3(7) Reserved.

22.3(8) *Traffic rules.* Rescinded IAB 12/21/05, effective 1/25/06.

22.3(9) *"Directory assistance."* Rescinded IAB 12/21/05, effective 1/25/06.

22.3(10) *Nonworking numbers.* All nonworking numbers shall be placed upon an adequate intercept where existing equipment allows.

22.3(11) *Assignment of numbers.*

a. No telephone number shall be reassigned to a different customer within 60 days from the date of permanent disconnect.

b. For customers assigned a new number within the exchange, the former working number intercept shall provide the new number to a calling party for not less than 60 days or until the issuance of a new directory. No new number information shall be provided if the customer so requests.

EXCEPTION: When a change in number is required by a telephone utility due to nonpayment of yellow page advertising, the intercept is not required to volunteer the new number to callers. The new number shall be provided to callers of the directory assistance operator.

c. If the number assigned a customer results in wrong number calls sufficient in volume to be a nuisance, the number shall be changed at no charge.

22.3(12) *Ordering and transferring of service.* All local exchange utilities shall establish terms and conditions for ordering and transferring local exchange service.

22.3(13) *Basic local service.* Rescinded IAB 12/21/05, effective 1/25/06.

22.3(14) *Adjacent exchange service.* All local exchange utilities shall allow customers to establish adjacent exchange service.

a. The customer shall pay the full cost of establishing and maintaining the adjacent exchange service.

b. In addition, the local exchange utility may include all or part of the following service provisions:

(1) The customer shall subscribe to local exchange service in the primary exchange in addition to the adjacent exchange service.

(2) All toll messages shall be placed through the primary exchange, unless there is a service outage in that exchange.

(3) The primary exchange company shall bill for the adjacent exchange service and make appropriate settlement to the secondary exchange company, unless the primary exchange and the adjacent exchange agree to a different billing arrangement.

(4) Adjacent exchange service shall be restricted to only the residential class of service, unless a waiver is permitted by the board for a particular customer for good cause shown.

(5) Failure of the customer to comply with the utility's provisions related to adjacent exchange service shall subject the customer to discontinuance of service after appropriate notice.

c. These adjacent exchange service rules shall not affect the terms under which a customer receives adjacent exchange service, if that customer was receiving adjacent exchange service prior to the effective date of these rules.

[**ARC 7826B**, IAB 6/3/09, effective 7/8/09; **ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.4(476) Customer relations.

22.4(1) *Customer information.*

a. Each utility shall:

(1) Maintain up-to-date maps, plans, or records of its entire exchange systems. These maps shall be available for board examination at a location within Iowa during regular office hours and will be provided to the board upon request. These are not the same maps as the boundary maps described in subrule 22.20(3).

(2) Whenever a residential customer or prospective residential customer requests local exchange service from a utility, and the customer indicates a desire to be informed of the lowest priced service alternatives available for local exchange service, the utility shall inform that customer of the lowest priced alternative available from that utility, based only on monthly recurring rates for flat-rated services, at the relevant location.

(3) Notify customers affected by a change in rates or schedule classification.

(4) Furnish such additional information as the customer may reasonably request.

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

Unless a customer agrees to an alternative form of notice, local exchange utilities shall notify their customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, the service may be subject to state regulation. You may request assistance from the Iowa Utilities Board by writing 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, by calling (515)725-7321 or toll-free 1-877-565-4450, or E-mail to customer@iub.iowa.gov."

The bill insert or notice on the bill will be provided no less than annually. A telephone utility which provides local exchange service and issues an annual directory shall publish the information set forth above in its directory in addition to a mailing.

22.4(2) *Customer deposits.* Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service based on the customer's credit history. No deposit other than for local exchange service is required to obtain local exchange service. The deposit must reflect the limits as to low-income customers in 199—subparagraph 39.3(2)*"b"*(4).

a. Deposits for local exchange service shall not be more in amount than the maximum charge for two months of local exchange service, or as may reasonably be required by the utility in cases involving service for short periods of time or special occasions. The deposit amounts must also reflect the limits as to low-income customers in 199—subparagraph 39.3(2)*"b"*(4).

b. Interest on customer deposits. Interest on such deposits shall be computed at 4.0 percent per annum, compounded annually. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent, relative to an account treated as an uncollectible account, is the most recent date the account became delinquent.

c. Each utility shall keep records to show:

(1) The name and address of each depositor.

(2) The amount and date of the deposit.

(3) Each transaction concerning the deposit.

d. Each utility shall issue a receipt of deposit to each customer from whom a deposit is received. An itemized statement on the customer's bill may be considered an appropriate receipt. Each utility shall also provide means whereby a depositor may establish claim if the receipt is lost.

e. The deposit shall be refunded after not more than 12 consecutive months of prompt payment (which may be 11 timely payments and one automatic forgiveness of late payment). The account shall be reviewed after 12 months of service and if the deposit is retained it shall again be reviewed at the end of the utility's accounting year or on the anniversary date of the account.

f. Unclaimed deposits. The utility shall make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility shall maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4, at which time the record and deposit, together with accrued interest less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section 556.11.

g. Unclaimed deposits, together with accrued interest, shall be credited to an appropriate account.

h. A new or additional deposit for local exchange service may be required to cover the amount provided in *"a"* above when a deposit has been refunded or the customer's payment history demonstrates a deposit is or continues to be appropriate. Written or verbal notice shall be provided advising the customer of any new or additional deposit requirement. The customer shall have no less than 12 days from the date of written or verbal notice to comply. The new or additional deposit may be payable electronically or by cash or check at any of the utility's business offices or local authorized agents. An appropriate receipt shall be provided. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

i. A customer who fails to pay a new or additional deposit for local exchange service may be disconnected under the provisions of the written notice and 22.4(5).

22.4(3) *Customer billing, timely payment, late payment charges, payment and collection efforts.* Each utility shall comply with these minimum standards.

a. Billing to customers shall be scheduled monthly except upon mutual agreement of the customer and utility. A utility with unusual circumstances may obtain authority from the board for billing at other than monthly intervals.

b. Rescinded IAB 2/6/91, effective 3/13/91.

c. Paper bills shall be issued and delivered via U.S. mail unless the customer agrees to electronic or other billing terms specified by customer agreement. Except as otherwise noted, the requirements of this subrule apply to both paper and electronic bills. The bill form or a bill insert shall provide the following information:

(1) The bill date and the bill due date for local exchange services, service charges, and other telecommunications services.

(2) The last date for timely payment shall be clearly shown and shall be not less than 20 days after the bill is rendered. For a paper bill, the bill shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. For an electronic bill, the bill shall be considered rendered to the customer on the date of transmission to the last-known E-mail address or as otherwise defined in an agreement between the customer and utility. If the delivery of a paper bill is by other than U.S. mail, the bill shall be considered rendered when delivered to the last-known address of the party responsible for payment. If a bill cannot be transmitted electronically, the utility shall issue a paper bill. The utility may charge an appropriate amount for the distribution of a paper bill so long as the same amount is discounted should the customer choose electronic billing. When a customer changes from paper billing to electronic billing, the utility shall be allowed one complete billing cycle to make adjustments for electronic billing credits.

(3) Bills to customers shall be rendered regularly and shall contain a clear listing of all charges. A written, itemized listing of the services to which the customer subscribes and the monthly rates for those services shall be provided as part of the initial bill or when service is ordered and subsequently upon reasonable request of the customer.

(4) Each disconnection notice shall state that access to local exchange service shall not be denied for failure to pay for deregulated services.

(5) The requirements of subparagraph (1) above shall not apply to calls billed by interexchange utilities, including AOS companies.

(6) The requirements of subparagraphs (2), (3) and (4) above shall not apply to calls billed to a commercial credit card.

d. Rescinded IAB 6/3/09, effective 7/8/09.

e. Unless the terms of a multistate customer contract state otherwise, when the customer makes a partial payment in a timely manner, and does not designate the service or product for which payment is made, the payment shall first be applied to the undisputed balance for local exchange service. If an amount remains, it may then be applied to other services.

f. Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules shall be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period. The rules shall state how the customer is notified the eligibility has been used. Complete forgiveness prohibits any effect upon the credit rating of the customer or collection of late payment charge.

g. All residential customers shall be permitted to have a last date for timely payment changeable for cause in writing; such as, but not limited to, 15 days following the approximate date each month upon which income is received by the person responsible for payment.

h. Maximum payment required for installation and activation of local exchange service shall comply with the total derived in accord with these rules.

(1) An applicant for local exchange service who is required to make a deposit to guarantee payment of bills may be required to pay the service charges and deposit prior to obtaining services.

(2) The amounts required must comply with 22.4(2), 22.4(5) and 22.4(7).

i. Maximum payments required by an active account or inactive account, for restoration of service of the same class and location as existed prior to disconnection, shall be the total of charges derived for reconnection and must comply with 22.4(2), 22.4(5) and 22.4(7).

j. The utility may initiate collection efforts with the issuance of a final bill when the termination of service is at the customer's request. For all other bills no collection effort other than rendering of the bill shall be undertaken until the delinquency date.

k. Undercharges. The time period for which a utility may back bill a customer for undercharges shall not exceed five years unless otherwise ordered by the board.

l. Overcharges. The time period for which the utility is required to refund or credit the customer's bill shall not exceed five years unless otherwise ordered by the board. Refunds to current customers may be in the form of bill credits, unless the refund exceeds $50 and the customer requests a refund in the same manner by which the bill was originally paid. Refunds to former customers may be made in the same manner by which the bill was originally paid. Refunds for local exchange service may not be applied to unpaid amounts for unregulated services.

22.4(4) *Customer complaints.*

a. Complaints concerning the charges, practices, facilities, or service of the utility shall be investigated promptly and thoroughly. The utility shall keep a record of such complaint showing the name and address of the complainant, the date and nature of the complaint, its disposition, and all other pertinent facts dealing with the complaint, which will enable the utility to review and analyze its procedure and actions. The records maintained by the utility under this rule shall be available for a period of two years for inspection by the board or its staff upon request.

b. Each utility shall develop a concise, fully informative procedure for the resolution of all customer complaints.

c. The utility shall take reasonable steps to ensure that customers shall not be denied the right to be heard.

d. The final step in the resolution of a complaint shall be a filing for board resolution of the complaint issues pursuant to 199—Chapter 6.

22.4(5) *Refusal or disconnection of service.* Notice of a pending disconnection shall be rendered and local exchange service shall be refused or disconnected as set forth in these rules. The notice of pending disconnection required by these rules shall be a written notice setting forth the reason for the notice and the final date by which the account is to be settled or specific action taken.

The notice shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the notice shall be considered rendered when delivered

to the last-known address of the person responsible for payment for the service. The final date shall be not less than five days after the notice is rendered.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for refusal or disconnection of service. This notice shall include a toll-free or collect number where a utility representative qualified to provide additional information about the disconnection can be reached. The notice shall also state the final date by which the account is to be settled or other specific action taken. In determining the final date, the days of notice for the causes shall be concurrent.

Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in 22.4(5)*"a," "b," "c," "d,"* and *"e,"* no service shall be disconnected on the day preceding or the day on which the utility's local business office or local authorized agent is closed. Service may be refused or disconnected:

a. Without notice in the event of a condition on the customer's premises determined by the utility to be hazardous.

b. Without notice in the event of customer's use in such a manner as to adversely affect the utility's equipment or the utility's service to others.

c. Without notice in the event of tampering with equipment furnished and owned by the utility.

d. Without notice in the event of unauthorized use.

e. For violation of or noncompliance with the board's rules, the requirements of municipal ordinances or law pertaining to the service.

f. For failure of the customer or prospective customer to furnish service equipment, permits, certificates or rights-of-way specified by the utility as conditions for obtaining service, or for the withdrawal of that same equipment or the termination of those permissions or rights, or for the failure of the customer or prospective customer to fulfill the contractual obligations imposed as conditions of obtaining service.

g. For failure of the customer to permit the utility reasonable access to its equipment.

h. For nonpayment of bill or deposit, except as restricted by 22.4(7), provided that the utility has made a reasonable attempt to effect collection and:

(1) Has provided the customer with 5 days' prior written notice with respect to an unpaid bill and 12 days' prior written notice with respect to an unpaid deposit, as required by this rule; disconnection may take place prior to the expiration of the 5-day unpaid bill notice period if the utility determines, from verifiable data, that usage during the 5-day notice period is so abnormally high that a risk of irreparable revenue loss is created.

(2) Is prepared to reconnect the same day if disconnection is scheduled for a weekend, holiday or after 2 p.m.

(3) In the event of a dispute concerning the bill, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill. Following payment of the undisputed amount, efforts to resolve the complaint shall continue and for not less than 45 days after the rendering of the disputed bill, the service shall not be disconnected for nonpayment of the disputed amount. The 45 days may be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board.

22.4(6) *Medical emergency.* Disconnection of a residential customer shall be postponed 30 days if an existing medical emergency of the customer, a member of the customer's family, or any permanent resident of the premises where service is rendered would present an especial danger to the health of any permanent resident of the premises. Indicators of an especial danger to health include, but are not limited to: age; infirmity; mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstance which may indicate a severe or hazardous health situation. The telephone utility may require written verification of the especial danger to health by a physician or a public health official, including the name of the person endangered, and a statement that the person is a resident of the premises in question. Initial verification may be by telephone, but the

telephone utility may require a written verification within 5 days of the verification of the especial health danger by the physician or a public health official, including the name of the person endangered and a statement that the person is a resident of the premises in question. If the service has been disconnected within 14 days prior to verification of illness for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. If the customer does not make payment during the 30-day period, the service is then subject to disconnection pursuant to subrule 22.4(5).

22.4(7) *Insufficient reasons for refusal, suspension, or discontinuance of service.* The following shall not constitute sufficient cause for refusal, suspension, or discontinuance of local exchange service to a present or prospective customer:

a. Delinquency in payment for service by a previous occupant of the premises to be served.

b. Failure to pay for terminal equipment, inside station wiring or other merchandise purchased from the utility.

c. Failure to pay for a different type or class of public utility service.

d. Failure to pay the bill of another customer as guarantor thereof.

e. Permitting another occupant of the premises access to the telephone utility service when that other occupant owed an uncollectible bill for service rendered at a different location.

f. Failure to pay for yellow page advertising.

g. Failure to pay for deregulated services other than local exchange service.

22.4(8) *Temporary service.* When the utility renders temporary service to a customer, it may require that the customer bear all the cost of installing and removing the service facilities in excess of any salvage realized.

[**ARC 7826B**, IAB 6/3/09, effective 7/8/09; Editorial change: IAC Supplement 12/29/10; **ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.5(476) Telephone utility service standards.

22.5(1) *Requirement for good engineering practice.* The telephone plant of the utility shall be designed, constructed, installed, maintained and operated subject to the provisions of the Iowa electrical safety code as defined in 199 IAC Chapter 25 and in accordance with accepted good engineering practice in the communication industry to ensure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

22.5(2) *Adequacy of service.*

a. Each local exchange utility and alternative operator services company shall employ prudent management and engineering practices so that sufficient equipment and adequate personnel are available at all times, including average busy-hour of the busy-season.

b. Each local exchange utility and alternative operator services company shall conduct traffic studies, employ reasonable procedures for forecasting future service demand, and maintain records necessary to demonstrate to the board that sufficient equipment is in use and that an adequate operating force is provided.

c. Each utility shall employ adequate procedures for assignment of facilities. The assignment record shall be kept up-to-date and checked periodically to determine if adjustments are necessary to maintain proper balance in all trunk and equipment groups. The records shall be available for review by the board upon request.

d. The criteria established in these rules define a minimal acceptable standard for the most basic elements of telecommunications service. The rules do not include all criteria and they do not establish the most desirable service level for any basic element. If a specific element is not covered, the provider must meet generally accepted industry standards for that element. Total service must also meet generally accepted industry standards.

e. The standards within these rules establish the minimum acceptable quality of service under normal operating conditions. They do not establish a level of performance to be achieved during the periods of emergency, catastrophe affecting large numbers of customers, nor do they apply to

extraordinary or abnormal conditions of operation, such as those resulting from work stoppage, civil unrest, or other events.

22.5(3) *Central office requirements.*

a. Each local exchange utility shall employ appropriate procedures to determine the adequacy of central office equipment. Sufficient central office capacity and equipment shall be provided to meet the following minimum requirements during average busy-season, busy-hour:

(1) Dial tone within three seconds for 98 percent of call attempts on the switched network.

(2) Complete dialing of called numbers on at least 97 percent of telephone calls without encountering an all-trunks-busy condition within the central office.

(3) At least 98 percent of all correctly dialed interoffice local calls shall not encounter an all-trunks-busy condition.

(4) At least 98 percent of all correctly dialed calls offered to any trunk group within an EAS calling area will not encounter an all-trunks-busy condition.

b. Each local exchange utility shall engineer all central office equipment using sound engineering practice, consistent with the practices of the telephone industry. All new central offices shall be engineered on a terminal-per-station basis.

c. Rescinded IAB 6/3/09, effective 7/8/09.

d. Each central office shall be provided with alarms on a 24-hour basis to indicate improper functioning of equipment. All alarms shall be transmitted to an alarm center or to a location that will receive and respond to the alarm condition as set forth in the Utilities Emergency/Disaster Plan on a 24-hour, seven-day-a-week basis. All alarms and alarm sensors must be tested and reported internally on a regular basis, not to exceed six months.

22.5(4) *Telecommunication circuits.* All circuits shall be properly constructed and maintained to ensure quality service.

22.5(5) *Interexchange trunks.* Trunks for extended area service shall be provided so that at least 98 percent of telephone calls will not encounter an all-trunks-busy condition.

22.5(6) *Loop transmission requirements.* Local exchange utilities shall furnish and maintain adequate plant, equipment, and facilities to provide satisfactory transmission of communications between users in their service areas. Transmission shall be at adequate volume levels and free of excessive distortion. Levels of noise and cross talk shall be such as not to impair communications.

22.5(7) *Minimum transmission objectives.*

a. The transmission objectives set forth are based upon the use of standard telephone stations connected to a 48-volt dial central office, and measured at a frequency of 1,000 hertz.

b. Lines shall have a loop resistance not exceeding the operating design of the associated central office equipment, unless long line adapters and amplifiers or special equipment are used.

c. All loop measurements shall be taken across tip and ring and to ground at the demarcation point excluding all inside wiring and terminal equipment.

(1) Loop current shall be acceptable above 20 mA.

(2) Circuit loss shall be measured at 1004 KHz at 0 dBm from the central office. The acceptable level shall be 0 to—8 dBm with a maintenance margin not to exceed 8.5 dB.

(3) Circuit noise shall be measured on a quiet (balanced) termination from the central office. The acceptable level shall be less than 20 dBrnC, the marginal level between 20 and 30 dBrnC, and unacceptable above 30 dBrnC.

(4) Power influence level shall be acceptable from 0 to 80 dBrnC, marginal from 80 to 90 dBrnC, and unacceptable above 90 dBrnC. Although the communication utility has the requirement to meet this objective, the communication and electric utilities shall cooperate in mitigating the effects of AC power induction.

d. Whenever feasible, the overall transmission loss, including terminating equipment, on intertandem trunks should be 6 dB for an all digital connection. Overall transmission loss, including terminating equipment on intertandem trunks should not exceed 9 dB for a composite digital and analog connection. This measurement shall be taken at 1004 Hz.

(1) The transmission objectives set forth are based upon measurements at the customer's network interface device with the customer premise disconnected.

(2) The transmission loss as set forth means the loss that occurs in a telecommunication connection measured in decibels (dB) at 1004 Hz exclusive of rest pads, impedance matching coils used for measuring and similar devices.

(3) A customer line shall, in general, have loop resistance not exceeding the operating design of the associated central office equipment. Amplifiers and long line adapters may be used to extend the central office design limits.

(4) A minimum line current of 20 mA DC is acceptable.

(5) The customer line (loop) shall be designed for a maximum loss of 8.0 dB at 1004 Hz to be measured from the customer demarcation to the central office one milliwatt test tone supply.

(6) The actual measured loss of the customer loop shall not exceed 9.0 dB from the customer demarcation to the central office one milliwatt test tone supply. A loss greater than 9.0 dB is unacceptable, requiring immediate action.

(7) Circuit noise is to be measured on a quiet termination from the central office. The acceptable level is not to exceed 20 dBrnC. The marginal level is between 20 dBrnC and 30 dBrnC. Any measurement exceeding 30 dBrnC is unacceptable, requiring immediate action.

22.5(8) *Joint use.* Where joint construction is mutually agreed upon, it shall be subject to the provisions of the Iowa electrical safety code and the requirement for good engineering practice found in subrule 22.5(1).

22.5(9) *Provisions for testing.* Each telephone utility shall provide or have access to test facilities which will enable it to determine the operating and transmission capabilities of circuit and switching equipment, either for routine maintenance or for fault location.

22.5(10) *Operator-assisted calls.* These operator services rules shall apply to all local exchange utilities, interexchange utilities, and alternative operator services companies which provide operator services.

a. All communications between customers must be considered as confidential in nature. The provider shall take reasonable action to minimize the potential access of other entities to those communications. Operators or employees of the provider must not listen to any conversation between customers except when an operating necessity. Operators shall not repeat or divulge the nature of any local or long distance conversation, nor divulge any information inadvertently overheard. Providers will be held responsible for strict compliance with this rule by their employees or other entities which perform this service for the provider.

b. Suitable rules and instructions shall be adopted by each provider and followed by employees or other entities employed by the provider governing the language and operating methods to be used by operators during assistance to customers. Any required call timing for regulated operator-assisted calls shall accurately record when the customer-requested connection is established and when it is terminated.

c. Each provider offering operator assistance to the public shall provide a service that can answer 90 percent of directory, intercept, toll, and local assistance calls within ten seconds. On the average, calls shall be answered within five seconds.

d. Rescinded IAB 6/3/09, effective 7/8/09.

e. An answer shall mean that the operator is ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an answer.

f. All operators receiving 0 - and 911 calls shall be capable of connecting calls to appropriate emergency services at all hours. All operator services providers shall have a board-approved methodology to ensure the routing of all emergency zero-minus (0 -) calls in the fastest possible way to the proper local emergency service agency.

g. Third-party billing from identified public pay telephones and reverse charges from all telephones will be allowed:

(1) If the person or device answering responds positively that the charges will be accepted, with the provision that remaining on the line does not constitute a positive response;

(2) On reverse charges, when it is apparent the voice on the answering machine is the caller's voice; and

(3) On a third-party billing, when it is apparent the voice on the answering machine at the billing number is the caller's voice.

22.5(11) *Maintenance of plant and equipment.*

a. Each telephone utility shall adopt and pursue a program of periodic inspection, testing, and preventive maintenance aimed at achieving efficient operation of its system to permit the rendering of safe, adequate and continuous service at all times.

b. Maintenance shall include keeping all plant and equipment in a good state of repair consistent with safe and adequate service performance. Broken, damaged or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted promptly when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor insulation, noise induction, cross talk, or poor transmission characteristics shall be promptly corrected to the extent practicable within the design capability of the plant affected when located or identified.

c. In all exchanges, periodic leakage tests shall be made on all circuits by use of proper instruments to determine that sufficient insulation is being maintained and further to discover any substantial change in insulation values which might cause future service difficulties. Loop resistance and transmission tests should be made on local circuits when transmission is poor, in an endeavor to locate the source of trouble.

d. Central office batteries shall be replaced when required to maintain good telephone service.

e. Central office equipment shall be inspected and routinely tested at regular intervals, and any necessary repairs, adjustments or replacements made to ensure the proper functioning of switching equipment.

f. All regulated outside plant facilities shall be properly maintained including replacement of equipment when broken, damaged, or when necessary for good transmission.

g. Records of various tests and inspections shall be kept on file in the office of the telephone utility for a minimum of one year. These records shall show the line or regulated equipment tested or inspected, the reason for the test, the general conditions under which the test was made, the general result of the test, and any corrections made.

22.5(12) Reserved.

22.5(13) *Terminating access blocking.* Rescinded IAB 12/21/05, effective 1/25/06.

22.5(14) *Information service access blocking.* Each local exchange utility shall provide its customers the option of blocking access to all 900 and 976 prefix numbers, without charge for the first block.

[**ARC 7826B**, IAB 6/3/09, effective 7/8/09; **ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.6(476) Standards of quality of service. The local exchange utility using its facilities to provide primary service will measure its service connection, held order, and service interruption performance monthly according to subrules 22.6(1), 22.6(2), and 22.6(3). Records of the measurements and any summaries thereof, by individual wire centers, will be provided upon request of the board. Records of these measurements will be retained by the utility for two years.

22.6(1) *Service connection.* Each local exchange utility using its facilities to provide service shall make all reasonable efforts to maintain a five-business-day standard for primary connection service or within the customer-requested service connection date. All reasonable efforts to maintain the above standard shall be measured by the following:

a. Eighty-five percent of all customers provided service within five business days of the request or the customer-requested date, whichever is later. Compliance will be measured based on a three-month rolling average.

b. Ninety-five percent of all customers provided service within ten business days of the request or the customer-requested date, whichever is later. Compliance will be measured based on a three-month rolling average.

c. Ninety-nine percent of all customers provided service within 30 business days of the request or the customer-requested date, whichever is later. Compliance will be measured based on a three-month rolling average.

22.6(2) *Held orders.*

a. During such period of time as a local exchange utility using its facilities to provide service may not be able to supply primary telephone service to prospective customers within five business days after the date applicant desires service, the telephone utility shall keep a record, by exchanges, showing the name and address of each applicant for service, the date of application, the date that service was requested, and the class of service applied for, together with the reason for the inability to provide new service to the applicant.

b. When, because of a shortage of facilities, a utility is unable to supply primary telephone service on the date requested by applicants, first priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency, the board may require establishment of a priority plan, subject to its approval for clearing held orders, and may request periodic reports concerning the progress being made.

c. When the local exchange utility using its facilities to provide service fails to provide primary local exchange service to any customer requesting service within 15 business days, the local exchange utility shall provide the customer with an alternative form of service until primary local exchange service can be provided. The alternative form of service provided shall be wireless telephone service unless the customer agrees otherwise.

d. If an alternative form of primary service is provided, the local exchange utility is authorized to charge the customer the regular rates (if applicable) for the alternative primary service ordered, if such rates are less than the regulated rate for primary local exchange service. Otherwise, the customer will be charged the regulated rate for primary local exchange service. Where an alternative form of service is impossible to provide, the facilities-based local exchange utility shall waive all usual installation charges and, once primary local exchange service is provided, shall credit the customer's account in an amount equal to the pro-rata monthly primary local exchange charge for each day service was not provided.

22.6(3) *Service interruption.*

a. Each telephone utility using its facilities to provide primary service shall make all reasonable efforts to prevent interruptions of service. When interruptions are reported or found by the utility to occur, the utility shall reestablish service with the shortest possible delay. Priority shall be given to a residential customer who states that telephone service is essential due to an existing medical emergency of the customer, a member of the customer's family, or any permanent resident of the premises where service is rendered. All reasonable efforts shall be measured by the following:

(1) Eighty-five percent of all out-of-service trouble reports cleared within 24 hours. Compliance will be measured based on a three-month rolling average.

(2) Ninety-five percent of all out-of-service trouble reports cleared within 48 hours. Compliance will be measured based on a three-month rolling average.

(3) One hundred percent of all out-of-service trouble reports cleared within 72 hours.

(4) The response time for all utilities responsible to test and attempt to correct any interexchange trunk problem, except a total outage, shall be within 24 hours after the problem is reported. If the problem is not corrected within that time, the utility responsible for doing so shall keep all other affected telephone utilities advised as to the current status on a daily basis. For a total outage, the response time shall be immediate.

b. Arrangements shall be made to have adequate personnel and equipment available to receive and record trouble reports and also to clear trouble of an emergency nature at all times.

c. Calls directed to the published telephone numbers for service repair or the business offices of the telephone utility shall be acknowledge within 20 seconds for 85 percent of all such calls and within 40 seconds for 100 percent of all such calls.

d. If a customer's service must be interrupted due to maintenance, the utility shall notify the affected customer, in advance, if possible. The company shall perform the work to minimize inconvenience to the customer and strive to avoid interruptions when there is conversation on the line.

e. Each telephone utility shall keep a written record showing all interruptions affecting service in a major portion of an exchange area for a minimum of six years. This record shall show the date, time, duration, time cleared and extent and cause of the interruption. This record shall be available to the board upon request.

f. Whenever a trouble report is received, a record shall be made by the company and if repeated within a 30-day period by the same customer, the case shall be referred to an individual for permanent correction.

g. When a customer's service is reported or is found to be out of order, it shall be restored as promptly as possible.

h. Each local exchange utility using its facilities to provide service shall maintain its network to reasonably minimize customer trouble reports. The rate of customer trouble reports on the company side of the demarcation point will not exceed four per 100 access lines per month per wire center.

i. When a subscriber's service is interrupted and remains out of service for more than 24 consecutive hours after being reported to the local exchange company or being found by the company to be out of order, whichever occurs first, the company shall make appropriate adjustments to the subscriber's account. This rule does not apply if the outage occurs as a result of:

(1) A negligent or willful act on the part of the subscriber;

(2) A malfunction of subscriber-owned telephone equipment;

(3) Disasters or acts of God; or

(4) The inability of the company to gain access to the subscriber's premises.

The adjustment, either a direct payment or a bill credit, shall be the proportionate part of the monthly charges for all services and facilities rendered inoperative during the interruption. The adjustment shall begin with the hour of the report or discovery of the interruption. Adjustments not in dispute shall be rendered within two billing periods after the billing period in which the interruption occurred.

22.6(4) *Repair—missed appointments.* When a utility makes an appointment for installation or repair within a given range of time, and misses that appointment by over an hour, the customer will receive one month's primary local service free of charge. This is applicable to each missed appointment.

22.6(5) *Emergency operation.*

a. Each telephone utility shall make reasonable provisions to meet emergencies resulting from failures of power service, climate control, sudden and prolonged increases in traffic, illness of operators, or from fire, explosion, water, storm, or acts of God, and each telephone utility shall inform affected employees, at regular intervals not to exceed one year, of procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of telephone service.

b. All central offices shall have adequate provision for emergency power. Each central office shall contain a minimum of two hours of battery reserve. For offices without permanently installed emergency power facilities, there shall be access to a mobile power unit with enough capacity to carry the load which can be delivered on reasonably short notice and which can be readily connected.

c. An auxiliary power unit shall be permanently installed in all toll centers and at all exchanges exceeding 4,000 access lines.

d. Each local exchange utility shall maintain and make available for board inspection, its current plans for emergency operations, including the names and telephone numbers of the local exchange utility's disaster services coordinator and alternates.

22.6(6) *Business offices.*

a. Each local exchange utility shall have one or more business offices or customer service centers staffed to provide customer access to qualified personnel, including supervisory personnel where warranted, to provide information relating to services and rates, accept and process applications for service, explain charges on customers' bills, adjust charges made in error, and, generally, to act as representatives of the local exchange utility. If one business office serves several exchanges, toll-free calling from those exchanges to that office shall be provided.

b. Upon the closing of any local exchange utility's public business office, the company must provide to the board, in writing, at least 30 days prior to the closing of the office the following information:

(1) The exchange(s) and communities affected by the closing;

(2) The date of the closing;

(3) A listing of other methods and facility locations available for payment of subscribers' bills in the affected exchanges; and

(4) A listing of other methods and locations available for obtaining public business office services.

[**ARC 7826B**, IAB 6/3/09, effective 7/8/09; **ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.7(476) Safety.

22.7(1) *Protective measures.*

a. Each utility shall exercise reasonable care to reduce the hazards to which its employees, its customers or users and the general public may be subjected.

b. The utility shall give reasonable assistance to the board in the investigation of the cause of accidents and in the determination of suitable means of preventing accidents.

c. Each utility shall maintain a summary of all reportable accidents arising from its operations.

22.7(2) *Safety program.* Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program should:

a. Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner.

b. Instruct employees in safe methods of performing their work.

c. Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

199—22.8(476) Nontoll interexchange trunking service (EAS) survey procedure.

22.8(1) *General information.*

a. The nontoll interexchange trunking service (EAS) survey procedures shall be followed by all telephone companies subject to the service jurisdiction of this board. The procedures in 22.8(2) and 22.8(3) shall be followed to establish EAS. The procedures in 22.8(4) and 22.8(5) shall be followed in order to discontinue EAS. There is no need to follow these procedures if there will be no rate increase associated with new EAS.

b. At all stages of this procedure the information required to be supplied to customers shall be sufficient to explain the required items to the customers, yet the information shall be in a form which is sufficiently brief not to confuse the customers or discourage the customers from completing the survey.

c. Whenever an EAS survey is conducted, the company shall mail to each customer account (primary service listing) a survey letter explaining the purpose of the survey, and a postage-paid, company-addressed return postcard on which the customer can indicate the customer's preference.

d. The company shall provide the board, for its approval, a copy of the proposed text and format of the customer letter and ballot survey card. The board may require alterations or corrections before permission is granted to proceed with the actual survey of the customers.

22.8(2) *Procedures and requirements for establishing EAS studies.*

a. The initiative for EAS shall be in the form of a request presented to the company with evidence of support indicated by a petition signed by no less than 15 percent of the exchange customers. Only the person to whom the monthly bill is addressed may sign the petition. In the case of a business customer, only a duly authorized agent or representative may sign. Each signer shall include address and telephone number. Initiative for EAS may also come from the company or the board.

b. If the requirements of 22.8(2), paragraph *"a,"* are fulfilled, a point-to-point usage study should be used to determine if sufficient community interest exists. There should be an average of five or more calls per customer per month and more than 50 percent of the customers making at least two toll calls per month. If these basic criteria are not met, the request will be dismissed without further proceedings.

c. If the provisions of 22.8(2), paragraph *"b,"* have been met, additional customer calling studies, cost and revenue studies including loss of toll revenues may be conducted, and submitted to the board. The board shall determine the merits of proceeding with a customer survey.

d. Records shall be kept of this procedure to substantiate the steps taken by the company. These studies need not be undertaken more than once in any 18-month period.

22.8(3) *Procedures and requirements for customer survey to establish EAS.*

a. The customer survey for two-way EAS need not be taken more than once in any 18-month period and the survey letter should contain the following items:

(1) An explanation of the purpose of the survey.

(2) A statement which identifies by class and grade of service the existing rate, the amount of rate increase and the new rate associated with the addition of the proposed EAS.

(3) A statement that more than 65 percent of the customers returning ballots must vote in favor of the proposal before further action will be taken.

(4) A statement indicating the proposed date when service would be established which shall not be more than two years from the survey ballot return date, unless the delay is granted by the board due to the facility considerations.

(5) The date by which the ballot must be returned to be considered shall be a minimum of 10 days and a maximum of 20 days from the date on which the survey letter is mailed to the customer. The ballots shall not be counted for 3 days following the survey ballot return date to allow all return cards to clear the post office. Results of the survey shall be provided to the board within 15 days of the return date.

b. Ballot by return postcard. The postage-paid, company-addressed return postcard included with the customer survey letter should contain the following information:

(1) A statement explaining the EAS proposal being voted on as set out in the customer survey letter.

(2) A place for the customer to indicate whether customer favors or is opposed to the establishment of EAS.

(3) Lines designated for the customer's signature, telephone number and date.

c. The return ballot shall be retained by the company for at least two years and shall be available for review by the board staff during that time. After two years the ballots may be destroyed; however, the results of the survey as recorded from the return ballots shall be maintained for a period of five years.

d. If the customers in an exchange vote in favor of EAS to another exchange but concurrence in two-way EAS is not received from that second exchange then consideration may be given to one-way EAS. The same basic survey procedure shall be followed as provided herein, but the customer survey letter shall also include information concerning lack of concurrence on two-way service by the neighboring exchange and that another survey is being taken to determine interest in one-way calling.

22.8(4) *Procedures and requirements for discontinuing EAS.*

a. The initiative to discontinue EAS shall be in the form of a request presented to the company with evidence of support indicated by a petition signed by no less than 15 percent of the exchange customers. Only the person to whom the monthly bill is addressed may sign the petition. In the case of a business customer, only a duly authorized agent or representative may sign. Each signer must include address and telephone number. Initiative to discontinue EAS may also come from the company or the board.

b. Customer calling studies, cost and revenue studies may be conducted and submitted to the board. The board shall determine the merits of proceeding with a customer survey.

c. Records shall be kept of this procedure to substantiate the steps taken by the company. These studies need not be undertaken more than once in any 18-month period.

22.8(5) *Procedures and requirements for customer survey to discontinue EAS.*

a. The customer survey for two-way EAS need not be taken more than once in any 18-month period and the survey letter should contain the following items:

(1) An explanation of the purpose of the survey.

(2) A statement which identifies by class and grade of service the amount of rate decrease, if any, and the new rates associated with the proposed discontinuance of EAS.

(3) A statement that more than 65 percent of the customers returning ballots must vote in favor of the discontinuance proposal before further action will be taken.

(4) A statement indicating the proposed date when service would be discontinued (which shall not be more than six months from the survey ballot return date).

(5) The date by which the ballots must be returned to be considered. This return date shall be a minimum of 10 days and a maximum of 20 days from the date on which the survey letter is mailed to the customer. The ballots shall not be counted for 3 days following the survey ballot return date to allow all return cards to clear the post office. Results of the survey shall be provided to the board within 15 days of the return date.

b. Ballot by return postcard. The postage-paid, company-addressed return postcard included with the customer survey letter should contain the following information:

(1) A statement explaining the EAS proposal being voted on as set out in the customer survey letter.

(2) A place for the customer to indicate whether customer favors or is opposed to the discontinuance of EAS.

(3) Lines designated for the customer's signature, telephone number and date.

c. The return ballot shall be retained by the company for at least two years and shall be available for review by the board staff during that time. After two years, the ballot may be destroyed; provided, however, a record showing the results of the survey as recorded from the return ballots shall be maintained for a period of five years.

d. If the customers approve discontinuance of two-way EAS to another exchange and concurrence in that discontinuance cannot be obtained from the customers of the second exchange, consideration may be given to continuance of one-way EAS by that second exchange. The same basic survey procedure shall be followed as provided herein, but the customer survey letter shall also include a statement indicating that the neighboring exchange or its customers have voted to discontinue two-way EAS and that this survey is being taken to determine interest in one-way calling.

199—22.9(476) Terminal equipment. Terminal equipment is deregulated. Customers may secure terminal equipment through any provider.

199—22.10(476) Unfair practices. All unfair or deceptive practices related to customer provision of equipment are prohibited. Any failure to provide information to customers or to deal with customers who provide their own terminal equipment or inside station wiring or an alteration of the charges for or availability of equipment or services on that ground, unless specifically authorized by board order or rule, shall constitute unfair or deceptive practices. In cases of equipment in compliance with Federal Communications Commission registration requirements, telephone utility personnel are prohibited from making any statement, express or implied, to, or which will reach, a customer or prospective customer that terminal equipment in compliance with Federal Communications Commission registration requirements cannot properly be attached to the telephone network. This does not apply to good-faith efforts to amend the Federal Communications Commission requirements.

The listing of unfair practices in this rule shall not limit the types of acts which may be found to be unfair nor shall those listed be used to establish decisional criteria operating to exempt any act otherwise unfair from the intent of this rule.

[**ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.11(476) Inside station wiring standards.

22.11(1) *Construction by user limitation.* A user shall not be allowed to construct inside station wiring from a demarcation point or between two or more buildings on the same premises to obtain service from an exchange other than that by which the user would normally be served, excluding users being provided adjacent exchange service or foreign exchange service. Existing inside wiring obtaining local exchange service within another exchange boundary shall be disconnected by the user within ten days after receipt of written notification from the local exchange company.

22.11(2) *Standards applicable to inside station wiring.* The following technical standards must be complied with:

a. Applicable registration standards promulgated by the Federal Communications Commission.

b. 47 CFR Part 68.

c. Applicable national, state or local building and electrical codes, including National Electrical Code, as defined in 199—subrule 25.2(5); and accepted good engineering practice in the communication industry to ensure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and safety of persons and property.
[**ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.12(476) Content of wholesale tariff filings proposing rate changes.

22.12(1) *Construction of rule.* This rule shall be construed in a manner consistent with its purpose to expedite informed consideration of wholesale tariff filings that propose rate changes by ensuring the availability of relevant information on a standardized basis. Unless a waiver is granted prior to the filing of a wholesale tariff, this rule shall apply to all wholesale tariff filings by telephone utilities proposing rate changes, except the retail tariff filings of AOS utilities that propose rates at or below the corresponding rates for similar services of utilities whose rates have been approved by the board in a rate case or set in a market determined by the board to be competitive.

22.12(2) *Cost studies to be filed.* Rescinded IAB 6/3/09, effective 7/8/09.

22.12(3) *Specification of cost methodologies.* Rescinded IAB 6/3/09, effective 7/8/09.

22.12(4) Rescinded, effective June 10, 1987.
[**ARC 7826B**, IAB 6/3/09, effective 7/8/09; **ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.13(476) Methodology for determining costs to serve. Rescinded IAB 6/3/09, effective 7/8/09.

199—22.14(476) Intrastate access charge application, tariff procedures, and rates.

22.14(1) *Application of intrastate access charges.*

a. Intrastate access charges shall apply to all intrastate access services rendered to interexchange utilities. Intrastate access charges shall not apply to EAS traffic. In the case of resale of services of interexchange utilities, access charges shall apply as follows:

(1) The interexchange utilities shall be billed as if no resale were involved.

(2) The resale carrier shall be billed only for access services not already billed to the underlying interexchange utility.

(3) Specific billing treatment and administration shall be provided pursuant to tariff.

b. Except as provided in 22.14(1)*"b"*(3), no person shall make any communication of the type and nature transmitted by telephone utilities, between exchanges located within Iowa, over any system or facilities, which are or can be connected by any means to the intrastate telephone network, and uses exchange utility facilities, unless the person shall pay to the exchange utility or utilities which provide service to the exchange where the communication is originated and the exchange where it is terminated, in lieu of the carrier common line charge, a charge in the amount of $25 per month per circuit that is capable of interconnection. However, if the person provides actual access minutes to the exchange utility, the charge shall be the charge per access minute or fraction thereof provided in 22.14(2)*"d"*(1), not to exceed $25 per line per month. The charge shall apply in all exchanges. However, if the person attests in writing that its facility cannot interconnect and is not interconnected with the exchange in question, the person will not be subject to the charge in that exchange.

(1) In the event that a communication is made without compliance with this rule, the telephone utility or utilities serving the person shall terminate telephone service after notice pursuant to subrule 22.4(5). The utility shall not reinstate service until the board orders the utility to restore service. The board shall order service to be restored when it has reasonable assurance that the person will comply with this rule.

(2) In any action concerning this rule, the burden of proof shall be upon the person making intrastate communications.

(3) This rule shall be inapplicable to administrative communications made by or to a telephone utility.

22.14(2) *Filing of intrastate access service tariffs.*

a. Tariffs providing for intrastate switched access services shall be filed with the board by a local exchange utility which provides such services. A local exchange utility whose tariff or concurring tariff does not contain automatic reductions to implement the applicable transitional intrastate access service reductions shall file revised transitional intrastate access services rates with the board to become effective on or about July 1 of each year until such terminating rates are removed from the tariff. A competitive local exchange carrier that is required to benchmark its intrastate access service rates to the rates of an incumbent local exchange carrier shall file revised transitional intrastate access rates with the board to become effective on or about August 1 of each year until such terminating rates are removed from the tariff. Unless otherwise provided, the filings are subject to the applicable rules of the board.

b. Except in situations involving HVAS, a local exchange utility may concur in the intrastate access tariff filed by another local exchange utility serving the same exchange area. However, a competitive local exchange carrier may not concur in the intrastate access tariff of an incumbent local exchange carrier that qualifies as a rural telephone company pursuant to 47 U.S.C. § 153(44) unless the competitive local exchange carrier also is a rural CLEC pursuant to 47 CFR § 61.26(a)(6).

(1) Alternatively, a local exchange utility may voluntarily elect to join another local exchange utility or utilities in forming an association of local exchange utilities. The association may file intrastate access service tariffs.

(2) All elements of the filings, under rule 199—22.14(476) including access service rate elements, shall be subject to review and approval by the board.

c. Rescinded IAB 2/7/90, effective 3/14/90.

d. All intrastate access service tariffs shall incorporate the following:

(1) Carrier common line charge. The rate for the intrastate carrier common line charge shall be three cents per access minute or fraction thereof for the originating segments of the communication unless a lower rate is required by the transitional intrastate access service reductions or if numbered paragraphs "1" and "2" are applicable. The carrier common line charge shall be assessed to exchange access made by an interexchange telephone utility, including resale carriers. In lieu of this charge, interconnected private systems shall pay for access as provided in 22.14(1)*"b."*

1. Incumbent local exchange carrier intrastate access service tariffs shall include the carrier common line charges approved by the board.

2. A competitive local exchange carrier shall deduct the carrier common line charge from its intrastate access service tariff.

(2) End-user charge. No intrastate end-user charge shall be assessed.

(3) Universal service fund. No universal service fund shall be established.

(4) Transitional and premium rates. There shall be no discounted transitional rate elements applied in Iowa except as otherwise specifically set forth in these rules.

(5) Rescinded IAB 10/14/15, effective 11/18/15.

(6) A telephone utility may, pursuant to tariff, bill for access on the basis of assumed minutes of use where measurement is not practical. However, if the interexchange utility provides actual minutes of use to the billing utility, the actual minutes shall be used.

(7) In the absence of a waiver granted by the board, local exchange utilities shall allow any interexchange utility the option to use its own facilities that were in service on March 19, 1992, to provide local access transport service to terminate its own traffic to the local exchange utility. The interexchange utility may use its facilities in the manner and to a meet point agreed upon by the local exchange utility and the interexchange utility as of March 19, 1992. Changes mutually agreeable to the local exchange utility and the interexchange utility after that date also shall be recognized in allowing the interexchange utility to use its own local access transport facilities to terminate its own traffic. Recognition under this rule will also be extended to improvements by an interexchange utility that provided all the transport facilities to an exchange on March 19, 1992, whether the improvements were mutually agreeable or not, unless the improvements are inconsistent with an agreement between the interexchange utility and the local exchange utility.

(8) A provision prohibiting the application of association access service rates to HVAS traffic.

e. A local exchange utility that is adding a new HVAS customer or otherwise reasonably anticipates an HVAS situation shall provide notice of the situation, the telephone numbers that will be assigned to the HVAS customer (if applicable), and the expected date service to the HVAS customer will be initiated, if applicable. Notice may be sent to each interexchange utility that paid for intrastate access services from the local exchange carrier in the preceding 12 months; to any carrier with whom the local exchange carrier exchanged traffic in the preceding 12 months; and to all other local exchange carriers authorized to provide service in the subject exchange, by a method calculated to provide adequate notice. Any interexchange utility may request negotiations concerning the access rates applicable to calls to or from the HVAS customer.

Any interexchange utility that believes a situation has occurred or is occurring that does not specifically meet the HVAS threshold requirements defined in subrule 22.1(3), but which raises the same general concerns and issues as an HVAS situation, may file a complaint with the board pursuant to these rules.

A local exchange utility that experiences an increase in intrastate access billings that qualifies as an HVAS situation, but did not add a new HVAS customer or otherwise anticipate the situation, shall notify interexchange utilities of the HVAS situation at the earliest reasonable opportunity, as described in the preceding paragraph. Any interexchange utility may request negotiations concerning whether the local exchange utility's access rates, as a whole or for HVAS only, should be changed to reflect the increased access traffic.

When a utility requests negotiations concerning intrastate access services, the parties shall negotiate in good faith to achieve reasonable terms and procedures for the exchange of traffic. No access charges shall apply to the HVAS traffic until an access tariff for HVAS is accepted for filing by the board and has become effective. At any time that any party believes negotiations will not be successful, any party may file a written complaint with the board pursuant to Iowa Code section 476.11. In any such proceeding, the board will consider setting the rate for access services for HVAS traffic based upon the incremental cost of providing HVAS, although any other relevant evidence may also be considered. The incremental cost will not include marketing or other payments made to HVAS customers. The resulting rates for access services may include a range of rates based upon the volume of access traffic or other relevant factors. Any negotiations pursuant to this paragraph shall conclude within 60 days. After 60 days, a party to the negotiations may petition the board to extend the period of negotiations or may petition the board to set a hearing pursuant to 199—paragraph 7.4(10)*"d."*

22.14(3) Rescinded, IAB 9/21/88, effective 10/26/88.

22.14(4) *Notice of intrastate access service tariffs.*

a. Each telephone utility that files new or changed tariffs relating to access charges, access service, or the recording function associated with billing and collection for access services shall give written notice of the new or changed tariffs to the utility's interexchange utility access customers, the board, and the consumer advocate. Notice shall be given on or before the date of filing of the tariff. The notice shall consist of: the file date, the proposed effective date, a description of the proposed changes, and the tariff section number where the service description is located. If two or more local exchange utilities concur in a single tariff filing, the local exchange utilities may send a joint written notice to the board, consumer advocate, and the interexchange utilities.

b. The board shall not approve any new or changed tariff described in paragraph *"a"* until after the period for resistance provided in subrule 22.14(5), paragraph *"a."*

22.14(5) *Resistance to intrastate access service tariffs.*

a. If an interexchange utility affected by an access service filing or the consumer advocate desires to file a resistance to a proposed new or changed access service tariff, it shall file its resistance within 14 days after the filing of the proposed tariff. The interexchange utility shall send a copy of the resistance to all telephone utilities filing or concurring in the proposed tariff.

b. After receipt of a timely resistance, the board may:

(1) Deny the resistance if it does not on its face present a material issue of adjudicative fact or the board determines the resistance to be frivolous or otherwise without merit and allows the tariff to go into effect by order or by operation of law; or

(2) Either suspend the tariff or allow the tariff to become effective subject to refund; and initiate informal complaint proceedings; or

(3) Either suspend the tariff or allow the tariff to become effective subject to refund; and initiate contested case proceedings; or

(4) Reject the tariff, stating the grounds for rejection.

c. The interexchange utility or the consumer advocate shall have the burden to support its resistance.

d. If contested case proceedings are initiated upon resistance filed by an interexchange utility, the interexchange utility shall pay the expenses reasonably attributable to the proceeding unless the interexchange utility is the successful party as determined by the board.

22.14(6) *Access charge rules to prevail.* The provisions of rule 199—22.14(476) shall be determinative of the procedures relating to intrastate access service tariffs and shall prevail over all inconsistent rules.

22.14(7) *Access billing disputes and discontinuation of service.* The provisions of subparagraph 22.4(5)*"h"*(3) also apply to intrastate access billing disputes. The provisions of rule 199—22.16(476) shall be followed before a utility discontinues providing intrastate access service to another utility.
[**ARC 7826B**, IAB 6/3/09, effective 7/8/09; **ARC 8871B**, IAB 6/30/10, effective 8/4/10; **ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.15(476) Interexchange utility service and access.

22.15(1) *Interexchange utility service.* An interexchange utility may provide interexchange service by complying with the laws of this state and the rules of this board. Any company or other entity accessing local exchange facilities or services in order to provide interexchange communication services to the public shall be considered to be an interexchange utility and subject to the rules herein, unless otherwise exempted. Such utilities are required to file a registration form, reports, and other items and are subject to service standards as specified in utilities division rules, unless otherwise exempted.

22.15(2) *Interexchange utility intrastate access.* Intrastate access to local exchange services or facilities may be obtained by an interexchange utility by ordering and paying for such intrastate access pursuant to the applicable tariff filed by the exchange utility in question, or as otherwise provided by agreement between the parties.

22.15(3) *Willful violation.* Rescinded IAB 10/14/15, effective 11/18/15.
[**ARC 7826B**, IAB 6/3/09, effective 7/8/09; **ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.16(476) Discontinuance of service. Except in the case of emergency, no local exchange utility or interexchange utility may discontinue providing intrastate service to any local exchange or part of a local exchange without providing notice to the board and the consumer advocate.

In cases of nonpayment of account, violation of rules and regulations, or violation of board orders, no utility shall discontinue service without providing at least two business days' notice to the board and the consumer advocate.

In all other cases, the utility shall file with the board and the consumer advocate a notice of intent to discontinue service at least 90 days prior to the proposed date of discontinuance. However, if the utility shows it has no customers for the service it proposes to discontinue, the utility need only file such notice 30 days prior to discontinuance.

22.16(1) The notice of discontinuance of service shall include the following:

1. The name and address of the utility involved;

2. The name, title, and address of the person to whom correspondence concerning the notice should be directed;

3. A description of the nature of and reasons for the proposed discontinuance;

4. Identification of the exchange or part of exchange involved and the date on which the utility desires to discontinue service;

5. A description of the area affected and an assessment of the impact on present and future public convenience and necessity of such discontinuance, including the name and address of any other utility currently or potentially providing the same or substitute service to the area;

6. A description of the service proposed to be discontinued, of the existing service available to the exchange or part of exchange involved, and of the service of the applying utility or others which would remain in the event approval is granted.

22.16(2) If after 30 days of the filing of such notice no action is taken by the board, the discontinuance may take place as proposed.

22.16(3) The board, on its own motion or at the request of the consumer advocate or affected customer, may hold a hearing on such discontinuance.

[**ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.17(476) Resale of service.

22.17(1) Any landlord, owner, tenant association, or otherwise affiliated group shall be permitted to provide communications services within or between one or more buildings with a community of interest. The provision of this service will be treated as a deregulated service, if the following requirements are met:

a. No person within a building or facility providing resale services shall be denied access to the local exchange carrier. The local exchange carrier shall provide service at normal tariffed rates to the point of demarcation. The end-user shall be responsible for service beyond that point. However, no person shall unreasonably inhibit the end-user's access to the local exchange carrier.

b. Telephone rates charged to resale providers of communications services under this rule shall be made on the same basis as business service.

c. "Community of interest" will normally be indicated by joint or common ownership, but any other relevant factors may be considered.

22.17(2) Any interested person may request formal complaint proceedings with respect to any existing or proposed resale arrangement under this rule. Complaints may concern, but are not limited to:

a. Whether the reseller is, in fact, a local exchange carrier in its own right, as demonstrated by limitations on access to the original local exchange carrier, the geographical area of the offering, or other relevant factors; and

b. Whether the reseller is allowing access to the local exchange carrier on reasonable terms.

199—22.18(476) Low-income connection assistance program. Rescinded IAB 12/31/97, effective 1/1/98.

199—22.19(476) Alternative operator services.

22.19(1) *Definitions.* The definitions found in Iowa Code section 476.91 apply to this rule.

22.19(2) *Tariffs.* Alternative operator service companies must provide service pursuant to board-approved tariffs covering both rates and service.

22.19(3) *Blocking.* AOS companies shall not block the completion of calls which would allow the caller to reach a long distance telephone utility different from the AOS company. All AOS company contracts with contracting entities must prohibit call blocking by the contracting entity. The contracting entity shall not violate that contract provision.

22.19(4) *Posting.* Contracting entities must post on or in close proximity to all telephones served by an AOS company the following information:

a. The name and address of the AOS company;

b. A customer service number for receipt of further service and billing information; and

c. Dialing directions to the AOS operator for specific rate information.

Contracts between AOS companies and contracting entities shall contain provisions for posting the information. The AOS companies also are responsible for the form of the posting and shall make reasonable efforts to ensure implementation, both initially and on an updated basis.

22.19(5) *Oral identification.* All AOS companies shall announce to the end-user customer the name of the provider carrying the call and shall include a sufficient delay period to permit the caller to terminate the call or advise the operator to transfer the call to the end-user customer's preferred carrier before billing begins.

22.19(6) *Billing.* All AOS company bills to end-user customers shall comply with the following requirements, in addition to the requirements of subrule 22.4(3):

a. All calls, except those billed to commercial credit cards, shall be itemized and identified separately on the bill. All calls will be rated solely from the end-user customer's point of origin to point of termination.

b. All bills, except those for calls billed to commercial credit cards, shall be rendered within 60 days of the provision of the service.

c. All charges for the use of a telephone instrument shall be shown separately for each call, except for calls billed to a commercial credit card.

22.19(7) *Emergency calls.* All AOS companies shall have a board-approved methodology to ensure the routing of all emergency zero-minus (0 -) calls in the fastest possible way to the proper local emergency service agency.

[**ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.20(476) Service territories. Service territories are defined by the telephone exchange area boundary maps on file with the Iowa utilities board. The maps will be available for viewing at the board's office during regular business hours and copies are available at the cost of reproduction. This rule does not apply to resale of local telephone service pursuant to rule 199—22.17(476).

22.20(1) *Issuance of certificates of authority to utilities on or prior to September 30, 1992.* The initial nonexclusive certificate of authority will be issued by the board on or before September 30, 1992, to each land-line telephone utility providing local telecommunications service in Iowa. The certificate will authorize service within the territory as shown by boundary maps in effect on January 1, 1992, but will reference and include modifications approved by the board prior to the issuance of the certificate. The certificate will be in the form of an order issued by the board and may be modified only by subsequent board orders.

If a utility disputes the boundary identified in the January 1, 1992, maps or in a certificate, it may file an objection with the board. After notice to interested persons and an opportunity for hearing, the board will determine the boundary.

22.20(2) *Procedures to revise maps and modify certificates.* All territory in the state shall be served by a local exchange utility and inappropriate overlaps of service territories are to be avoided.

a. When the board, after informal investigation, determines a significant gap or overlap exists on the maps on file defining service territories, affected utilities and interested persons, including affected customers, will be notified. The board will direct the affected utilities to file a proposed boundary within 30 days, if the utilities can agree.

b. The boundary filing must include the name of each affected customer and justification for the proposed boundary, including a detailed statement of why the proposal is in the public interest. Prior to filing with the board, the serving utilities must notify interested persons of a convenient location where they can view the current and proposed maps, or copies of the maps covering their location must be mailed to them. The notice shall state the nature of the boundary filing and that any objections must be mailed to the board postmarked within 14 days of the mailing of the notice by the utility. The utility's filing shall also include a copy of the notice and the date on which the notice was mailed to customers.

c. Upon board approval of the proposed boundary, the affected utilities shall file revised maps which comply with subrule 22.20(3) and, upon approval of the maps, the board will modify the certificates.

d. If the utilities cannot agree on the boundary, or if an interested person timely mails material objections to the proposed boundary, the board will resolve the issues in contested case proceedings to revise the maps and modify the certificates after notice of the proceedings to all affected utilities and interested persons.

e. A voluntary modification petition filed jointly by all affected utilities pursuant to 1992 Iowa Acts, Senate File 511, shall contain the information required in 22.20(2)*"b."* The notice and hearing requirements in 22.20(2)*"b"* through *"d"* shall be observed in voluntary modification proceedings.

f. A post-January 1, 1992, map will not be effective in defining a utility's service territory until approved by the board.

22.20(3) *Map specifications.* All ILECs shall have on file with the board maps which identify their exchanges and both internal exchange boundaries where the utility's own exchanges abut and ultimate boundaries where the utility's exchanges abut other utilities. A CLEC shall either file its own exchange boundary map or adopt the exchange boundary map filed by the ILEC serving that exchange.

a. If a utility files a paper boundary map, the map shall be on a scale of one inch to the mile. If a utility files a boundary map in an electronic format, the relevant scale shall be noted in the filing. Boundary maps shall include information equivalent to the county maps which are available from the Iowa department of transportation, showing all roads, railroads, waterways, plus township and range lines outside the municipalities. A larger scale shall be used where necessary to clarify areas. All map details shall be clean-cut and readable.

(1) Each filed map shall clearly show the ultimate utility boundary line; this line shall be periodically marked with the letter "U." Exchange boundaries where the utility's own exchanges abut shall be periodically marked with the letter "E." Ultimate and exchange boundary lines shall be drawn on a section, half-section, or quarter-section line. If not, the distance from a section line or other fixed reference point shall be clearly noted. When using a fixed reference point, measurement shall always be from the center of the fixed point.

(2) The map shall also identify the utility serving each contiguous exchange. The utility names shall be placed about the exterior of the ultimate boundary. The points at which the adjacent exchange meets the ultimate boundary will be marked with arrows.

(3) Plant facilities shall not be shown on the boundary map. Approximate service locations may be shown but are not required.

(4) The name of the utility filing the map shall be placed in the upper right corner of the map. This will be followed by the names of each exchange shown on the map and served by that utility. The last item will be the date the map is filed and the proposed effective date, which will be 30 days after the filing date unless the board sets a different date.

b. If requested by the board, a legal description shall be filed to clarify an ambiguous boundary between utilities. The legal description shall conform with the standards set in Iowa Code section 114A.9.

22.20(4) *Certificate modifications.* Two local exchange utilities may transfer the service territory boundaries and customers from one utility to another after affected customers have been notified and are given an opportunity for a hearing before the board. A certificate modification shall be approved if the board finds that the transfer will result in adequate service to affected customers, the transfer is in the public interest, and the provisions of paragraph 22.23(2)*"e"* have been followed. If the certificate modification involves an ILEC, the ILEC shall file revised boundary maps.

After July 1, 2014, a local exchange utility may expand its service territory by filing a notice of the expansion with the board and by providing that notice to affected utilities. The notice shall list the exchanges where the utility currently provides ILEC and CLEC service and shall provide the names of the exchanges where the utility proposes to expand its competitive service area.

a. Filing instructions. The notice of the expansion shall be filed using the board's electronic filing system in accordance with rule 199—14.9(17A,476). The filing shall be titled "Proposed Expansion of Competitive Service Area," with a reference to the year for which the notice is filed. The board's records and information center will assign each filing an ES docket number, signifying "Expansion of Service Areas." Unless docketed by the board for further investigation, a letter approving the notice and modifying the utility's certificate will be issued within 30 days of the filing. ES dockets are not subject to protection from public disclosure.

b. Conservation of numbering resources. A utility proposing to expand its competitive service area shall not apply for numbering resources in those exchanges until its provision of local exchange service to customers becomes imminent.

22.20(5) *Certificate revocation.* Any five subscribers or potential subscribers, an interexchange utility, or consumer advocate upon filing a sworn statement showing a generalized pattern of inadequate telephone service or facilities may petition the board to begin formal certificate revocation proceedings

against a local exchange utility. For the purposes of this rule, inadequate telephone service or facilities may include the failure to bill high-volume intrastate access (HVAS) charges in a manner consistent with the requirements of rule 199—22.14(476). While similar in nature to a complaint filed under rule 199—6.2(476), a petition under this rule shall be addressed by the board under the following procedure and not the procedure found in 199—Chapter 6.

a. Upon receiving a petition, the board will make an informal preliminary investigation into the adequacy of the service and facilities provided by a local exchange utility. The board also may begin an informal preliminary investigation on its own motion at any time.

b. Prior to beginning formal revocation proceedings under 1992 Iowa Acts, Senate File 511, the board will provide notice to the utility of any alleged inadequacies in its service. The utility may admit or deny the allegations. If admitted, the utility will have a reasonable time to eliminate the inadequacies. If denied, the utility will have the opportunity to refute the allegations in contested case proceedings after mailed notice and an opportunity to intervene for the utility's affected customers.

c. If the board does not issue the notice of alleged inadequacies to the utility as provided in 22.20(2)*"b"* within 60 days after the filing of the petition, the petition will be deemed denied.

d. If the board finds significant inadequacies in service or facilities in any certificate revocation contested case, the utility will be allowed a reasonable time to eliminate the inadequacies.

e. If the utility fails to eliminate significant inadequacies in service or facilities within a reasonable time, the board, after mailed notice to all parties in the contested case, or to affected customers if the utility admitted the inadequacies, and after an opportunity for hearing, may revoke or condition the certificate as provided in 1992 Iowa Acts, Senate File 511.

f. Proceedings under this subrule may be combined with proceedings under subrule 22.20(4), or similar certification proceedings initiated on the board's own motion, to consider an appropriate replacement utility simultaneously with the revocation case.

[**ARC 7826B**, IAB 6/3/09, effective 7/8/09; **ARC 8871B**, IAB 6/30/10, effective 8/4/10; **ARC 2180C**, IAB 10/14/15, effective 11/18/15]

199—22.21(476) Toll dialing patterns. All local exchange utilities shall use the dialing pattern, 0 or 1 plus ten digits, for all toll calls either within a single numbering plan area or from one numbering plan area to another.

199—22.22(476) Requests for interconnection negotiations. Rescinded IAB 8/28/96, effective 8/2/96.

199—22.23(476) Unauthorized changes in telephone service.

22.23(1) *Definitions.* As used in this rule, unless the context otherwise requires:

"Change in service" means the designation of a new provider of a telecommunications service to a customer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a customer account.

"Consumer" means a person other than a service provider who uses a telecommunications service.

"Cramming" means the addition or deletion of a product or service for which a separate charge is made to a telecommunication customer's account without the verified consent of the affected customer. Cramming does not include the addition of extended area service to a customer account pursuant to board rules, even if an additional charge is made. Cramming does not include telecommunications services that are initiated or requested by the customer, including dial-around services such as "10-10-XXX," directory assistance, operator-assisted calls, acceptance of collect calls, and other casual calling by the customer.

"Customer" means the person other than a service provider whose name appears on the account and others authorized by that named person to make changes to the account.

"Executing service provider" means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider or from its own customer.

"Jamming" means the addition of a preferred carrier freeze to a customer's account without the verified consent of the customer.

"Letter of agency" means a written document complying with the requirements of 199 IAC 22.23(2)*"b."*

"Preferred carrier freeze" means the limitation of a customer's preferred carrier choices so as to prevent any change in preferred service provider for one or more services unless the customer gives the service provider from which the freeze was requested the customer's express consent.

"Service provider" means a person providing a telecommunications service, not including commercial mobile radio service.

"Slamming" means the designation of a new provider of a telecommunications service to a customer, including the initial selection of a service provider, without the verified consent of the customer. "Slamming" does not include the designation of a new provider of a telecommunications service to a customer made pursuant to the sale or transfer of another carrier's customer base, provided that the designation meets the requirements of 199 IAC 22.23(2)*"e."*

"Soft slam" means an unauthorized change in service by a service provider that uses the carrier identification code (CIC) of another service provider, typically through the purchase of wholesale services for resale.

"Submitting service provider" means a service provider who requests another service provider to execute a change in service.

"Telecommunications service" means a local exchange or long distance telephone service other than commercial mobile radio service.

"Verified consent" means verification of a customer's authorization for a change in service.

22.23(2) *Prohibition of unauthorized changes in telecommunications service.* Unauthorized changes in telecommunications service, including but not limited to cramming and slamming, are prohibited.

a. Verification required. No service provider shall submit a preferred carrier change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with one of the following procedures:

(1) The service provider has obtained the customer's written authorization in a form that meets the requirements of 199 IAC 22.23(2)*"b"*; or

(2) The service provider has obtained the customer's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in subparagraph (1) above. Service providers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or

(3) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data. The independent third party must not be owned, managed, controlled, or directed by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred carrier change; or

(4) The local service provider may change the preferred service provider, for customer-originated changes to existing accounts only, through maintenance of sufficient internal records to establish a valid customer request for the change in service. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification of the identification of the person requesting the change in service. The burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service.

All verifications shall be maintained for at least two years from the date the change in service is implemented. Verification of service freezes shall be maintained for as long as the preferred carrier freeze is in effect.

(5) For other changes in service resulting in additional charges to existing accounts only, a service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification under the circumstances of the identification of the person requesting the change in service. Any of the three verification methods in 22.23(2)*"a"*(1) to (3) will also be acceptable. The burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service. Where the additional charge is for one or more specific telephone calls, examples of internal records a carrier may submit include call records showing the origin, date, time, destination, and duration of the calls, and any other data the carrier relies on to show the calls were made or accepted by the customer, along with an explanation of the records and data.

b. Letter of agency form and content.

(1) A service provider may use a letter of agency to obtain written authorization or verification of a customer's request to change the customer's preferred service provider selection. A letter of agency that does not conform with this subrule is invalid for purposes of this rule.

(2) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in subparagraph (5) below having the sole purpose of authorizing a service provider to initiate a preferred service provider change. The letter of agency must be signed and dated by the customer to the telephone line(s) requesting the preferred service provider change.

(3) The letter of agency shall not be combined on the same document with inducements of any kind.

(4) Notwithstanding subparagraphs (2) and (3) above, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in subparagraph (5) below and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a preferred service provider change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(5) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

1. The customer's billing name and address and each telephone number to be covered by the preferred service provider change order;

2. The decision to change the preferred service provider from the current service provider to the soliciting service provider;

3. That the customer designates [insert the name of the submitting service provider] to act as the customer's agent for the preferred service provider change;

4. That the customer understands that only one service provider may be designated as the customer's interstate or interLATA preferred interexchange service provider for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred service providers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange), the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

5. That the customer understands that any preferred service provider selection the customer chooses may involve a charge to the customer for changing the customer's preferred service provider.

(6) Any service provider designated in a letter of agency as a preferred service provider must be the service provider directly setting the rates for the customer.

(7) Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current service provider.

(8) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

c. Customer notification. Every change in service shall be followed by a written notification to the affected customer to inform the customer of the change. Such notice shall be provided within 30 days of the effective date of the change. Such notice may include, but is not limited to, a conspicuous written statement on the customer's bill, a separate mailing to the customer's billing address, or a separate written statement included with the customer's bill. Each such statement shall clearly and conspicuously identify the change in service, any associated charges or fees, the name of the service provider associated with the change, and a toll-free number by which the customer may inquire about or dispute any provision in the statement.

d. Preferred carrier freezes.

(1) A preferred service provider freeze (or freeze) prevents a change in a customer's preferred service provider selection unless the customer gives the service provider from whom the freeze was requested express consent. All local exchange service providers who offer preferred service provider freezes must comply with the provisions of this subrule.

(2) All local exchange service providers who offer preferred service provider freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customer's service provider selections.

(3) Preferred service provider freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred service provider freeze. The service provider offering the freeze must obtain separate authorization for each service for which a preferred service provider freeze is requested.

(4) Solicitation and imposition of preferred service provider freezes.

1. All solicitation and other materials provided by a service provider regarding preferred service provider freezes must include:

- An explanation, in clear and neutral language, of what a preferred service provider freeze is and what services may be subject to a freeze;
- A description of the specific procedures necessary to lift a preferred service provider freeze; an explanation that these steps are in addition to the verification requirements in 22.23(2)*"a"* and 22.23(2)*"b"* for changing a customer's preferred service provider selections; and an explanation that the customer will be unable to make a change in service provider selection unless the freeze is lifted; and
- An explanation of any charges associated with the preferred carrier freeze.

2. No local exchange carrier shall implement a preferred service provider freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

- The local exchange carrier has obtained the customer's written and signed authorization in a form that meets the requirements of 22.23(2)*"d"*(4)"3"; or
- The local exchange carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the preferred service provider freeze is to be imposed, to impose a preferred service provider freeze. The electronic authorization shall confirm appropriate verification data and the information required in 22.23(2)*"d"*(4)"3." Service providers electing to confirm preferred service provider freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the preferred service provider freeze request, including automatically recording the originating automatic numbering identification; or
- An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred service provider freeze and confirmed the appropriate verification data and the information required in 22.23(2)*"d"*(4)"3." The independent third party must not be owned, managed, or directly controlled by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred service provider freeze requests for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content

of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred service provider freeze.

3. A local exchange service provider may accept a written and signed authorization to impose a freeze on the customer's preferred service provider selection. Written authorization that does not conform with this subrule is invalid and may not be used to impose a preferred service provider freeze.

- The written authorization shall comply with 22.23(2)*"b"*(5)"2" and "3" and 22.23(2)*"b"*(8) concerning the form and content for letters of agency.
- At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms: (1) the customer's billing name and address and the telephone number(s) to be covered by the preferred service provider freeze; (2) the decision to place a preferred service provider freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred service provider freezes on additional preferred service provider selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen; (3) that the customer understands that the customer will be unable to make a change in service provider selection unless the preferred service provider freeze is lifted; and (4) that the customer understands that any preferred carrier freeze may involve a charge to the customer.

(5) All local exchange service providers who offer preferred service provider freezes must, at a minimum, offer customers the following procedures for lifting a preferred service provider freeze:

1. A local exchange service provider administering a preferred service provider freeze must accept a customer's written and signed authorization stating the intention to lift a preferred service provider freeze; and

2. A local exchange service provider administering a preferred service provider freeze must accept a customer's oral authorization stating the intention to lift a preferred carrier freeze and must offer a mechanism that allows a submitting service provider to conduct a three-way conference call with the service provider administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a preferred service provider freeze, the service provider administering the freeze shall confirm appropriate verification data and the customer's intent to lift the particular freeze.

e. Procedures in the event of sale or transfer of customer base. A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's customer base without obtaining each customer's authorization in accordance with 199 IAC 22.23(2)*"a,"* provided that the acquiring carrier complies with the following procedures. A telecommunications carrier may not use these procedures for any fraudulent purpose, including any attempt to avoid liability for violations under 199 IAC 22.23(2)*"a."*

(1) No later than 30 days before the planned transfer of the affected customers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the board a letter notifying the board of the transfer and providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected customers, and the date of the transfer of the customer base to the acquiring carrier. In the letter, the acquiring carrier also shall certify compliance with the requirement to provide advance customer notice in accordance with 199 IAC 22.23(2)*"e"*(3) and with the obligations specified in that notice. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected customers.

(2) If, subsequent to the filing of the letter of notification with the board required by 199 IAC 22.23(2)*"e"*(1), any material changes to the required information develop, the acquiring carrier shall file written notification of these changes with the board no more than 10 days after the transfer date announced in the prior notification. The board may require the acquiring carrier to send an additional notice to the affected customers regarding such material changes.

(3) Not later than 30 days before the transfer of the affected customers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected customer. The acquiring carrier must fulfill the obligations set forth in the written notice. The written notice must inform the customer of the following:

1. The date on which the acquiring carrier will become the customer's new provider of telecommunications service;

2. The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the customer's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the customer of any change(s) to these rates, terms, and conditions;

3. The acquiring carrier will be responsible for any carrier change charges associated with the transfer;

4. The customer's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available;

5. All customers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the customers must contact their local service providers to arrange a new freeze;

6. Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier; and

7. The toll-free customer service telephone number of the acquiring carrier.

22.23(3) *Carrier registration.*

a. Registration required. Each carrier that provides or bills for telecommunications services to customers located in Iowa shall register with the board and shall provide, at a minimum, the information specified in the form that appears in this subrule.

DEPARTMENT OF COMMERCE

UTILITIES BOARD

TELECOMMUNICATIONS SERVICE PROVIDER REGISTRATION

1. FULL NAME OF CARRIER PROVIDING SERVICE IN IOWA:

_____

2. CARRIER MAILING ADDRESS (including 9-digit ZIP code):

_____

_____

_____

3. NAME, TITLE, TELEPHONE NUMBER, E-MAIL ADDRESS, AND FAX NUMBER OF CONTACT PERSON:

_____

_____

_____

_____

4. ALL TRADE NAMES OR D/B/A'S USED BY CARRIER IN IOWA OR IN ADVERTISING OR BILLING THAT MAY REACH IOWA CUSTOMERS:

_____

_____

5. NAME, MAILING ADDRESS, AND TELEPHONE NUMBER OF AGENT IN IOWA AUTHORIZED TO ACCEPT SERVICE OF PROCESS ON BEHALF OF CARRIER:

_____

_____

_____

6. TYPES OF TELECOMMUNICATIONS SERVICE PROVIDED (CHECK ALL THAT APPLY):
____ LOCAL EXCHANGE SERVICE
____ INTEREXCHANGE SERVICE
____ DATA TRANSMISSION
____ ALTERNATIVE OPERATOR SERVICES ONLY
____ OTHER—PLEASE SPECIFY:_____
7. ATTESTATION. I, _____, certify that I am the company officer responsible for this registration, that I have examined the foregoing registration, and that to the best of my knowledge, information, and belief the information is accurate and will be updated as required.
Dated ____/____/____
SIGNATURE_____

b. Failure to register. Failure to file and reasonably update a registration, or provision of false, misleading, or incomplete information, may result in civil penalties under 22.23(5) and may be considered as evidence of a pattern or practice of violation of these rules.

22.23(4) *Subscriber complaints regarding changes in service—procedures.* When a telecommunications service provider is contacted by an Iowa customer alleging an unauthorized change in service, the service provider shall inform the customer of the customer's right to contact the board regarding the complaint. The service provider shall provide the customer with the board's toll-free number for complaints, (877)565-4450.

When a subscriber submits to the board a written complaint alleging an unauthorized change in service, the complaint will be processed by the board pursuant to 199—Chapter 6, "Complaint Procedures."

22.23(5) *Civil penalties and assessment of damages.*

a. Civil penalties. In addition to any applicable civil penalty set out in Iowa Code section 476.51, a service provider who violates a provision of the anti-slamming statute, a rule adopted pursuant to the anti-slamming statute, or an order lawfully issued by the board pursuant to the anti-slamming statute is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than $10,000 per violation. Each violation is a separate offense.

b. Amount. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

c. Collection. A civil penalty collected pursuant to this subrule shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for consumer education programs administered by the board.

d. Exclusion from regulated rates. A penalty paid by a rate-of-return regulated utility pursuant to this subrule shall be excluded from the utility's costs when determining the utility's revenue requirement and shall not be included either directly or indirectly in the utility's rates or charges to its customers.

e. Civil actions. The board shall not commence an administrative proceeding to impose a civil penalty under this rule for acts subject to a civil enforcement action pending in court under Iowa Code section 714D.7.

f. Assessment of damages among interested persons. As a part of formal complaint proceedings, the board may determine the potential liability, including assessment of damages, for unauthorized changes in service among the customer, the previous service provider, the executing service provider, the submitting service provider, and any other interested persons. In the event of a soft slam, the board may impose joint and several liability on the reseller and the facilities-based service provider. For purposes of this rule and in the absence of unusual circumstances, the term "damages" means charges directly relating to the telecommunications services provided to the customer that have appeared or may appear on the customer's bill. The term "damages" does not include incidental, consequential, or punitive damages.

22.23(6) *Penalties for patterns of violations.* If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of these rules, the board may by order do any of the following:

a. Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

b. Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

c. Limit the billing or access services prohibition under paragraph *"a"* or *"b"* above to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

d. Revoke the certificate of public convenience and necessity of a local exchange service provider.

22.23(7) *Service provider complaints regarding changes in service.* When a service provider files a written complaint charging another service provider with causing unauthorized changes in end user services to the detriment of the complaining service provider, the complaint will be processed pursuant to 199—Chapter 6, "Complaint Procedures," except that any party to the proceeding may petition the board for an order initiating formal complaint proceedings at any time, regardless of the status of the informal complaint proceedings. The board will grant such petitions or enter such an order on its own motion if the board finds that informal complaint proceedings are unlikely to aid in the resolution of the complaint.

199—22.24(476) Applications for numbering resources.

22.24(1) *Application to be filed with the board.* Any communications service provider, including but not limited to local exchange carriers, wireless service providers, and paging companies, applying for numbering resources with the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator (PA) shall send a draft application or executed application to the board by facsimile transfer or electronic mail at least two days prior to the date on which the original application is to be received by the NANPA or PA. A draft application shall contain substantially the same information that is to be contained in an executed application. The application may be faxed to (515)725-7399 or E-mailed to customer@iub.iowa.gov. Electronic submissions shall include "NANPA Application" or "PA Application" in the subject line.

22.24(2) *Confidential treatment.* The information contained in the draft applications or executed applications for numbering resources shall be held as confidential for a period of 90 days or until the new codes are entered into the local exchange routing guide (LERG), whichever is later.

22.24(3) *Content.* Each application filed with the board under this rule shall include a reference to this rule and sufficient information to identify the service provider and a contact person.

[Editorial change: IAC Supplement 12/29/10]

These rules are intended to implement Iowa Code sections 476.1 to 476.3, 476.5, 476.6, 476.8, 476.9, 476.29, 476.91, and 546.7 and Iowa Code Supplement section 476.103.

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RACING AND GAMING COMMISSION[491]

[Prior to 11/19/86, Chs 1 to 10, see Racing Commission[693]; Renamed Racing and Gaming Division [195] under the "umbrella" of Commerce, Department of [181], 11/19/86]
[Prior to 12/17/86, Chs 20 to 25, see Revenue Department[730] Chs 91 to 96]
[Transferred from Commerce Department[181] to the Department of Inspections and Appeals "umbrella"[481] pursuant to 1987 Iowa Acts, chapter 234, section 421]
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[Prior to 11/19/86, Racing Commission[693]]
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491—7.1(99D) Terms defined. As used in these rules, unless the context otherwise requires, the following definitions apply:

"Bertillion card" means a card that lists the identifying features of a greyhound.

"Bolt" means when a greyhound leaves the race course during the running of an official race.

"Commission" means the racing and gaming commission.

"Dead heat" means when two or more greyhounds reach the finish line of a race at the same time.

"Double entry" means entry of two or more greyhounds in the same race from the same kennel or same owner that are separate wagering interests.

"Draw" means the process of selecting runners and the process of assigning post positions in a manner to ensure compliance with the conditions of the rules of racing.

"Entrance fee" means a fee set by the facility that must be paid in order to make a greyhound eligible for a stakes race.

"Facility" means an entity licensed by the commission to conduct pari-mutuel wagering or gaming operations in Iowa.

"Facility premises" means all real property utilized by the facility in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, kennel area, parking lots, and any other areas under the jurisdiction of the commission.

"Foreign substance" means any drug, medicine, or any other substance uncommon to the greyhound's body which can or may affect the racing condition of a greyhound or which can or may affect sampling or testing procedures.

"Forfeit" means money due but lost because of an error, fault, neglect of duty, breach of contract, or a penalty.

"Greyhound" means a greyhound registered with the National Greyhound Association.

"Licensee" means a person that has been issued a current license to participate in racing in Iowa.

"Lock-out kennel" means the secure and restricted area within the paddock used to temporarily house entered greyhounds prior to their participation in the current performance.

"NGA" means the National Greyhound Association.

"No Race" means a race canceled for any reason by the stewards.

"Owner" means any person or entity that holds any title, right of interest, whole or partial, in a greyhound, including the lessee and lessor of a greyhound.

"Post position" means the position assigned to a greyhound for the start of the race.

"Post time" means the scheduled starting time for a contest.

"Rule off" means the act of barring a greyhound from the premises of a facility and denying all racing privileges.

"Scratch" means the act of withdrawing an entered greyhound from a race after the program is printed.

"Tote/totalizator" means the machines that sell mutuel tickets and the board on which the approximate odds are posted.

491—7.2(99D) Facility's responsibilities.

7.2(1) *Racetrack.* Each facility shall provide a race course which:

a. Is constructed and elevated in a manner that is safe and humane for greyhounds.

b. Has a surface, including cushion subsurface and base, constructed of materials and to a depth that adequately provides for the safety of the greyhounds.

c. Has a drainage system that is approved by the commission.

d. Must be approved by the commission and be subject to periodic inspections by the stewards.

7.2(2) *Equipment.* Each facility shall install, maintain in good working condition, and provide for qualified personnel to operate the following equipment:

a. Equipment necessary to produce adequate video recordings of the prerace blanket and muzzle inspection and the entire race from start to finish. Video recordings shall be retained and secured by the facility until the first day of the following racing season.

b. Communications systems between the stewards, mutuel department, starting box, public address announcer, paddock, and necessary on-track racing officials.

c. A starting box and mechanical lure approved by the commission.

7.2(3) *Vacancies.*

a. When a vacancy occurs among the racing officials other than the stewards prior to post time of the first race of the day, or when a vacancy occurs after the racing of the day has started, the facility shall immediately fill the vacancy, subject to approval by the board of stewards. Permanent changes of racing officials during the racing meet shall be requested in writing by the facility subject to the written approval of the administrator or commission representative before the change occurs.

b. If none of the stewards are present prior to post time of the first race of the day, the management of the facility shall name at least three qualified persons to serve during the absence of the stewards and immediately file a full written report of the absence and the names of the replacements to the commission.

7.2(4) *Other responsibilities.*

a. The facility shall provide an area located within a reasonable proximity of the paddock for the purpose of collecting body fluid samples for any tests required by the commission. The location, arrangement, and furnishings, including refrigeration and hot and cold running water, must be approved by the commission.

b. The facility shall take such measures needed to maintain the security of the greyhounds while on facility premises to protect them from injury, vexing, or tampering.

c. The facility shall exclude all persons from the kennel compound area who have no designated duty or authority with the greyhounds in the compound area and are not representatives of the commission, racing officials, duly authorized licensed employees, or guests with facility-approved passes.

d. The facility shall periodically, or whenever the stewards deem necessary, remove soiled surface materials from runs, the detention area for collection of samples, and exercise areas and replace with clean surface materials.

491—7.3(99D) Racing officials—duties.

7.3(1) *Racing officials—general.*

a. The officials of a race meeting shall include: the stewards; commission veterinarian; commission veterinary assistants; director of racing; mutuel manager; racing secretary; assistant racing secretary; chart writer; paddock judge; clerk of scales; lure operator; brakeman; photo finish operator/timer; starter; patrol judge; and kennel master.

b. All racing officials, except the state stewards, commission veterinarian and commission veterinary assistants, shall be appointed by the facility. Appointments by the facility are subject to the approval of the commission or commission representative. The commission or commission representative may demand a change of personnel for what the commission deems good and sufficient reason. The appointment of a successor to racing officials shall be subject to the approval of the administrator or commission representative.

c. Racing officials are prohibited from the following activities:

(1) Having any interest in the sale, lease, purchase, or ownership of any greyhound racing at the meeting, or its sire or dam.

(2) Wagering on the outcome of a race at the facility where they are employed.

(3) Owning a business or being employed by a business that does business with the facility.

(4) Accepting or receiving money or anything of value for assistance in connection with the racing official's duties.

7.3(2) *Stewards.*

a. There shall be three stewards for each racing meet, two of whom shall be appointed by the commission and one who shall be nominated by the facility for approval by the commission or commission representative.

b. The laws of Iowa and the rules of the commission supersede the conditions of a race. In matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the facility.

c. The stewards shall have the authority to interpret the rules and to decide all questions not specifically covered by the rules.

d. All questions pertaining to the extent of the stewards' authority shall be determined by a majority of the stewards.

e. The stewards shall have the authority to regulate owners, trainers, kennel helpers, all other persons attendant to greyhounds, racing officials, and licensed personnel of the racing meet and those persons addressed by 491—paragraph 4.6(5)*"e."*

f. The stewards shall have the authority to determine all questions arising with reference to entries and racing.

g. The stewards shall have the authority to call for proof that a greyhound is neither itself disqualified in any respect, nor nominated by, nor the property, wholly or in part, of a disqualified person, and in default of proof being given to their satisfaction, they may declare the greyhound disqualified.

h. The stewards shall have the authority to order at any time an examination of any greyhound entered for a race or which has run in a race.

i. The stewards shall take notice of any questionable conduct, with or without complaint, and shall investigate promptly and render a decision on every objection and on every complaint made to them.

j. The stewards, in order to maintain necessary safety and health conditions and to protect the public confidence in greyhound racing as a sport, shall have the right to authorize a person(s) on their behalf to enter into or upon the buildings, kennels, rooms, motor vehicles, trailers, or other places within the premises of a facility, to examine same, and to inspect and examine the person, personal property, and effects of any person within such place, and to seize any illegal articles or any items as evidence found.

k. The steward(s) present shall appoint one or two persons to serve as temporary stewards if a vacancy or vacancies occur among the stewards.

l. The stewards may excuse a greyhound, after it has left the paddock for the post, if they consider the greyhound injured, disabled, or unfit to run. All money on the greyhound shall be refunded.

m. The stewards shall determine the finish of a race by the relative position of the muzzle, or nose if the muzzle is lost or hanging, of each greyhound. They shall immediately notify the mutuel department of the numbers of the first three (four in races with superfecta wagering) greyhounds.

(1) The stewards shall promptly display the numbers of the first three (four in races with superfecta wagering) greyhounds in each race in order of their finishes. If the stewards differ in their placing, the majority shall prevail.

(2) The stewards may consult a picture from the photo finish camera whenever they consider it advisable; however, in all cases, the camera is merely an aid and the decision of the stewards shall be final.

(3) The stewards may post, without waiting for a picture, such placements as are in their opinion unquestionable and, after consulting the picture, make other placements. However, in no case shall the race be declared official until the stewards have determined the greyhounds finishing first, second and third (and fourth in races with superfecta wagering).

(4) The stewards may correct an error before the display of the sign "Official" or recall the sign "Official" in case it has been displayed through error.

n. The stewards may place any greyhound on the schooling list at any time for any reason that, in their opinion, warrants such action.

7.3(3) *Commission veterinarian and veterinary assistants.*

a. The commission veterinarian shall advise the commission and the stewards on all veterinary matters.

b. The commission veterinarian shall be on the premises of the facility at weigh-in time and during all racing hours. The veterinarian shall examine the physical condition of each greyhound at weigh-in time, observe each greyhound as it enters the lock-out kennel, and reexamine the greyhound when the greyhound enters the paddock prior to the race, and recommend to the stewards that any greyhound deemed unsafe to race or physically unfit to produce a satisfactory effort in a race be scratched.

c. The commission veterinarian shall place any greyhound determined to be sick or have a communicable disease, or any greyhound deemed unsafe, unsound, or unfit, on a veterinarian's list which shall be posted in a conspicuous place available to all owners, trainers, and racing officials. Once a greyhound has been placed on the veterinarian's list, it must remain on the list for at least three calendar days and may be allowed to race only after it has been removed from the list by the commission veterinarian.

d. The commission veterinarian shall have full access to each and every kennel where greyhounds are kenneled on the facility premises. The commission veterinarian shall inspect the general physical condition of the greyhounds, sanitary conditions of the kennels, segregation of female greyhounds in season, segregation of sick greyhounds, the types of medicine found in use, incidents of cruel and inhumane treatment, and any other matters or conditions which are brought to the attention of the commission veterinarian.

e. The commission veterinarian shall have supervision and control of the detention area for collection of body fluid samples for the testing of greyhounds for prohibited medication.

f. The commission veterinarian shall not be licensed to participate in racing in any other capacity. A commission veterinarian may not prescribe any medication for, or treat, any greyhound owned by a person licensed by the commission, on or away from any facility, with or without compensation, except in the case of an emergency; this provision does not apply to a relief veterinarian appointed by the administrator to cover the absence of the commission veterinarian. When emergency treatment is given, a commission veterinarian shall make a complete written report to the stewards. Euthanasia of greyhounds shall not be considered treatment.

g. The commission veterinarian shall conduct a postmortem examination on every greyhound to determine the injury or sickness which resulted in the euthanasia or death if:

(1) A greyhound suffers a breakdown on the racetrack.

(2) A greyhound expires while kenneled on facility premises.

h. Commission veterinary assistant. The commission veterinarian may employ persons to assist in maintaining the detention area and collecting body fluid samples.

7.3(4) *Director of racing.*

a. The director of racing shall have full supervision over kennel owners, greyhound owners, trainers, kennel helpers, lead-outs, and all facility racing officials.

b. The director of racing shall ensure that all racing department personnel are properly trained in the discharge of their duties.

7.3(5) *Mutuel manager.* The mutuel manager is responsible for the operation of the mutuel department. The mutuel manager shall ensure that any delays in the running of official races caused by totalizator malfunctions are reported to the stewards. The mutuel manager shall submit a written report on a delay when requested by a state steward.

7.3(6) *Racing secretary and assistant racing secretary.*

a. The racing secretary shall discharge all duties whether expressed or required by the rules and shall keep a complete record of all races.

b. The racing secretary is responsible for maintaining a file of all NGA lease (or appropriate substitute) and ownership papers on greyhounds racing at the meeting. The racing secretary shall inspect all papers and documents dealing with owners and trainers, partnership agreements, appointments of authorized agents, and adoption of kennel names to be sure they are accurate, complete, and up to date. The racing secretary has the authority to demand the production of any documents or other evidence in

order to be satisfied as to their validity and authenticity to ensure compliance with the rules. The racing secretary shall be responsible for the care and security of the papers while the greyhounds are located on facility property. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership or lease of a greyhound filed with the racing secretary shall be available for public inspection.

c. The racing secretary shall ensure that current valid vaccination certificates for diseases, as determined by the commission veterinarian, are submitted for greyhounds housed within facility property. The racing secretary shall also maintain records of vaccinations in such a manner as to notify the stewards, the commission veterinarian, and the trainer of impending expiration ten days prior to the actual date of expiration.

d. The racing secretary shall receive and enter all entries and withdrawals as set forth in this chapter. Conditions of races shall not conflict with commission rules and the racing secretary shall, each day, as soon as the entries have closed and been compiled and the withdrawals have been made, post in a conspicuous place an overnight listing of the greyhounds in each race. The racing secretary shall make every effort to ensure fairness and equal opportunity for all greyhound owners and kennel owners in the drawing of all races.

e. The racing secretary shall not allow any greyhound to start in a race unless the greyhound is entered in the name of the legal owner and the owner's name appears on the registration papers, a legal lease, or bill of sale attached to the registration papers.

f. The racing secretary shall not allow any greyhound to start in a race if it is in any way ineligible or disqualified.

g. Assistant racing secretary. The facility may employ an assistant racing secretary who shall assist the racing secretary in the performance of duties and serve under the supervision of the racing secretary.

7.3(7) *Chart writer.*

a. The chart writer shall compile the information necessary for a program that shall be printed for each racing day. The program shall contain the names of the greyhounds that are to run in each of the races for that day. These names shall appear in the order of their post positions designated by numerals placed at the left.

b. The program or form sheet must carry at least two past performances of each greyhound scheduled to race. The program or form sheet must also contain name; color; sex; date of whelping; breeding; established racing weight; number of starts in official races; number of times finishing first, second and third; name of owner or lessee (if applicable); name of trainer; distance of race; track record; and other information to enable the public to properly judge the greyhound's ability.

c. If a greyhound's name is changed, the new name, together with the former name, shall be published in the official entries and program until after the greyhound has started six times.

7.3(8) *Paddock judge.*

a. The paddock judge shall complete a Bertillion card for each greyhound prior to entering official schooling or an official race, by a physical inspection of each greyhound and comparison with NGA ownership papers. Inconsistencies between the physical inspection and NGA papers shall be noted on the Bertillion card, and significant inconsistencies shall be reported to the stewards.

b. The paddock judge shall fully identify and check, using the Bertillion card index system of identification maintained by the facility, all greyhounds starting in schooling and official races while in the paddock before post time. No greyhound shall be permitted to start in an official schooling race or official race that has not been fully identified and checked against the Bertillion card. The paddock judge shall report to the stewards any greyhound(s) that does not conform to the card index identification.

c. The paddock judge shall provide to the stewards, at the beginning of each race meeting and during the meeting if requested by the stewards due to inaccuracies or exceptional circumstances, written certification of the accuracy of the official scale used for weighing greyhounds.

d. The paddock judge shall supervise the kennel master and lead-outs in the performance of their duties.

e. The paddock judge shall not allow any greyhound to be weighed in unless it has an identification tag attached to its collar indicating the number of the race in which the greyhound is entered and its post position. This tag shall not be removed until the greyhound has been weighed out and blanketed.

f. The paddock judge shall not allow anyone to weigh in a greyhound for racing unless the person has a valid kennel owner's, trainer's, or assistant trainer's license issued by the commission.

g. The paddock judge shall not allow any greyhound to leave the paddock for the starting box unless it is equipped with a regulation muzzle and blanket. The blanket worn by each greyhound shall prominently display the numeral corresponding to the greyhound's assigned post position. The muzzles and blankets used shall be approved by the paddock judge, who shall carefully examine them in the paddock before the greyhound leaves for the post to ensure they are properly fitted and secured.

h. The paddock judge shall keep on hand and ready for use extra muzzles of all sizes, lead straps, and collars.

i. The paddock judge shall assign post positions to lead-outs by lot and maintain a record of all such assignments.

j. The paddock judge shall report all delays and weight violations to the stewards.

7.3(9) *Clerk of scales.*

a. The clerk of scales shall weigh all greyhounds in and out in a uniform manner and observe the weight display and scale platform when reading the weight.

b. The clerk of scales shall post a scale sheet of weights in a conspicuous location promptly after weighing.

c. The clerk of scales shall prevent a greyhound from passing the scales if there should be a weight variation as set forth in subrules 7.9(4), 7.9(5), and 7.9(6). The clerk of scales shall promptly notify the paddock judge of the weight variation, who will report to the stewards any infraction of the rules as to weight or weighing.

d. The clerk of scales shall report all late scratches and weights for display on the tote board or on a bulletin board located in a place conspicuous to the wagering public.

e. The clerk of scales shall ensure that all greyhounds are weighed in and weighed out with a muzzle, collar, and lead strap.

f. The clerk of scales shall keep a list of all greyhounds known by the racing officials to be consistent weight losers while in the lock-out kennel and shall notify the stewards as to the weight loss of any such greyhound before each race.

7.3(10) *Lure operator.*

a. The lure operator shall operate the lure in a smooth, uniform, and consistent manner so as not to impede or otherwise disrupt the running of the race.

b. The lure operator shall ensure that the distance between the lure and lead greyhound is consistent with the distance prescribed by the stewards.

c. The lure operator shall take into consideration the location on the course and the prevailing weather conditions to maintain the appropriate distance of the lure from the lead greyhound.

d. The lure operator shall be held accountable by the stewards for the lure's operation.

e. The lure operator shall determine that the lure is in good operating condition and shall immediately report to the stewards any circumstance that may prevent the normal, consistent operation of the lure.

7.3(11) *Brakeman.*

a. Prior to the running of each race, the brakeman shall:

(1) Ensure that the brake system is in good operating condition, which includes properly unlocking the brake.

(2) Inspect the lure motor for any noticeable malfunctions.

(3) Ensure that the lure is secured and the arm is fully extended into a stable and locked position.

(4) Inspect the rail to ensure that it is in perfect repair and free of debris.

b. The brakeman shall ensure that the arm has retracted and stop the lure in a safe and consistent manner after each race is finished.

7.3(12) *Photo finish operator/timer.*

a. The photo finish operator/timer shall maintain the photo finish and timing equipment in proper working order and shall photograph each race.

b. The photo finish operator/timer shall be responsible for and declare the official time of each race. The time of the race shall be taken from the opening of the doors of the starting box.

c. The timer shall use the time shown on the timing device as the official time of the race if the timer is satisfied that the timing device is functioning properly; otherwise, the timer shall use the time recorded manually with a stopwatch.

7.3(13) *Starter.*

a. The starter shall give orders and take measures not in conflict with commission rules necessary to secure a fair start. There shall be no start until, and no recall after, the doors of the starting box have opened except under subrules 7.12(10) and 7.12(11).

b. The starter shall report causes of delay to the stewards.

7.3(14) *Patrol judge.*

a. The patrol judge shall supervise the lead-outs and greyhounds from paddock to post.

b. The patrol judge, in view of the stewards and the public, shall inspect the muzzles and blankets of greyhounds to ensure muzzles and blankets are properly fitted and secured after the greyhounds have left the paddock.

c. The patrol judge shall assist the starter in the starter's duties upon the arrival of the lead-outs and greyhounds at the starting box.

7.3(15) *Kennel master.*

a. The kennel master shall unlock the prerace lock-out kennels immediately before weigh-in to inspect that the lock-out kennels are in proper working order and that nothing has been deposited in any of the lock-out crates.

b. The kennel master or designee must receive the greyhounds from the trainer, one at a time, and ensure that each greyhound is placed in its lock-out crate and continue to ensure the security of the lock-out area from weigh-in until the time when greyhounds are removed for the last race of a performance.

c. The kennel master shall, on a daily basis, ensure that the lock-out kennels are sprayed, disinfected, maintained in proper sanitary condition, and at an appropriate temperature and climate.

491—7.4(99D) Lead-outs.

7.4(1) A lead-out shall lead the greyhounds from the paddock to the starting box. Owners, trainers, or attendants will not be allowed to lead their own greyhounds.

7.4(2) Each lead-out will lead only one greyhound from the paddock to the starting box during official races. In official schooling races, no more than two greyhounds may be led from the paddock to the starting box by one lead-out.

7.4(3) Lead-outs must handle the greyhounds in a humane manner, put the assigned greyhound in its proper box before the race, and then retire to their designated post during the running of the race.

7.4(4) Lead-outs are prohibited from holding any conversation with the public or with one another en route to the starting box or while returning to the paddock.

7.4(5) Lead-outs shall be attired in clean uniforms, present a neat appearance, and conduct themselves in an orderly manner.

7.4(6) Lead-outs are prohibited from smoking, drinking beverages other than water, or eating unless on duly authorized breaks in a designated area.

7.4(7) Lead-outs shall not be permitted to have any interest in the greyhounds racing at the facility where they are assigned.

7.4(8) Lead-outs are prohibited from wagering on the result of any greyhound racing at the facility where they are assigned.

7.4(9) Lead-outs shall immediately report any infirmities or physical problems they observe in greyhounds under their care to the nearest racing official for communication to the commission veterinarian.

7.4(10) Lead-outs shall not remove racing blankets until the greyhounds are accepted by licensed kennel representatives at the conclusion of the race.

7.4(11) Lead-outs may assist the kennel master in the performance of the kennel master's duties.

491—7.5(99D) Trainers and assistant trainers.

7.5(1) A trainer shall prevent the administration of any drug, medication, or other prohibited substance that may cause a violation of commission rules. The trainer is responsible for the condition of a greyhound entered in an official race and, in the absence of substantial evidence to the contrary, is responsible for the presence of any prohibited drug, medication, or other substance, regardless of the acts of third parties. A positive test for a prohibited drug, medication, or substance, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule or Iowa Code chapter 99D.

7.5(2) Other responsibilities. A trainer is responsible for:

a. Ensuring that the kennel and primary enclosures are cleaned and sanitized as may be necessary to reduce disease hazards and odors. Runs and exercise areas having gravel or other nonpermanent surface materials shall be sanitized by periodic removal of soiled materials, application of suitable disinfectants, and replacement with clean surface materials.

b. Ensuring that fire prevention rules are strictly observed in the assigned area.

c. Providing a list to the state steward(s) of the trainer's employees in any area under the jurisdiction of the commission. The list shall include each employee's name, occupation, social security number, and occupational license number. The commission shall be notified by the trainer, in writing, within 24 hours of any change.

d. Ensuring the proper identity, custody, care, health, condition, and safety of greyhounds in the trainer's charge.

e. Disclosure to the racing secretary of the true and entire ownership of each greyhound in the trainer's care, custody, or control. Any change in ownership shall be reported immediately to the racing secretary. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a greyhound, shall be attached to the registration certificate for the greyhound and filed with the racing secretary.

f. Ensuring that greyhounds under the trainer's care have a completed Bertillion card on file with the paddock judge prior to being entered for official schooling or official races.

g. Ensuring that greyhounds under the trainer's care have not been trained using a live lure or live bait.

h. Using the services of those veterinarians licensed by the commission to attend greyhounds that are kenneled on facility premises. If necessary to remove a greyhound from facility premises for veterinary services, the trainer must provide, upon request, the records required in 7.14(4)*"c."*

i. Promptly reporting to the stewards and the commission veterinarian the serious illness of any greyhound in the trainer's charge.

j. Promptly reporting the death of any greyhound in the trainer's care on facility premises to the stewards, owner, and the commission veterinarian and complying with the rules on postmortem examination set forth in paragraph 7.3(3)*"g."*

k. Immediately reporting to the stewards and the commission veterinarian if the trainer knows, or has cause to believe, that a greyhound in the trainer's custody, care, or control has received any prohibited drugs or medication.

l. Having the trainer's greyhound at weigh-in promptly at the time appointed. If not, the greyhound may be scratched and the trainer may be subject to disciplinary action.

m. When a trainer is to be absent 24 hours or more from the kennel or premises where greyhounds are racing, the trainer shall provide a licensed trainer or assistant trainer to assume complete responsibility for all greyhounds under the trainer's care, and both shall sign a "trainer's responsibility form" which must be approved by the stewards.

7.5(3) *Assistant trainers.*

a. Upon the demonstration of a valid need, a trainer may employ an assistant trainer as approved by the stewards.

b. An assistant trainer may substitute for and shall assume the same duties, responsibilities, and restrictions as imposed on the licensed trainer. The trainer shall be jointly responsible for the assistant trainer's compliance with commission rules.

491—7.6(99D) Registration.

7.6(1) No greyhound shall be entered or permitted to race or to be schooled at any facility unless properly tattooed and registered by the NGA and, if applicable, its last four past-performance lines are made available to the racing secretary. The NGA shall be recognized as the official breeding registry of all greyhounds.

7.6(2) A certificate of registration for each greyhound shall be filed with the racing secretary at the racetrack where the greyhound is to be schooled, entered, or raced. All certificates of registration must be available at all times for inspection by the stewards.

7.6(3) All transfers of any title to a leasehold or other interest in greyhounds schooled, entered, or raced at any facility shall be registered and recorded with the NGA.

7.6(4) No title or other interest in any greyhound will be recognized by the commission until the title or other interest is evidenced by written instrument duly filed with and recorded by the NGA. Certified copies of the written instrument shall be filed with the racing secretary at the facility where the greyhound is to be schooled, entered, or raced, and, upon request, with the commission. When a greyhound is leased, the lessee of the greyhound shall file a copy of the lease agreement with the racing secretary and, upon request, with the commission. The lease agreement shall include:

a. The name of the greyhound.

b. The name and address of the owner.

c. The name and address of the lessee.

d. The kennel name, if any, of each party.

e. The terms of the lease.

7.6(5) Whenever a greyhound, or any interest in a greyhound, is sold or transferred, a copy of the NGA transfer of ownership documents must be filed with the racing secretary, who must forward it to the commission upon request.

7.6(6) When a greyhound is sold with engagements, or any part of them, the written acknowledgment of both parties that the greyhound was sold with the engagements is necessary to entitle the seller or buyer to any rights or obligations set forth in the transaction. If certain engagements are specified, only those are sold with the greyhound. When the greyhound is sold by public auction, the advertised conditions of the sale are sufficient evidence and, if certain engagements are specified, only those are sold with the greyhound.

7.6(7) Vaccination certificates.

a. All NGA certificates must be accompanied by a current valid vaccination certificate for rabies and other diseases as determined by the commission veterinarian and administrator. This certificate must indicate vaccination by a duly licensed veterinarian against such diseases. The criteria for vaccination will be disclosed seven days before the opening of each racing season and will be subject to continuing review. The criteria may be revised at any time and in any manner deemed appropriate by the commission veterinarian and the administrator.

b. Upon expiration of a vaccination certificate, the greyhound must be removed from the premises immediately.

491—7.7(99D) Entries.

7.7(1) Persons entering greyhounds to run at a facility agree in so doing to accept the decision of the stewards on any questions relating to a race or racing.

7.7(2) Every entry for a race must be in the name of the registered owner, lessee, or a kennel name and may be made in person, in writing, by telephone, or by fax. The full name of every person having

an ownership in a greyhound, accepting the trainer's percentage, or having any interest in its winnings must be registered with the racing secretary before the greyhound starts at any meeting.

7.7(3) A greyhound shall not be qualified to run in any race unless it has been, and continues to be, duly entered for the same. A greyhound eligible at the time of entry shall continue to be qualified unless the conditions of a race specify otherwise or the greyhound is disqualified by violation of commission rules. A greyhound must be eligible at the time of the start to be qualified for an overnight event.

7.7(4) The entrance to a race shall be free unless otherwise stipulated in its conditions. If the conditions require an entrance fee, it must accompany the entry or the greyhound shall be considered ineligible.

a. A person entering a greyhound becomes liable for the entrance money or stake.

b. A greyhound shall not become a starter for a race unless any stake or entrance money required for that race has been duly paid.

c. Entrance money is not refunded on the death or withdrawal of a greyhound, because of a mistake in its entry if the greyhound is ineligible, or the greyhound's failure to start.

d. If the racing secretary should allow a greyhound to start in a race without its entrance money or stake having been paid, the facility shall be liable for the entrance money or stake.

e. If a race is not run, all stakes or entrance money shall be refunded.

f. No entry, or right of entry under it, shall become void upon the death of the person who entered the greyhound.

7.7(5) The entrance money required for a race shall be distributed as provided in the conditions of the race.

7.7(6) Any person having an interest in a greyhound that is less than the interest or property of any other person is not entitled to assume any of the rights or duties of an owner as provided by commission rules, including but not limited to the right of entry and declaration.

7.7(7) Joint subscriptions and entries may be made by any one or more of the owners. However, all partners shall be jointly and severally liable for all fees and forfeits.

7.7(8) The racing officials shall have the right to call on any person in whose name a greyhound is entered to produce proof that the greyhound entered is not the property, either wholly or in part, of any person who is disqualified or to produce proof as to the extent of interest or property a person holds in the greyhound. The greyhound shall be considered ineligible if such proof is not provided.

7.7(9) No greyhound shall be permitted to start that has not been fully identified.

7.7(10) Any person who knowingly attempts to establish the identity of a greyhound or its ownership shall be held accountable the same as the owner and shall be subject to the same penalty in case of fraud or attempted fraud.

7.7(11) No disqualified greyhound shall be allowed to enter or to start in any race. A greyhound will be considered disqualified if the greyhound is:

a. Owned in whole or in part or is under the control, directly or indirectly, of a disqualified person.

b. Not conditioned by a licensed trainer.

c. On the schooling list or the veterinarian's list.

d. A female greyhound in season or lactating.

e. Disqualified by any other commission rule.

7.7(12) Entries that have closed shall be compiled and conspicuously posted without delay by the racing secretary.

a. Entries for stakes races shall close at the time advertised and no entry shall be accepted after that time.

b. In the absence of notice to the contrary, entrance and withdrawals for stakes races which close during or on the eve of a race meeting shall close at the office of the racing secretary who shall make provisions therefor. Closing for stakes races at all other times shall be at the office of the facility.

7.7(13) No alteration shall be made in any entry after closing of entries, but an error may be corrected.

7.7(14) No trainer or owner shall have more than two greyhounds in any race except in stakes or sweepstakes races. No double entries shall be allowed until all single interests eligible for the

performance are used and double entries shall be uncoupled for wagering purposes. Double entries shall be prohibited in all twin trifecta and tri-super races.

7.7(15) No greyhound under the age of 16 months shall be eligible to enter or race.

7.7(16) The facility shall have the right to withdraw or change any unclosed race. In the event the number of entries to any stakes race is in excess of the number of greyhounds that may, because of track limitations, be permitted to start, the starters for the race shall be determined by the racing secretary, in accordance with the conditions of the race.

7.7(17) No greyhound that has been trained using a live lure or live bait shall be entered to race at a facility in the state of Iowa.

7.7(18) The starting post position of greyhounds shall be assigned by lot or drawing supervised by the racing secretary at a time and place properly posted in the paddock, at least one day prior to the running of the races so that any and all owners, trainers, or authorized agents interested may be present if they so desire.

491—7.8(99D) Withdrawals and scratches.

7.8(1) The withdrawal of a greyhound from an engagement is irrevocable.

7.8(2) Withdrawals from sweepstakes shall be made to the racing secretary in the same manner as for making entries. The racing secretary shall record the day and hour of receipt and give early publicity thereto.

7.8(3) Withdrawals from official races must be made by the owner, trainer, or authorized agent to the racing secretary or assistant racing secretary at least one-half hour before the time designated for the drawing of post positions on the day prior to the day on which the greyhound is to race, or at the time the racing secretary may appoint.

7.8(4) Any greyhound that is withdrawn from a race after the overnight entries are closed shall be deemed a scratch. Such a greyhound shall lose all preference accrued up to that date unless excused by the stewards.

a. In order to scratch a greyhound entered in a race, sufficient cause must be given to satisfy the stewards, and the cause must be reported immediately.

b. Any scratches that occur as the result of a violation of a commission rule must carry a penalty, or a suspension of the greyhound for a period of six racing days, or both. Scratches for other causes shall be disciplined at the discretion of the stewards.

c. If any owner or trainer fails to have the greyhound entered at the appointed time for weigh in and as a result the greyhound is scratched, the stewards shall impose a fine, suspension, or both, on the person or persons responsible.

d. The stewards may for sufficient cause scratch a greyhound entered in a race.

7.8(5) All greyhounds scratched from a race because of overweight or underweight shall receive a suspension of six racing days and must school back before starting in an official race. Greyhounds so scratched may school during their suspension.

491—7.9(99D) Weights and weighing.

7.9(1) All greyhounds must be weighed, under supervision of a majority of the stewards, not less than one hour before the time of the first race of the performance, unless prior permission is granted by the state steward.

7.9(2) The weigh-in time shall be limited to a 30-minute period unless an extension has been granted by a state steward.

7.9(3) Before a greyhound is allowed to school or race at any track, the owner or trainer must establish the racing weight of each greyhound with the clerk of scales.

7.9(4) At weigh-in time, should there be a variation of more than one and one-half pounds either way from the greyhound's established weight, the stewards shall order the greyhound scratched.

7.9(5) If, at weigh-in time, there should be more than two pounds of variation between the weight of the greyhound's present race and the weight at weigh-in time of the greyhound's last race, the stewards shall order the greyhound scratched.

7.9(6) At weigh-out time, if a greyhound loses weight in excess of two pounds from its weigh-in weight while in the lock-out kennels, the stewards shall order the greyhound scratched. However, if, in the opinion of the veterinarian, the loss of weight while in the lock-out kennels does not impair the racing condition of the greyhound, the stewards may allow the greyhound to race.

7.9(7) The weight regulations provided in subrules 7.9(1) through 7.9(6) shall be printed in the daily program.

7.9(8) The established racing weight may be changed upon written request of the kennel owner or trainer and written consent of the stewards, provided the change is made four calendar days before the greyhound is allowed to race at the new weight.

a. All greyhounds having an established weight change of more than one pound must be schooled at least once, or more at the discretion of the stewards, at the new established weight before being eligible for entry.

b. Greyhounds that have not raced or schooled officially for a period of three weeks will be allowed to establish a new racing weight with the consent of the stewards.

7.9(9) The stewards shall have the privilege of weighing a greyhound entered in a race at any period from the time it enters the lock-out kennel until post time.

7.9(10) Immediately after being weighed in, the greyhounds shall be placed in lock-out kennels under the supervision of the paddock judge, and no owner or other person except racing officials, commission representatives, or lead-outs shall be allowed in or near the lock-out kennels.

491—7.10(99D) Qualifying time.

7.10(1) Each facility shall establish and notify the state steward of the qualifying times to be in effect during the racing meet. Said notification must be made at least three days before the first day of official racing.

7.10(2) The qualifying time shall be posted on the notice board at the track.

7.10(3) Any change in the qualifying time during the course of the meeting shall be made only with the approval of the board of stewards.

7.10(4) Any greyhound that fails to meet the established qualifying time shall not be permitted to start other than in futurity or stakes races.

491—7.11(99D) Schooling.

7.11(1) Greyhounds must be schooled in the presence of the stewards, or must, in the opinion of the stewards, be sufficiently experienced before they can be entered or started.

7.11(2) All schooling races shall be at a distance not less than 3/16 mile and wagering will not be allowed.

7.11(3) Any greyhound that has not raced on site for a period of 10 racing days or 15 calendar days, whichever is less, or has been placed on the veterinarian's list shall be officially schooled at least once at its racing weight before being eligible for entry. Any greyhound that has not raced for a period of 30 calendar days shall be officially schooled at its racing weight at least twice before being eligible for entry.

7.11(4) Each official schooling race must consist of at least six greyhounds. However, if this condition creates a hardship, less than six may be schooled with the permission of the state steward.

7.11(5) No hand schooling will be considered official.

7.11(6) All greyhounds in official schooling races must be raced at their established racing weight and started from the box wearing muzzles and blankets.

7.11(7) Any greyhound may be ordered on the schooling list by the stewards at any time for good cause and must be schooled officially and satisfactorily before being allowed to enter an official race.

491—7.12(99D) Running of the race.

7.12(1) When two or more greyhounds run a dead heat, all prizes and moneys to which the greyhounds would have been entitled shall be divided equally between them.

7.12(2) If a greyhound bolts the course, runs in the opposite direction, or does not run the entire prescribed distance for the race, it shall forfeit all rights in the race and, no matter where it finished, the stewards shall declare the finish of the race the same as if it were not a contender. However, for the purpose of this rule, the greyhound shall be considered to have started the race.

7.12(3) If a greyhound bolts the course, or runs in the opposite direction during the running of the race, and in so doing, in the opinion of the stewards, interfered with any other greyhound in the race, the stewards shall declare a "No Race" and all moneys wagered shall be refunded, except when, in the opinion of the stewards, the interference clearly did not interfere with the outcome of the race.

7.12(4) If it appears that a greyhound may interfere with the running of the race because of failure to leave the box, an accident, or for any other reason, any lead-out or racing official stationed around the track may remove the greyhound from the track. However, for the purpose of this rule, the greyhound shall be considered to have started the race.

7.12(5) All greyhounds must wear the regulation muzzle and blanket while racing.

7.12(6) All greyhounds must be exhibited in the show paddock before post time of the race in which they are entered.

7.12(7) A race shall not be called official unless the lure is in advance of the greyhounds at all times during the race. If at any time during the race a greyhound catches or passes the lure, the stewards shall declare a "No Race" and all moneys wagered shall be refunded.

7.12(8) The stewards shall closely observe the operation of the lure and hold the lure operator to strict accountability for any inconsistency of operation.

7.12(9) If a greyhound is left in the box when the doors of the starting box open at the start, there shall be no refund.

7.12(10) A false start, due to any faulty action of the starting box, break in the machinery, or other cause, is void, and the greyhounds may be started again as soon as practicable, or the race may be declared a "No Race."

7.12(11) After a greyhound has been placed in the starting box, no refund shall be made and all wagers shall stand. In case of mechanical failure with the starting box, the greyhounds shall be removed from the starting box. The stewards shall determine whether the race will be declared a "No Race" and all moneys wagered be refunded or whether to allow the race to be run after the malfunction has been repaired.

7.12(12) The decision as to whether the greyhound(s) was prevented from starting by a mechanical failure shall be made by the stewards after consultation with the starter.

7.12(13) If a race is marred by jams, spills, or racing circumstances other than accident to the machinery while a race is being run, and three or more greyhounds finish, the stewards shall declare the race finished; but if fewer than three greyhounds finish the stewards shall declare a "No Race" and all moneys wagered shall be refunded.

7.12(14) In the event the lure arm is not fully extended or fails to remain fully extended during the running of the race, the stewards may declare a "No Race" if, in their opinion, the position of the lure arm affected the outcome of the race. In the event the lure arm collapses to the rail during the running of the race, the stewards shall declare a "No Race" and all moneys wagered shall be refunded.

7.12(15) Any act of the owner, trainer, or handler of a greyhound that would tend to prevent the greyhound from running its best and winning if possible shall result in suspension of all persons found guilty of complicity.

491—7.13(99D) Race reckless/interfered/ruled off.

7.13(1) *Race reckless.* It is the steward's discretion for the first offense on a maiden as to whether the maiden interfered or raced reckless. It will not be mandatory that a first offense on a maiden be raced reckless.

7.13(2) *Interfered.*

a. Maidens or graded greyhounds coming into Iowa with an interference line from another state will be ruled off all Iowa tracks at the time of the first offense in Iowa.

b. Graded greyhounds will be given an interference ticket at the time of their first offense and will be required to school back to stewards' satisfaction.

c. First offense interference greyhounds will be deleted from the master interference list after one year has elapsed.

7.13(3) *Ruled off.*

a. For a second interference, a greyhound is ruled off all Iowa tracks.

b. The stewards may rule off a greyhound after the first incident of interference if they determine the greyhound's continued participation in racing jeopardizes the safety of the greyhounds it competes against.

c. Once a greyhound has been ruled off in the state of Iowa, it can not for any reason be entered to race in Iowa again.

491—7.14(99D) Medication and administration, sample collection, chemists, and practicing veterinarians.

7.14(1) *Medication and administration.*

a. No greyhound, while participating in a race, shall carry in its body any medication, drug, foreign substance, or metabolic derivative thereof.

b. Also prohibited are any drugs or foreign substances that might mask or screen the presence of the prohibited drugs or prevent or delay testing procedures.

c. Proof of detection by the commission chemist of the presence of a medication, drug, foreign substance, or metabolic derivative thereof, prohibited by paragraph 7.14(1)*"a"* or *"b,"* in a saliva, urine, or blood specimen duly taken under the supervision of the commission veterinarian from a greyhound immediately prior to or promptly after running in a race shall be prima facie evidence that the greyhound was administered, with the intent that it would carry or that it did carry, prohibited medication, drug, or foreign substance in its body while running in a race in violation of this rule.

d. No person other than a licensed veterinarian shall administer, cause to be administered, participate, or attempt to participate in any way in the administration to a greyhound registered for racing any medication, drug, or foreign substance prior to a race on the day of the race for which a greyhound is entered.

e. Any such person found to have administered or caused, participated, or attempted to participate in any way in the administration of, a medication, drug, or foreign substance which caused or could have caused a violation of this rule shall be subject to disciplinary action.

f. The owner, trainer, kennel helper, or any other person having charge, custody, or care of the greyhound is obligated to protect the greyhound and guard it against the administration or attempted administration of any medication, drug, or foreign substance. If the stewards find that any person has failed to show proper protection and guarding of the greyhound, or if the stewards find that any owner, lessee, or trainer is guilty of negligence, they shall impose discipline and take other action they deem proper under any of the rules of the commission.

7.14(2) *Sample collection.*

a. Under the supervision of the commission veterinarian, urine, blood, and other specimens shall be taken and tested from any greyhounds that the stewards of the meeting, commission veterinarian, or the commission's representatives may designate. The specimens shall be collected by the commission veterinarian or other person(s) the commission may designate.

b. No unauthorized person shall be admitted at any time to the building or the area utilized for the purpose of collecting the required body fluid samples or the area designated for the retention of greyhounds pending the obtaining of body fluid samples.

c. During the taking of specimens from a greyhound, the owner, trainer, or kennel representative designated by the owner or trainer may be present and witness the taking of the specimen and so signify in writing. Failure to be present and witness the collection of the samples constitutes a waiver by the owner, trainer, or kennel representative of any objections to the source and documentation of the sample.

d. A security guard must be in attendance during the hours designated by the commission.

e. The commission veterinarian, the board of stewards, agents of the division of criminal investigation, or the authorized representatives of the commission may take samples of any medicine or other materials suspected of containing improper medication, drugs, or other substance which could affect the racing condition of a greyhound in a race, which may be found in kennels or elsewhere on facility premises or in the possession of any person connected with racing, and the same shall be delivered to the official chemist for analysis.

f. Nothing in this rule shall be construed to prevent:

(1) Any greyhound in any race from being subjected by the order of a steward or the commission veterinarian to tests of body fluid samples for the purpose of determining the presence of any foreign substance.

(2) The state steward or the commission veterinarian from authorizing the splitting of any sample.

(3) The commission veterinarian from requiring body fluid samples to be stored in a frozen state for future analysis.

7.14(3) *Chemist.*

a. Tests are to be under the supervision of the commission, which shall employ one or more chemists or contract with one or more qualified chemical laboratories to determine by chemical testing and analysis of body fluid samples whether a foreign substance, medication, drug, or metabolic derivative thereof is present.

b. All body fluid samples taken by or under direction of the commission veterinarian or authorized representative of the commission shall be delivered to the laboratory of the official chemist for analysis. Each sample shall be marked or numbered and bear information essential to its proper analysis; but the identity of the greyhound from which the specimen was taken or the identity of its owners, trainer, or kennel shall not be revealed to the official chemist or the staff of the chemist. The container of each sample shall be sealed as soon as the sample is placed therein.

c. The commission chemist shall be responsible for safeguarding and testing each sample delivered to the laboratory by the commission veterinarian.

d. The commission chemist shall conduct individual tests on each sample, screening for prohibited substances and conducting other tests to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of samples shall be permitted only with the knowledge and approval of the administrator.

e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, the tests shall be reconfirmed, and the remaining portion of the sample, if available, preserved and protected for two years following close of meet.

f. The commission chemist shall submit to the commission a written report as to each sample tested, indicating by sample tag identification number, whether the sample tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the administrator or commission representative. In addition to the administrator, the commission chemist shall notify the state steward of all positive tests. In the event the commission chemist should find a sample suspicious for a prohibited medication, additional time for test analysis and confirmation may be requested.

g. In reporting to the administrator or state steward a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of the professional opinion as to the positive finding.

h. No action shall be taken by the administrator or state steward on the report of the official chemist unless and until the medication, drug, or other substance and the greyhound from which the sample was taken have been properly identified and until an official report signed by the chemist has been received by the administrator or state steward.

i. The cost of the testing and analysis shall be paid by the commission to the official chemist. The commission shall then be reimbursed by each facility on a per-sample basis so that each facility

shall bear only its proportion of the total cost of testing and analysis. The commission may first receive payment from funds provided in Iowa Code chapter 99D, if available.

7.14(4) *Practicing veterinarian.*

a. Prohibited acts.

(1) A licensed veterinarian practicing at any meeting is prohibited from possessing any ownership, directly or indirectly, in any racing animal racing during the meeting.

(2) Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other thing of value directly or indirectly on the outcome of any race conducted at the meeting at which the veterinarian is furnishing professional service.

(3) No veterinarian shall within the facility premises furnish, sell, or loan any hypodermic syringe, needle, or other injection device, or any drug, narcotic, or prohibited substance to any other person unless with written permission of the stewards.

b. Whenever a veterinarian has used a hypodermic needle or syringe, the veterinarian shall destroy the needle and syringe and remove it from the facility. The use of other than single-use disposable syringes and infusion tubes on facility premises is prohibited.

c. Every practicing veterinarian licensed by the commission shall keep, on the premises of a facility, a written record of practice relating to greyhounds participating in racing.

(1) This record shall include the name of the greyhound treated, the nature of the greyhound's ailment, the type of treatment prescribed and performed for the greyhound, and the date and time of treatment.

(2) This record shall be kept for practice engaged in at all facilities in the state of Iowa and shall be produced without delay upon the request of the board of stewards or the commission veterinarian.

d. Each veterinarian shall report immediately to the commission veterinarian any illness presenting unusual or unknown symptoms in a racing animal entrusted into the veterinarian's care.

e. Practicing veterinarians may have employees licensed as veterinary assistants working under their direct supervision. Activities of these employees shall not include direct treatment or diagnosis of any animal. The practicing veterinarian must be present if a veterinary assistant is to have access to injection devices or injectables. The practicing veterinarian shall assume all responsibility for a veterinary assistant.

491—7.15(99D) Iowa greyhound pari-mutuel racing fund. Pursuant to Iowa Code section 99D.9B, an Iowa greyhound pari-mutuel racing fund (fund) is created in the state treasury and under the control of the commission. The fund will be distributed on an annual basis pursuant to this rule.

7.15(1) *Iowa greyhound association.*

a. Fifty percent of the money in the fund shall be distributed to the Iowa greyhound association.

b. An annual audit concerning the operation of the escrow account shall be submitted to the commission 90 days after the end of the Iowa greyhound association's fiscal year.

c. In the event that the Iowa greyhound association fails to conduct live dog racing during any calendar year, the Iowa greyhound association shall transfer any unused moneys in the escrow fund to the commission and shall receive no further distributions from the fund.

7.15(2) *One-time payments.*

a. *Administrative expenses.* All expenses incurred by the commission to administer the fund will be deducted before an amount is determined for distribution during each calendar year.

b. *Greyhound adoption agency (agency).* An agency will be reimbursed a dollar amount based upon original receipts and itemized expenses up to $1,700 per greyhound. All documentation for reimbursement must be submitted to the commission office for consideration on a form prescribed by the commission. Distribution of reimbursement for qualifying requests will occur upon approval by the commission. The commission has sole discretion in determining the eligibility of receipts submitted. No requests for reimbursement will be accepted by the commission after October 31, 2016. For an agency to be eligible for reimbursement, the agency must prove to the commission that:

(1) The agency physically handled the greyhound to facilitate the adoption;

(2) The agency has a no-kill policy;

(3) The greyhound raced in Iowa; and

(4) The greyhound was placed into adoption due to the cessation of racing.

c. *Greyhound kennel owners.* Greyhound kennel owners are eligible to recover costs up to $5,000 associated with the removal of equipment from the kennels at the pari-mutuel dog racetrack located in Pottawattamie County. For a greyhound kennel owner to be eligible for reimbursement, the owner must prove to the commission that the expenses were incurred as a result of the removal of property, excluding the transporting of the greyhounds. Greyhound kennel owners shall submit original receipts and itemize the expenses to the commission to verify expenditures. All documentation for reimbursement must be submitted to the commission office for consideration on a form prescribed by the commission. The commission has sole discretion in determining the eligibility of the receipts and expenses submitted. Distribution of reimbursement for qualifying requests will occur upon approval by the commission. No requests for reimbursement will be accepted by the commission after October 31, 2016.

d. *Trainers.* The trainer of record for the kennel employed at the pari-mutuel dog racetrack located in Pottawattamie County upon the closing of the racetrack in December 2015 shall receive $8,000 for each year of service during the five-year period from 2011 through 2015. Proof of employment for each year for which payment is requested must be sent to the commission. The commission has sole discretion in determining the eligibility of the proof of employment submitted. Distribution for qualifying requests will occur upon approval by the commission. No requests for reimbursement under this paragraph will be accepted by the commission after June 30, 2016.

e. *Assistant trainers.* Assistant trainers employed, present and handling the day-to-day affairs at the pari-mutuel dog racetrack located in Pottawattamie County at the closing of the racetrack in December 2015 shall receive $4,000 for each year of service during the five-year period from 2011 through 2015. Proof of employment for each year for which payment is requested must be sent to the commission. Distribution for qualifying requests will occur upon approval by the commission. Any assistant trainer who is not employed through the closing of the racetrack in December 2015 shall be eligible for payments only if the kennel owner certifies in writing the assistant trainer's services are not needed. No requests for reimbursement under this paragraph will be accepted by the commission after June 30, 2016.

f. *Financial hardship.* Industry participants are eligible to receive up to $100,000 from the commission if they can demonstrate a need to be compensated due to hardships caused by the closing of the pari-mutuel dog racetrack located in Pottawattamie County. The burden of demonstrating hardship is on the applicant. The applicant shall submit in writing the request and basis for compensation including original receipts, if applicable, and itemized expenses. The commission has sole discretion in determining the eligibility of the applicant and the authentication of information to demonstrate hardship. Distribution for qualifying requests will occur upon approval by the commission. No requests for reimbursement under this paragraph will be accepted by the commission after June 30, 2016.

g. *Live greyhound racing in Dubuque County.* Should live racing cease in Dubuque County in or after calendar year 2015 but prior to 2022, the commission will establish an application process for one-time payments related to the cessation of racing in Dubuque County. The commission has sole discretion in establishing this process.

7.15(3) *Annual payments.* After all one-time payments have been paid from the fund, the remainder of the fund will be distributed to industry participants. The remainder of the fund shall be distributed as follows:

a. Seventy percent of the fund shall be paid as past-performance distributions based on the percentage of purse winnings and the department of agriculture and land stewardship awards the industry participant received from 2010 through 2014. Information pertaining to purse winnings and breeders awards will be obtained from the greyhound racetracks in Pottawattamie and Dubuque counties and from the department of agriculture and land stewardship.

b. Thirty percent of the fund shall be paid to qualifying greyhound industry participants without regard to purse winnings.

(1) Points will be awarded to the following recipients:

1. Greyhound farm owners shall receive 1,060 points for each year of operation from 2010 through 2014, provided the farm was licensed by the department of agriculture and land stewardship from 2010 through 2014.

2. Greyhound breeders shall receive 32 points for each greyhound the breeder whelped and raised for the first six months of the greyhound's life in Iowa as recorded with the department of agriculture and land stewardship from 2010 through 2014.

(2) The applicant's pro rata share of the overall points awarded will be converted to the pro rata basis of the moneys distributed to qualifying greyhound industry participants without regard to purse winnings.

c. Information pertaining to registered greyhound farms or greyhounds individually registered at whelping will be obtained from the department of agriculture and land stewardship.

d. Fund recipients, identified by independent tax identification numbers, shall be limited to $3 million over the life of the fund. In the event live racing in Dubuque County ends and, as a result, there are remaining moneys to be deposited into the fund to be distributed to qualifying greyhound participants, the commission shall establish a new limit for fund recipients to be received over the life of the fund.

e. The commission has the sole discretion in determining the eligibility of the documentation submitted as it relates to claims under this rule.

f. The first of the annual payments will be distributed no later than April 2017 with payment each year following in April. The last payment will be distributed April 2022.

[**ARC 2198C**, IAB 10/14/15, effective 11/18/15]

These rules are intended to implement Iowa Code chapter 99D.

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◊ Two or more ARCs

1 Effective date of subrule 7.9(1) delayed 70 days by the Administrative Rules Review Committee at its 12/10/86 meeting. Delay lifted by the Administrative Rules Review Committee at its 1/7/87 meeting.

CHAPTER 44
CONTINUING EDUCATION FOR CHIROPRACTIC PHYSICIANS
[Prior to 7/24/02, see 645—Ch 43]

645—44.1(151) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

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

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

"Board" means the board of chiropractic.

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

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest and certificate of completion.

"License" means license to practice.

"Licensee" means any person licensed to practice as a chiropractic physician in the state of Iowa.
[**ARC 9109B**, IAB 10/6/10, effective 11/10/10]

645—44.2(272C) Continuing education requirements.

44.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of each even-numbered year two years later. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 60 hours of continuing education approved by the board.

44.2(2) Rescinded IAB 8/3/05, effective 9/7/05.

44.2(3) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses with the exception of two hours in the content areas of Iowa Administrative Code, 645—Chapters 40 through 46 and Iowa Code chapter 151. Continuing education hours acquired anytime from the initial licensing until the second license renewal with the exception of two hours in the content areas of Iowa Administrative Code, 645—Chapters 40 through 46 and Iowa Code chapter 151 may be used. The new licensee will be required to complete a minimum of 60 hours of continuing education per biennium for each subsequent license renewal.

44.2(4) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

44.2(5) No hours of continuing education shall be carried over into the next biennium except as stated in 44.2(3) and 44.3(2)*"a"*(3). A licensee whose license is reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

44.2(6) It is the responsibility of each licensee to finance the cost of continuing education.

645—44.3(151,272C) Standards.

44.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

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

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

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

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

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

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

(2) Number of program clock hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

44.3(2) *Specific criteria.*

a. Continuing education hours of credit shall be obtained by completing:

(1) At least 36 hours of continuing education credit obtained from a program that directly relates to clinical case management of chiropractic patients. Beginning with the July 1, 2014, to June 30, 2016, renewal cycle, at least 20 of these hours shall be earned by completing a program in which an instructor conducts the class employing a traditional in-person, classroom-type presentation and the licensee is in attendance in the same room as that instructor. The remaining 16 hours of continuing education credit relating to clinical case management of chiropractic patients may be obtained by independent study, including any on-line instruction, that complies with conditions specified in 645—44.1(151).

(2) A minimum of two hours per biennium in professional boundaries regarding ethical issues related to professional conduct that may include but are not limited to sexual harassment, sensitivity training and ethics.

(3) Starting with the 2006 renewal cycle, a minimum of 12 hours per biennium of continuing education in the field of acupuncture if the chiropractic physician is engaged in the practice of acupuncture. Continuing education hours in the field of acupuncture earned between December 31, 2003, and June 30, 2004, up to a maximum of 12 hours may be used to satisfy licensure renewal requirements for either the 2004 or 2006 renewal cycle. The licensee may use the earned continuing education credit hours only once. Credit can not be duplicated for both the 2004 and 2006 compliance periods.

(4) Classes on child abuse and dependent adult abuse that meet the criteria in subrule 44.3(1).

(5) Two hours of continuing education credit at the time of the first biennial renewal period and one hour every biennial renewal period after that in the content areas of Iowa Administrative Code, 645—Chapters 40 through 46 and Iowa Code chapter 151.

b. Continuing education hours of credit may be obtained by:

(1) Teaching at a Council on Chiropractic Education (CCE)-approved program or board of chiropractic-approved institution. A maximum of 15 hours per biennium may be obtained for each course taught.

(2) Completing electronically transmitted programs/activities or independent study programs/activities that have a certificate of completion that meets criteria in 645—44.3(151,272C).

(3) A licensee who is a presenter of a continuing education program that meets criteria in 645—44.3(151,272C) may receive credit once per biennium for the initial presentation of the program.

(4) Completing continuing education that meets criteria in 645—44.3(151,272C) or a program provided by a CCE-accredited chiropractic college in the United States, the Iowa Chiropractic Society, American Chiropractic Association or International Chiropractors Association.

(5) Completing continuing education courses/programs that are certified by the Providers of Approved Continuing Education (PACE) through the Federation of Chiropractic Licensing Boards (FCLB).

(6) Proctoring at the NBCE examination. Fifteen hours of continuing education hours per NBCE examination event may be claimed up to a maximum of 30 hours of continuing education credit per biennium. The proctoring hours may apply toward the clinical requirement.

c. Continuing education may not be obtained by completing or teaching classes in basic anatomy and physiology or undergraduate level coursework.

44.3(3) *Specific criteria for presenters.* All instructors/presenters of a continuing education activity must include, as part of the continuing education activity, verbal and written statements to the participants regarding any affiliations or employment relationships with any entity promoting, developing or marketing products, services, procedures or treatment methods.
[**ARC 9109B**, IAB 10/6/10, effective 11/10/10; **ARC 0211C**, IAB 7/25/12, effective 8/29/12; **ARC 1201C**, IAB 12/11/13, effective 1/15/14; **ARC 2202C**, IAB 10/14/15, effective 11/18/15]

645—44.4(151,272C) Audit of continuing education report. Rescinded IAB 8/13/08, effective 9/17/08.

645—44.5(151,272C) Automatic exemption. Rescinded IAB 8/13/08, effective 9/17/08.

645—44.6(272C) Continuing education exemption for disability or illness. Rescinded IAB 8/13/08, effective 9/17/08.

645—44.7(151,272C) Grounds for disciplinary action. Rescinded IAB 8/13/08, effective 9/17/08.

645—44.8(272C) Continuing education exemption for inactive practitioners. Rescinded IAB 8/3/05, effective 9/7/05.

645—44.9(272C) Continuing education exemption for disability or illness. Rescinded IAB 8/3/05, effective 9/7/05.

645—44.10(272C) Reinstatement of inactive practitioners. Rescinded IAB 8/3/05, effective 9/7/05.

645—44.11(272C) Hearings. Rescinded IAB 8/3/05, effective 9/7/05.

These rules are intended to implement Iowa Code section 272C.2 and chapter 151.

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◊ Two or more ARCs

[1] Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held January 29, 2001; delay lifted by the committee at its meeting held February 9, 2001, effective 2/10/01.

CHAPTER 45
DISCIPLINE FOR CHIROPRACTIC PHYSICIANS
[Prior to 7/24/02, see 645—Ch 44]

645—45.1(151) Definitions.

"Board" means the board of chiropractic.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means a person licensed to practice as a chiropractic physician in Iowa.

645—45.2(151,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—45.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

45.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

45.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

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

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

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

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a chiropractic physician in this state.

e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

g. Failure to maintain a patient's record(s) for a minimum of six years after the date of last examination or treatment. Records for minors shall be maintained for one year after the patient reaches the age of majority (18) or six years after the date of last examination or treatment, whichever is longer. Proper safeguards shall be maintained to ensure the safety of records from destructive elements. This provision includes both clinical and fiscal records.

45.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. This includes representations utilizing the term "physical therapy" when informing the public of the services offered by the chiropractic physician unless a licensed physical therapist is performing such services. Nothing herein shall be construed as prohibiting a chiropractic physician from making representations regarding physiotherapy that may be the same as, or similar to, physical therapy or physical medicine as long as treatment is appropriate as authorized in Iowa Code chapter 151. Proof of actual injury need not be established.

45.2(4) Practice outside the scope of the profession.

45.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation or representations that are likely to cause the average person to misunderstand.

45.2(6) Habitual intoxication or addiction to the use of drugs.

45.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

45.2(8) Falsification of client records.

45.2(9) Acceptance of any fee by fraud or misrepresentation.

45.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

45.2(11) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

45.2(12) Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

45.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

45.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

45.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

45.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

45.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

45.2(18) Failure to comply with a subpoena issued by the board, or otherwise fail to cooperate with an investigation of the board.

45.2(19) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

45.2(20) Failure to pay costs assessed in any disciplinary action.

45.2(21) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

45.2(22) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

45.2(23) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a chiropractic physician.

45.2(24) Failure to report a change of name or address within 30 days after it occurs.

45.2(25) Representing oneself as a chiropractic physician when one's license has been suspended or revoked, or when one's license is on inactive status.

45.2(26) Permitting another person to use the licensee's license for any purposes.

45.2(27) Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

45.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a patient, client or coworker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

45.2(29) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

45.2(30) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

45.2(31) Unprofessional conduct or behavior. A chiropractor shall not exhibit unprofessional behavior in connection with the practice of chiropractic. Unprofessional behavior shall include, but not be limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, requesting patient records without a medical justification, and theft.

[**ARC 8625B**, IAB 3/24/10, effective 4/28/10; **ARC 9109B**, IAB 10/6/10, effective 11/10/10; **ARC 9862B**, IAB 11/16/11, effective 12/21/11; **ARC 2202C**, IAB 10/14/15, effective 11/18/15]

645—45.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed $1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—45.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645—45.5(151) Order for mental, physical, or clinical competency examination or alcohol or drug screening. Rescinded IAB 8/13/08, effective 9/17/08.

These rules are intended to implement Iowa Code chapters 147, 151 and 272C.

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PHARMACY BOARD[657]

[Prior to 2/10/88, see Pharmacy Examiners, Board of [620], renamed Pharmacy Examiners Board[657] under the "umbrella" of Public Health Department by 1986 Iowa Acts, ch 1245; renamed by 2007 Iowa Acts, Senate File 74]

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CHAPTER 3
PHARMACY TECHNICIANS
[Prior to 9/4/02, see 657—Ch 22]

657—3.1(155A) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Board" means the Iowa board of pharmacy.

"Cashier" means a person whose duties within the pharmacy are limited to accessing finished, packaged prescription orders and processing payments for and delivering such orders to the patient or the patient's representative.

"Certified pharmacy technician" or *"certified technician"* means an individual who holds a valid current national certification and who has registered with the board as a certified pharmacy technician.

"Delivery" means the transport and conveyance of a finished, securely packaged prescription order to the patient or the patient's caregiver.

"Nationally accredited program" means a program and examination for the certification of pharmacy technicians that is accredited by the NCCA.

"NCCA" means the National Commission for Certifying Agencies.

"Pharmacy support person" means a person, other than a licensed pharmacist, a registered pharmacist-intern, or a registered pharmacy technician, who may perform nontechnical duties assigned by the pharmacist under the pharmacist's responsibility and supervision pursuant to 657—Chapter 5.

"Pharmacy technician" or *"technician"* means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, as provided in rules 657—3.22(155A) through 657—3.24(155A), and includes a certified pharmacy technician and a pharmacy technician trainee.

"Pharmacy technician certification" or *"national certification"* means a certificate issued by a national pharmacy technician certification authority accredited by the NCCA attesting that the technician has successfully completed the requirements of the certification program. The term includes evidence of renewal of the national certification.

"Pharmacy technician trainee" or *"technician trainee"* means an individual who is in training to become a pharmacy technician and who is in the process of acquiring national certification as a pharmacy technician as provided in rule 657—3.5(155A).

"Pharmacy technician training" or *"technician training"* means education or experience acquired for the purpose of qualifying for and preparing for national certification.

"Supervising pharmacist" means an Iowa-licensed pharmacist who is on duty in a licensed pharmacy in Iowa and who is responsible for the actions of a pharmacy technician or other supportive personnel.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 1785C**, IAB 12/10/14, effective 1/14/15]

657—3.2(155A) Purpose of registration. A registration program for pharmacy technicians is established for the purposes of determining the competency of a pharmacy technician or of an applicant for registration as a certified pharmacy technician or pharmacy technician trainee and for the purposes of identification, tracking, and disciplinary action for violations of federal or state pharmacy or drug laws or regulations.

[**ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 1785C**, IAB 12/10/14, effective 1/14/15]

657—3.3(155A) Registration required. Any person employed in Iowa as a pharmacy technician, except a pharmacist-intern whose pharmacist-intern registration is in good standing with the board, shall obtain and maintain during such employment a current registration as a certified pharmacy technician or pharmacy technician trainee pursuant to these rules. An individual accepting employment as a pharmacy technician in Iowa who fails to register as a certified pharmacy technician or pharmacy technician trainee as provided by these rules may be subject to disciplinary sanctions. A certified pharmacy technician accepting employment as a certified pharmacy technician in Iowa who fails to register as a certified pharmacy technician or who fails to maintain national certification may be subject to disciplinary sanctions.

3.3(1) *Licensed health care provider.* Except as provided in this rule, a licensed health care provider whose registration or license is in good standing with and not subject to current disciplinary sanctions or practice restrictions imposed by the licensee's professional licensing board and who assists in the technical functions of the practice of pharmacy shall be required to register as a certified pharmacy technician or pharmacy technician trainee pursuant to these rules.

3.3(2) *Original application required.* Any person not currently registered with the board as a pharmacy technician shall complete the appropriate application for registration within 30 days of accepting employment in an Iowa pharmacy as a pharmacy technician. Such application shall be received in the board office before the expiration of this 30-day period.

3.3(3) *Technician training.* A person who is enrolled in a college-based or American Society of Health-System Pharmacists (ASHP)-accredited technician training program shall obtain a pharmacy technician trainee registration prior to beginning on-site practical experience. A person who is employed in a pharmacy and who is receiving pharmacy technician training through work experience shall obtain a pharmacy technician trainee registration within 30 days of the commencement of pharmacy technician training.

3.3(4) *Registration number.* Each pharmacy technician registered with the board will be assigned a unique registration number.

[**ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 9407B**, IAB 3/9/11, effective 4/13/11; **ARC 1785C**, IAB 12/10/14, effective 1/14/15]

657—3.4 Reserved.

657—3.5(155A) Certification of pharmacy technicians. Except as provided in subrule 3.5(1), all pharmacy technicians shall be required to be nationally certified as provided by this rule. National certification acquired through successful completion of any NCCA-accredited pharmacy technician certification program and examination fulfills the requirement for national certification. National certification does not replace the need for licensed pharmacist control over the performance of delegated functions, nor does national certification exempt the pharmacy technician from registration pursuant to these rules. A certified pharmacy technician shall maintain the technician's national certification, in addition to the technician's Iowa registration, during any period of employment in an Iowa pharmacy as a certified pharmacy technician.

3.5(1) *Pharmacy technician trainee.* A person who is in the process of acquiring national certification as a pharmacy technician shall register with the board as a pharmacy technician trainee. The registration shall be issued for a period of one year and shall not be renewed.

3.5(2) *Certified pharmacy technician.* All applicants for a new pharmacy technician registration except as provided by subrule 3.5(1), and all applicants for renewal of a pharmacy technician registration, shall provide proof of current national pharmacy technician certification and shall complete the application for certified pharmacy technician registration.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 9407B**, IAB 3/9/11, effective 4/13/11; **ARC 1785C**, IAB 12/10/14, effective 1/14/15]

657—3.6(155A) Extension of deadline for national certification. Rescinded **ARC 1785C**, IAB 12/10/14, effective 1/14/15.

657—3.7 Reserved.

657—3.8(155A) Application form.

3.8(1) *Required information.* The application for a certified pharmacy technician registration or pharmacy technician trainee registration shall include the following:

a. Information sufficient to identify the applicant including, but not limited to, name, address, date of birth, gender, and social security number;

b. Educational background;

c. Work experience;

d. Current place or places of employment;

e. Any other information deemed necessary by the board and as provided by this rule.

3.8(2) *Declaration of current impairment or limitations.* The applicant shall declare any current use of drugs, alcohol, or other chemical substances that in any way impairs or limits the applicant's ability to perform the duties of a pharmacy technician with reasonable skill and safety.

3.8(3) *History of felony or misdemeanor crimes.* The applicant shall declare any history of being charged, convicted, found guilty of, or entering a plea of guilty or no contest to a felony or misdemeanor crime (other than minor traffic violations with fines under $100).

3.8(4) *History of disciplinary actions.* The applicant shall declare any history of disciplinary actions or practice restrictions imposed by a state health care professional or technician licensure or registration authority.

3.8(5) *Additional information.* The following additional information shall be required from an applicant for the specified registration.

a. *Pharmacy technician trainee.* The applicant for pharmacy technician trainee registration shall identify the source of pharmacy technician training, the anticipated date of completion of training, and the anticipated date of national certification.

b. *Certified pharmacy technician.* The applicant for certified pharmacy technician registration shall provide proof of current national pharmacy technician certification. The applicant shall also identify all current pharmacy employers including pharmacy name, license number, address, and average hours worked per week.

c. *Licensed health care provider.* In addition to the additional information required by paragraph *"a"* or *"b"* as applicable, a licensed health care provider shall provide evidence that the licensee's professional license or registration is current and in good standing and is not subject to current disciplinary sanctions or practice restrictions imposed by the licensee's professional licensing authority.

3.8(6) *Sworn signature.* The applicant shall sign the application under penalty of perjury and shall submit the application to the board with the appropriate fees pursuant to rule 657—3.10(155A).

[**ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 1785C**, IAB 12/10/14, effective 1/14/15]

657—3.9(155A) Registration term and renewal. A pharmacy technician registration shall expire as provided in this rule for the specified registration. The board shall not require continuing education for renewal of a pharmacy technician registration.

3.9(1) *Certified pharmacy technician registration.* A certified pharmacy technician registration shall expire on the second last day of the birth month following initial registration, with the exception that a new certified pharmacy technician registration issued within the two months immediately preceding the applicant's birth month shall expire on the third last day of the birth month following initial registration.

3.9(2) *Pharmacy technician trainee registration.* A registration for a pharmacy technician who is in the process of acquiring national certification (technician trainee) shall expire on the last day of the registration month 12 months following the date of registration or 12 months following the date registration was required pursuant to subrule 3.3(3).

a. *National certification completed.* When the registered pharmacy technician trainee completes national certification, and no later than the date of expiration of the pharmacy technician trainee registration, the pharmacy technician trainee shall complete and submit an application for certified pharmacy technician registration. A successful application shall result in issuance of a new certified pharmacy technician registration as provided in subrule 3.9(1).

b. *Voluntary cancellation of registration.* A registered pharmacy technician trainee who fails to complete national certification prior to expiration of the pharmacy technician trainee registration shall notify the board that the pharmacy technician trainee registration should be canceled and that the individual has ceased practice as a pharmacy technician.

c. *Failure to notify the board.* If a pharmacy technician trainee fails to notify the board prior to the expiration date of the pharmacy technician trainee registration regarding the individual's intentions as provided in paragraph *"a"* or *"b,"* the pharmacy technician trainee registration shall be canceled and the individual shall cease practice as a pharmacy technician.

[**ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 1785C**, IAB 12/10/14, effective 1/14/15]

657—3.10(155A) Registration fee. The following fees for initial registration and registration renewal shall apply to the specified registration applications filed within the following time frames. The appropriate fee shall be submitted with the registration application in the form of a personal check, certified check or cashier's check, or a money order payable to the Iowa Board of Pharmacy.

3.10(1) *Certified pharmacy technician registration.* The fee for obtaining an initial certified pharmacy technician registration or for biennial renewal of a certified pharmacy technician registration shall be $40 plus applicable surcharge pursuant to rule 657—30.8(155A).

3.10(2) *Technician trainee registration.* The fee for a one-year pharmacy technician trainee registration shall be $20 plus applicable surcharge pursuant to rule 657—30.8(155A).

[**ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 0504C**, IAB 12/12/12, effective 1/16/13; **ARC 1785C**, IAB 12/10/14, effective 1/14/15]

657—3.11(155A) Late applications and fees.

3.11(1) *Initial registration.* An application for initial registration that is not received within the applicable period specified in subrule 3.3(2) or 3.3(3) shall be delinquent, and the applicant shall be assessed a late payment fee. The late payment fee shall be equal to the amount of the fee for initial registration. A delinquent initial registration shall include payment of the initial registration fee, applicable surcharge pursuant to rule 657—30.8(155A), and late payment fee.

3.11(2) *Registration renewal.* A technician registration that is not renewed before its expiration date shall be delinquent, and the registrant shall not continue employment as a pharmacy technician until the registration is reactivated. An individual who continues employment as a pharmacy technician without a current registration, in addition to the pharmacy and the pharmacist in charge that allow the individual to continue practice as a pharmacy technician, may be subject to disciplinary sanctions.

a. A person who is required to renew a registration pursuant to these rules and who fails to renew the registration before the first day of the month following expiration shall pay the renewal fee, a penalty fee equal to the amount of the renewal fee, plus the applicable surcharge pursuant to rule 657—30.8(155A).

b. A person who is required to renew a registration pursuant to these rules and who fails to renew the registration before the first day of the second month following expiration shall pay the renewal fee, a penalty fee equal to the amount of the renewal fee, the applicable surcharge pursuant to rule 657—30.8(155A), plus an additional penalty fee of $10 for each additional month, not to exceed three additional months, that the registration is delinquent. The maximum combined fee payment for reactivation of a delinquent registration shall not exceed an amount equal to twice the renewal fee plus $30 plus the applicable surcharge pursuant to rule 657—30.8(155A).

c. A late payment fee shall not be assessed on an expired registration if the person was not employed as a pharmacy technician during the period following expiration of the registration.

[**ARC 0504C**, IAB 12/12/12, effective 1/16/13]

657—3.12(155A) Registration certificates. The certificate of pharmacy technician registration issued by the board to a certified pharmacy technician or pharmacy technician trainee is the property of and shall be maintained by the registered pharmacy technician. The certificate or a copy of the certificate shall be maintained in each pharmacy where the pharmacy technician works. Each pharmacy utilizing pharmacy technicians shall be responsible for verifying that all pharmacy technicians working in the pharmacy are registered, that pharmacy technician registrations remain current and active, and that a certified pharmacy technician's national certification remains current and active.

[**ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 9407B**, IAB 3/9/11, effective 4/13/11; **ARC 1785C**, IAB 12/10/14, effective 1/14/15]

657—3.13(155A) Notifications to the board. A pharmacy technician shall report to the board within ten days a change of the technician's name, address, or pharmacy employment status.

[**ARC 9009B**, IAB 8/11/10, effective 7/23/10]

657—3.14 to **3.16** Reserved.

657—3.17(155A) Training and utilization of pharmacy technicians. All licensed pharmacies located in Iowa that utilize pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians appropriate to the practice of pharmacy. Pharmacy policies shall specify the frequency of review. Pharmacy technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of pharmacy technician training shall be available for inspection and copying by the board or an agent of the board.
[**ARC 1785C**, IAB 12/10/14, effective 1/14/15]

657—3.18(147,155A) Identification of pharmacy technician.

3.18(1) *Identification badge.* A pharmacy technician shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacy technician and that includes at least the technician's first name.

3.18(2) *Misrepresentation prohibited.* A pharmacy technician shall not represent himself or herself in any manner as a pharmacist or pharmacist-intern. A pharmacy technician shall not represent himself or herself in any manner as a certified pharmacy technician unless the technician has attained national pharmacy technician certification.
[**ARC 9009B**, IAB 8/11/10, effective 7/23/10]

657—3.19 Reserved.

657—3.20(155A) Responsibility of supervising pharmacist. The ultimate responsibility for the actions of a pharmacy technician shall remain with the supervising pharmacist.
[**ARC 9009B**, IAB 8/11/10, effective 7/23/10]

657—3.21(155A) Delegation of functions.

3.21(1) *Technical dispensing functions.* A pharmacist may delegate technical dispensing functions to an appropriately trained and registered pharmacy technician, but only if the pharmacist is on site and available to supervise the pharmacy technician when delegated functions are performed, except as provided in 657—subrule 6.7(2) or 657—subrule 7.6(2), as appropriate, or as provided for telepharmacy in 657—Chapter 9. Except as provided for an approved tech-check-tech program pursuant to 657—Chapter 40, the pharmacist shall provide and document the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative. A pharmacy technician shall not delegate technical functions to a pharmacy support person.

3.21(2) *Nontechnical functions.* A pharmacist may delegate nontechnical functions to a pharmacy technician or a pharmacy support person only if the pharmacist is present to supervise the pharmacy technician or pharmacy support person when delegated nontechnical functions are performed, except as provided in 657—subrule 6.7(2) or 657—subrule 7.6(2), as appropriate, or as provided for telepharmacy in 657—Chapter 9.
[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9783B**, IAB 10/5/11, effective 11/9/11]

657—3.22(155A) Technical functions. At the discretion of the supervising pharmacist, the following technical functions, in addition to any of the functions authorized for a pharmacy support person pursuant to 657—Chapter 5, may be delegated to a pharmacy technician as specified in the following subrules.

3.22(1) *Certified pharmacy technician.* Under the supervision of a pharmacist, a certified pharmacy technician may perform technical functions delegated by the supervising pharmacist including, but not limited to, the following:

a. Perform packaging, manipulative, or repetitive tasks relating to the processing of a prescription or medication order in a licensed pharmacy.

b. Accept prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's agent.

c. Contact prescribers to obtain prescription refill authorizations.

d. Process pertinent patient information, including information regarding allergies and disease state.

e. Enter prescription and patient information into the pharmacy computer system.

f. Inspect drug supplies provided and controlled by an Iowa-licensed pharmacy but located or maintained outside the pharmacy department, including but not limited to drug supplies maintained in an ambulance or other emergency medical service vehicle, a long-term care facility, a hospital patient care unit, or a hospice facility.

g. Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.

h. Prepackage or label multi-dose and single-dose packages of drugs as provided in 657—Chapter 22.

i. Perform drug compounding processes as provided in 657—Chapter 20.

j. As provided in rule 657—3.24(155A), accept new prescription drug orders or medication orders communicated to the pharmacy by a prescriber or by the prescriber's agent.

3.22(2) *Pharmacy technician trainee.* Under the supervision of a pharmacist, a pharmacy technician trainee may perform only the following technical functions delegated by the supervising pharmacist:

a. Perform packaging, manipulative, or repetitive tasks relating to the processing of a prescription or medication order in a licensed pharmacy.

b. Accept prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's agent.

c. Contact prescribers to obtain prescription refill authorizations.

d. Process pertinent patient information, including information regarding allergies and disease state.

e. Enter prescription and patient information into the pharmacy computer system.

f. Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.

g. Prepackage or label multi-dose and single-dose packages of drugs as provided in 657—Chapter 22.

h. Under the supervision of a pharmacist who provides training and evaluates and monitors trainee competence in the compounding processes, perform drug compounding processes as provided in 657—Chapter 20.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 9502B**, IAB 5/18/11, effective 6/22/11; **ARC 1785C**, IAB 12/10/14, effective 1/14/15; **ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—3.23(155A) Tasks a pharmacy technician shall not perform. A pharmacy technician shall not be authorized to perform any of the following judgmental tasks:

1. Except for a certified pharmacy technician participating in an approved tech-check-tech program pursuant to 657—Chapter 40, provide the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order;

2. Conduct prospective drug use review or evaluate a patient's medication record for purposes identified in rule 657—8.21(155A);

3. Provide patient counseling, consultation, or patient-specific drug information, tender an offer of patient counseling on behalf of a pharmacist, or accept a refusal of patient counseling from a patient or patient's agent;

4. Make decisions that require a pharmacist's professional judgment, such as interpreting prescription drug orders or applying information;

5. Transfer a prescription drug order to another pharmacy or receive the transfer of a prescription drug order from another pharmacy;

6. Delegate technical functions to a pharmacy support person.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 9783B**, IAB 10/5/11, effective 11/9/11]

657—3.24(155A) New prescription drug orders or medication orders. At the discretion of the supervising pharmacist, a certified pharmacy technician may be allowed to accept new prescription

drug orders or medication orders communicated to the pharmacy by a prescriber or by the prescriber's agent if the certified pharmacy technician has received appropriate training pursuant to the pharmacy's policies and procedures. The supervising pharmacist shall remain responsible for ensuring the accuracy, validity, and completeness of the information received by the certified pharmacy technician. The pharmacist shall contact the prescriber to resolve any questions, inconsistencies, or other issues relating to the information received by the certified pharmacy technician that involve a pharmacist's professional judgment.
[**ARC 9009B**, IAB 8/11/10, effective 7/23/10]

657—3.25(155A) Delegation of nontechnical functions. Rescinded IAB 4/7/10, effective 6/1/10.

657—3.26 and **3.27** Reserved.

657—3.28(147,155A) Unethical conduct or practice. Violation by a pharmacy technician of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in rule 657—3.30(155A).

3.28(1) *Misrepresentative deeds.* A pharmacy technician shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

3.28(2) *Confidentiality.* In the absence of express written authorization from the patient or written order or direction of a court, except where the best interests of the patient require, a pharmacy technician shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, a person duly authorized by law to receive such information, or as otherwise provided in rule 657—8.16(124,155A), any of the following:

a. A patient's name, address, social security number, or any information that could be used to identify a patient;

b. The contents of any prescription drug order or medication order or the therapeutic effect thereof, or the nature of professional pharmaceutical services rendered to a patient;

c. The nature, extent, or degree of illness suffered by any patient; or

d. Any medical information furnished by the prescriber or the patient.

3.28(3) *Discrimination.* It is unethical to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, gender, gender identity, sexual orientation, marital status, age, national origin, physical or mental disability, or disease state when providing pharmaceutical services.

3.28(4) *Unethical conduct or behavior.* A pharmacy technician shall not exhibit unethical behavior in connection with the technician's pharmacy employment. Unethical behavior shall include, but is not limited to, the following acts: verbal or physical abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.
[**ARC 9009B**, IAB 8/11/10, effective 7/23/10]

657—3.29(155A) Denial of registration. The executive director or designee may deny an application for registration as a certified pharmacy technician or pharmacy technician trainee for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

An individual whose application for registration as a certified pharmacy technician or pharmacy technician trainee is denied pursuant to this rule may, within 30 days after issuance of the notice of denial, appeal to the board for reconsideration of the application.
[**ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 1785C**, IAB 12/10/14, effective 1/14/15]

657—3.30(155A) Discipline of pharmacy technicians.

3.30(1) *Violations.* The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

3.30(2) *Sanctions.* The board may impose the following disciplinary sanctions:

a. Revocation of a certified pharmacy technician or pharmacy technician trainee registration.

b. Suspension of a certified pharmacy technician or pharmacy technician trainee registration until further order of the board or for a specified period.

c. Nonrenewal of a certified pharmacy technician registration.

d. Prohibition, permanently, until further order of the board, or for a specified period, from engaging in specified procedures, methods, or acts.

e. Probation.

f. The ordering of a physical or mental examination.

g. The imposition of civil penalties not to exceed $25,000.

h. Issuance of a citation and warning.

i. Such other sanctions allowed by law as may be appropriate.

[**ARC 9009B**, IAB 8/11/10, effective 7/23/10; **ARC 1785C**, IAB 12/10/14, effective 1/14/15]

These rules are intended to implement Iowa Code sections 147.72, 147.107, 155A.6A, 155A.23, 155A.33, and 155A.39.

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CHAPTER 6
GENERAL PHARMACY PRACTICE

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 2]

657—6.1(155A) Purpose and scope. A general pharmacy is a location where a pharmacist provides pharmaceutical services or dispenses pharmaceutical products to patients in accordance with pharmacy laws. This chapter does not apply to a hospital pharmacy as defined in 657—Chapter 7. The requirements of these rules for general pharmacy practice are in addition to the requirements of 657—Chapter 8 and other rules of the board relating to services provided by the pharmacy.

657—6.2(155A) Pharmacist in charge. One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the responsibilities identified in rule 657—8.3(155A).

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 0501C**, IAB 12/12/12, effective 1/16/13; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—6.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, at a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. A reference including all pertinent Iowa laws, rules, and regulations that impact the pharmacy's practice.
2. A patient information reference that includes or provides patient information in compliance with rule 657—6.14(155A).
3. A reference on drug interactions.
4. A general information reference.
5. A drug equivalency reference.
6. A reference on natural or herbal medicines.
7. The readily accessible telephone number of a poison control center that serves the area.
8. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

[**ARC 2196C**, IAB 10/14/15, effective 11/18/15]

657—6.4(155A) Exemption from duplicate requirements. A pharmacy established in the same location as another licensed pharmacy and with direct and immediate access to required references, patient counseling area, refrigerator, or sink with hot and cold running water may utilize the references, counseling area, refrigerator, or sink of the other pharmacy to satisfy the requirements of rule 657—6.3(155A), subrule 6.14(3), or rule 657—8.5(155A), paragraphs "1" and "2."

657—6.5 and **6.6** Reserved.

657—6.7(124,155A) Security. While on duty, each pharmacist shall be responsible for the security of the prescription department, including provisions for effective control against theft of, diversion of, or unauthorized access to prescription drugs, records for such drugs, and patient records as provided in 657—Chapter 21.

6.7(1) *Department locked.* The prescription department shall be locked by key or combination so as to prevent access when a pharmacist is not on site except as provided in subrule 6.7(2).

6.7(2) *Temporary absence of pharmacist.* In the temporary absence of the pharmacist, only the pharmacist in charge may designate pharmacy technicians or pharmacy support persons who may be present in the prescription department to perform technical or nontechnical functions, respectively, designated by the pharmacist in charge. Activities identified in subrule 6.7(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours.

a. In the absence of the pharmacist, the pharmacy shall be secured from public access and the pharmacy shall notify the public that the pharmacist is temporarily absent and that no prescriptions will

be dispensed until the pharmacist returns. If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician or a pharmacy support person to perform designated functions when the pharmacy is closed, the pharmacy technician or the pharmacy support person may not dispense or deliver any drug, chemical, device, or prepared prescription to a patient or patient's agent.

b. A pharmacy technician or a pharmacy support person who is present in the pharmacy when the pharmacy is closed shall prepare and maintain in the pharmacy a log identifying each period of time that the pharmacy technician or pharmacy support person worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. Each entry shall be dated, and each daily record shall be signed by the pharmacy technician or pharmacy support person who prepared the record. The log shall be periodically reviewed by the pharmacist in charge.

6.7(3) *Activities prohibited in absence of pharmacist.* Activities which shall not be designated and shall not be performed during the temporary absence of the pharmacist include:

a. Dispensing or distributing any prescription drugs or devices to patients or others.

b. Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

c. Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.21(155A).

d. Providing patient counseling, consultation, or drug information.

e. Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.

f. Transferring prescriptions to or from other pharmacies.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 1308C**, IAB 2/5/14, effective 3/12/14]

657—6.8(124,155A) Prescription processing documentation. All prescriptions shall be dated and assigned a unique identification number that shall be recorded on the original prescription. The original prescription, whether transmitted orally, electronically, or in writing, shall be retained by the pharmacy filling the prescription. Refill documentation shall include date of refill and the initials or other unique identification of the pharmacist. The name, strength, and either the manufacturer's name or the National Drug Code (NDC) of the actual drug product dispensed shall be maintained and be readily retrievable.

657—6.9(124,155A) Transfer of prescription. The transmission of a prescription drug order from a pharmacy to a pharmacy engaged in centralized prescription filling or processing on behalf of the originating pharmacy pursuant to the requirements of 657—Chapter 18 shall not constitute the transfer of a prescription. Upon the request of a patient or the patient's caregiver, a pharmacy shall transfer original prescription drug order information and prescription refill information to a pharmacy designated by the patient or the patient's caregiver, central fill or processing pharmacies excepted, subject to the following requirements:

6.9(1) *Schedule III, IV, or V prescriptions.* The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis except as provided in subrule 6.9(9).

6.9(2) *Noncontrolled substances prescriptions.* The transfer of original prescription drug order information for noncontrolled prescription drugs between pharmacies is permissible as long as the number of transfers does not exceed the number of originally authorized refills and the original prescription is still valid.

6.9(3) *Communication.* The transfer is communicated directly between pharmacists, directly between pharmacist-interns under the direct supervision of pharmacists at the respective pharmacies, directly between a pharmacist and a pharmacist-intern under the direct supervision of a pharmacist, or as authorized in subrule 6.9(9). Following direct communication between authorized individuals as provided herein, the transferring pharmacist or pharmacist-intern may transmit the prescription and transfer information required under subrule 6.9(5) from the transferring pharmacy via facsimile. The receiving pharmacist or pharmacist-intern shall ensure the prescription transfer record maintained in the receiving pharmacy contains all of the information required under subrule 6.9(8).

6.9(4) *Prescriptions maintained.* Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

6.9(5) *Record of transfer out.* The pharmacist or pharmacist-intern transferring the prescription drug order information shall:

a. Invalidate the prescription drug order;

b. Record on or with the invalidated prescription drug order the following information:

(1) The name, address, and, for a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(2) The name of the pharmacist or pharmacist-intern receiving the prescription drug order information;

(3) The name of the pharmacist or pharmacist-intern transferring the prescription drug order information; and

(4) The date of the transfer.

6.9(6) *Original prescription status.* The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

6.9(7) *Controlled substance prescription status.* The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred.

6.9(8) *Record of transfer received.* The pharmacist or pharmacist-intern receiving the transferred prescription drug order information shall:

a. Indicate that the prescription drug order has been transferred;

b. Record on or with the transferred prescription drug order the following information:

(1) Original date of issuance and date of dispensing, if different from date of issuance;

(2) Original prescription number;

(3) Number of valid refills remaining, the date of last refill, and, for a controlled substance, the dates and locations of all previous refills;

(4) Name, address, and, for a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred;

(5) The date of the transfer;

(6) Name of the pharmacist or pharmacist-intern receiving the prescription drug order information;

(7) Name of the pharmacist or pharmacist-intern transferring the prescription drug order information; and

(8) If transferring a controlled substance prescription from a pharmacy utilizing a shared electronic database system as described in subrule 6.9(9) to a pharmacy outside that shared system, the pharmacy name, location, DEA registration number, and prescription number from which the prescription was originally filled.

6.9(9) *Electronic transfer between pharmacies.* Pharmacies electronically accessing the same prescription drug order records via a real-time, on-line database may electronically transfer prescription information, including controlled substance prescription information, up to the maximum refills permitted by law and the prescriber's authorization, if the following requirements are met.

a. The data processing system shall have a mechanism to send the transferring pharmacy a message containing the following information:

(1) The fact that the prescription drug order was transferred;

(2) The unique identification number of the prescription drug order transferred;

(3) The name, address, and DEA registration number of the pharmacy to which the prescription drug order was transferred and the name of the pharmacist or pharmacist-intern receiving the prescription information; and

(4) The date and time of transfer.

b. A pharmacist or pharmacist-intern under the direct supervision of a pharmacist in the transferring pharmacy shall review the message and document the review by signing and dating a hard copy of the message or logbook containing the information required on the message, or by a notation

in the electronic message that includes the unique identification of the pharmacist or pharmacist-intern and the date of review, as soon as practical, but in no event more than 72 hours from the time of such transfer.

c. For transfers of controlled substance prescriptions, all information requirements included in subrules 6.9(1) and 6.9(3) through 6.9(8) shall be satisfied in the electronic system. Transfers of controlled substance prescriptions shall also identify the pharmacy name, address, DEA registration number, and prescription number from which the prescription was originally filled.

[**ARC 7634B**, IAB 3/11/09, effective 4/15/09; **ARC 8169B**, IAB 9/23/09, effective 10/28/09; **ARC 0343C**, IAB 10/3/12, effective 11/7/12]

657—6.10(126,155A) Prescription label requirements.

6.10(1) *Required information.* The label affixed to or on the dispensing container of any prescription drug or device dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:

a. Serial number (a unique identification number of the prescription);

b. The name, telephone number, and address of the pharmacy;

c. The name of the patient or, if such drug is prescribed for an animal, the species of the animal and the name of its owner;

d. The name of the prescribing practitioner;

e. The date the prescription is dispensed;

f. The directions or instructions for use, including precautions to be observed;

g. Unless otherwise directed by the prescriber, the label shall bear the name, strength, and quantity of the drug dispensed.

(1) If a pharmacist selects an equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label shall identify the generic drug and may identify the brand name drug for which the selection is made, such as "(generic name) Generic for (brand name product)."

(2) If a pharmacist selects a brand name drug product for a generic drug product prescribed by a practitioner, the prescription container label shall identify the brand name drug product dispensed and may identify the generic drug product ordered by the prescriber, such as "(brand name product) for (generic name)";

h. The initials or other unique identification of the dispensing pharmacist.

6.10(2) *Exceptions.* The requirements of subrule 6.10(1) do not apply to unit dose dispensing systems, 657—22.1(155A), and patient med paks, 657—22.5(126,155A).

[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—6.11 and **6.12** Reserved.

657—6.13(155A) Patient record system.

6.13(1) *Information required.* A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing. The pharmacist shall be responsible for obtaining, recording, and maintaining the following information:

a. Full name of the patient for whom the drug is intended;

b. Address and telephone number of the patient;

c. Patient's age or date of birth;

d. Patient's gender;

e. Known allergies;

f. Significant patient information including a list of all prescription drug orders dispensed by the pharmacy during the two years immediately preceding the most recent entry showing the name of the drug or device, prescription number, name and strength of the drug, the quantity and date received, and the name of the prescriber; and

g. Pharmacist comments relevant to the individual's drug therapy, including:

(1) Known drug reactions,

(2) Identified idiosyncrasies,

(3) Known chronic conditions or disease states of the patient,

(4) The identity of any other drugs, over-the-counter drugs, herbals, other alternative medications, or devices currently being used by the patient that may relate to prospective drug review.

6.13(2) *Record retained.* A patient record shall be maintained for a period of not less than two years from the date of the last entry in the patient record. This record may be a hard copy or a computerized form.

6.13(3) *Confidential.* Information in the patient record shall be deemed to be confidential and may be released only as provided in rule 657—8.16(124,155A).

657—6.14(155A) Patient counseling and instruction. Every general pharmacy located in Iowa shall post in every prescription pickup area, including in every drive-through prescription pickup lane, in a manner clearly visible to patients, a notice that Iowa law requires the pharmacist to discuss with the patient any new prescriptions dispensed to the patient. The board shall provide a general pharmacy with the required signage. A pharmacy that provides no direct patient access to the pharmacy department, commonly referred to as a "closed-door pharmacy," shall not be required to post the counseling notice.

6.14(1) *Counseling required.* Upon receipt of a new prescription drug order, or upon receipt of a change in drug therapy including but not limited to a change of dose, directions, or drug formulation, and following a prospective drug use review pursuant to 657—8.21(155A), a pharmacist shall counsel each patient or patient's caregiver. An offer to counsel shall not fulfill the requirements of this rule. Patient counseling shall be on matters which, in the pharmacist's professional judgment, will enhance or optimize drug therapy. Appropriate elements of patient counseling may include:

a. The name and description of the drug;

b. The dosage form, dose, route of administration, and duration of drug therapy;

c. Intended use of the drug, if known, and expected action;

d. Special directions and precautions for preparation, administration, and use by the patient;

e. Common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

f. Techniques for self-monitoring drug therapy;

g. Proper storage;

h. Prescription refill information;

i. Action to be taken in the event of a missed dose;

j. Pharmacist comments relevant to the individual's drug therapy including any other information peculiar to the specific patient or drug.

6.14(2) *Instruction.* A pharmacist may instruct patients and demonstrate procedures for self-monitoring of medical conditions and for self-administration of drugs.

6.14(3) *Counseling area.* A pharmacy shall contain an area which is suitable for confidential patient counseling. Such area shall:

a. Be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

b. Be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

6.14(4) *Oral counseling not practicable.* If in the pharmacist's professional judgment oral counseling is not practicable, the pharmacist may use alternative forms of patient information. "Not practicable" refers to patient variables including, but not limited to, the absence of the patient or patient's caregiver, the patient's or caregiver's hearing impairment, or a language barrier. "Not practicable" does not include pharmacy variables such as inadequate staffing, technology failure, or high prescription volume. Alternative forms of patient information may include written information leaflets, pictogram labels, video programs, or information generated by electronic data processing equipment. When used in place of oral counseling, alternative forms of patient information shall advise the patient or caregiver that the pharmacist may be contacted for consultation in person at the pharmacy by toll-free telephone

or collect telephone call. A combination of oral counseling and alternative forms of counseling is encouraged.

6.14(5) *Exception.* Patient counseling, as described above, shall not be required for inpatients of an institution where other licensed health care professionals are authorized to administer the drugs.

6.14(6) *Refusal of consultation.* A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation. A patient's or caregiver's refusal of consultation shall be documented by the pharmacist. The absence of any record of a refusal of the pharmacist's attempt to counsel shall be presumed to signify that the offer was accepted and that counseling was provided.

[**ARC 8540B**, IAB 2/24/10, effective 4/1/10; **ARC 9910B**, IAB 12/14/11, effective 1/18/12]

657—6.15(124,126) Return of drugs and other items. For the protection of the public health and safety, prescription drugs and devices, controlled substances, and items of personal contact nature may be returned to the pharmacy for reuse or resale only as herein provided:

6.15(1) *Integrity maintained.* Prescription drugs and devices may be returned, exchanged, or resold only if, in the professional judgment of the pharmacist, the integrity of the prescription drug has not in any way been compromised.

6.15(2) *Controlled substances.* Under no circumstances shall pharmacy personnel accept from a patient or a patient's agent any controlled substances for return, exchange, or resale except to the same patient.

6.15(3) *Unit dose returns.* Prescription drugs dispensed in unit dose packaging, excluding controlled substances, may be returned and reused as authorized in 657—subrule 22.1(6).

6.15(4) *Personal contact items.* Pharmacy personnel shall not accept for reuse or resale any items of personal contact nature that have been removed from the original package or container after sale.

657—6.16(124,155A) Records. Every inventory or other record required to be kept under Iowa Code chapters 124 and 155A or rules of the board shall be kept by the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record except as specifically identified by law or rule. Controlled substances records shall be maintained in a readily retrievable manner in accordance with federal requirements and 657—Chapter 10. Original hard-copy prescription and other pharmacy records more than 12 months old may be maintained in a secure storage area outside the licensed pharmacy department unless such remote storage is prohibited under federal law. A remote storage area shall be located within the same physical structure containing the licensed pharmacy department.

6.16(1) *Combined records.* If controlled substances, prescription drugs, or nonprescription drug items are listed on the same record, the controlled substances shall be asterisked, red-lined, or in some other manner made readily identifiable from all other items appearing on the records.

6.16(2) *Prescriptions maintained.* The original prescription drug order shall be maintained for a period of two years following the date of last activity on the prescription.

6.16(3) *Number imprinted.* The original hard-copy prescription shall be imprinted with the prescription or control number assigned to the prescription drug order.

6.16(4) *Alternative data retention system.* Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

a. The records maintained in the alternative system contain all of the information required on the manual record;

b. The data processing system is capable of producing a hard copy of the record, within two business days, upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies; and

c. The information maintained in the alternative system is not obscured or rendered illegible due to security features of the original hard-copy record.

[**ARC 7636B**, IAB 3/11/09, effective 4/15/09; **ARC 8539B**, IAB 2/24/10, effective 4/1/10]

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306, 126.10, 126.11, 155A.6, 155A.13, 155A.27, 155A.28, 155A.31, and 155A.33 through 155A.36.

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◊ Two or more ARCs

CHAPTER 7
HOSPITAL PHARMACY PRACTICE

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 12]

657—7.1(155A) Purpose and scope. Hospital pharmacy means and includes a pharmacy licensed by the board and located within any hospital, health system, institution, or establishment which maintains and operates organized facilities for the diagnosis, care, and treatment of illnesses to which patients may or may not be admitted for overnight stay at the facility. A hospital is a facility licensed pursuant to Iowa Code chapter 135B. This chapter does not apply to a pharmacy located within such a facility for the purpose of providing outpatient prescriptions. A pharmacy providing outpatient prescriptions is and shall be licensed as a general pharmacy subject to the requirements of 657—Chapter 6. The requirements of these rules for hospital pharmacy practice apply to all hospitals, regardless of size or type, and are in addition to the requirements of 657—Chapter 8 and other rules of the board relating to services provided by the pharmacy.
[**ARC 9911B**, IAB 12/14/11, effective 1/18/12]

657—7.2(155A) Pharmacist in charge. One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the responsibilities identified in rule 657—8.3(155A). Where 24-hour operation of the pharmacy is not feasible, a pharmacist shall be available on an "on call" basis.
[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—7.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, at a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. A reference including all pertinent Iowa laws, rules, and regulations that impact the pharmacy's practice.
2. A patient information reference that includes or provides patient information in compliance with rule 657—6.14(155A).
3. A reference on drug interactions.
4. A general information reference.
5. A drug equivalency reference.
6. An injectable-drug compatibility reference.
7. A drug identification reference to enable identification of drugs brought into the facility by patients.
8. The readily accessible telephone number of a poison control center that serves the area.
9. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served. For example, the treatment of pediatric patients and oncology patients would require additional references unique to those specialties.

[**ARC 2196C**, IAB 10/14/15, effective 11/18/15]

657—7.4 and **7.5** Reserved.

657—7.6(124,155A) Security. The pharmacy shall be located in an area or areas that facilitate the provision of services to patients and shall be integrated with the facility's communication and transportation systems. The following conditions must be met to ensure appropriate control over drugs and chemicals in the pharmacy:

7.6(1) *Pharmacist responsibility.* Each pharmacist, while on duty, shall be responsible for the security of the pharmacy area, including provisions for effective control against theft of, diversion of, or unauthorized access to drugs or devices, controlled substances, records for such drugs, and patient records as provided in 657—Chapter 21. Policies and procedures shall identify the minimum amount of time that a pharmacist is available at the hospital pharmacy.

7.6(2) *Access when pharmacist absent.* When the pharmacist is absent from the facility, the pharmacy is closed and shall be secured from public access. Policies and procedures shall be established

that identify who will have access to the pharmacy when the pharmacy is closed and the procedures to be followed for obtaining drugs, devices, and chemicals to fill an emergent need during the pharmacist's absence.

a. The pharmacist in charge may designate pharmacy technicians or pharmacy support persons who may be present in the pharmacy to perform technical or nontechnical functions, respectively, designated by the pharmacist in charge. Activities identified in paragraph *"d"* of this subrule may not be performed when the pharmacy is closed.

b. If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician or a pharmacy support person to perform designated functions when the pharmacy is closed, only a certified pharmacy technician may assist another authorized, licensed health care professional to locate a drug or device pursuant to an emergent need. The pharmacy technician or the pharmacy support person may not dispense or deliver the drug, chemical, or device to the licensed health care professional. The licensed health care professional shall comply with established policies and procedures for obtaining drugs, devices, and chemicals when the pharmacy is closed. The licensed health care professional shall not ask or expect the pharmacy technician or the pharmacy support person to verify that the appropriate drug, chemical, or device has been obtained from the pharmacy.

c. A pharmacy technician or a pharmacy support person who is present in the pharmacy when the pharmacy is closed shall prepare and maintain in the pharmacy a log identifying each period of time that the pharmacy technician or pharmacy support person worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. Each entry shall be dated and each daily record shall be signed by the pharmacy technician or pharmacy support person who prepared the record. The log shall be periodically reviewed by the pharmacist in charge.

d. Activities which shall not be performed by a pharmacy technician or a pharmacy support person when the pharmacist is absent from the facility include:

(1) Dispensing, delivering, or distributing any prescription drugs or devices to patients or others, including health care professionals, prior to pharmacist verification. Verification by a nurse or other licensed health care professional shall not supplant verification by a pharmacist.

(2) Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

(3) Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.21(155A).

(4) Providing patient counseling, consultation, or drug information.

(5) Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.

(6) Preparing compounded drug products for immediate administration by other hospital staff or health care professionals without verification by a pharmacist.

7.6(3) *Locked areas.* All pharmacy areas where drugs or devices are maintained or stored and where a pharmacist is not continually present shall be locked.

7.6(4) *Verification by pharmacist.* When the pharmacy is open, patient-specific drugs or devices shall not be distributed prior to the pharmacist's final verification and approval.

7.6(5) *Drugs or devices in patient care areas.* Drugs or devices maintained or stored in patient care areas shall be in locked storage unless the patient care unit is staffed by health care personnel and the medication area is visible to staff at all times.

[**ARC 8673B**, IAB 4/7/10, effective 6/1/10; **ARC 9408B**, IAB 3/9/11, effective 4/13/11; **ARC 1308C**, IAB 2/5/14, effective 3/12/14]

657—7.7(155A) Verification by remote pharmacist. A hospital pharmacy may contract with another pharmacy for remote pharmacist preview and verification of patient-specific drugs or devices ordered for a patient. Contracted services may include pharmacist order entry pursuant to subrule 7.8(3). Pharmacies entering into a contract or agreement pursuant to this rule shall comply with the following requirements:

7.7(1) *Nonsupplanting service.* A contract or agreement for remote pharmacist services shall not relieve the hospital pharmacy from employing or contracting with a pharmacist to provide routine pharmacy services within the facility. The activities authorized by this rule are intended to supplement

on-site hospital pharmacy services and are not intended to eliminate the need for an on-site hospital pharmacy or pharmacist. The activities authorized by this rule are intended to increase the availability of the pharmacist for involvement in cognitive and patient care activities when the pharmacy is open. The hospital pharmacy shall maintain records that demonstrate the directing of pharmacist activities to additional cognitive and patient care activities, and those records shall be available for inspection by the board or an agent of the board.

7.7(2) *Hospital-staff pharmacist.* Nothing in this rule shall prohibit a pharmacist employed by or contracting with a hospital pharmacy for on-site services from also providing remote preview and verification of patient-specific drugs or devices ordered for a patient when the hospital pharmacy is closed. A pharmacist previewing and verifying drug or device orders from a remote location shall have access to patient information pursuant to subrule 7.7(4) or 7.7(5), shall have access to the prescriber as provided in subrule 7.7(6), and shall be identified on the drug or device order as provided in subrule 7.7(7).

7.7(3) *Licenses required.* A pharmacy contracting with a hospital pharmacy to provide services pursuant to this rule shall maintain with the board a current Iowa pharmacy license. A remote pharmacist providing pharmacy services as an employee or agent of a contracting pharmacy pursuant to this rule shall be licensed to practice pharmacy in Iowa.

7.7(4) *Electronic access to patient information.* The remote pharmacist shall have secure electronic access to the hospital pharmacy's patient information system and to all other electronic systems that the on-site pharmacist has access to when the pharmacy is open. The remote pharmacist shall receive training in the use of the hospital's electronic systems.

7.7(5) *Nonelectronic patient information.* If a hospital's patient information is not maintained in an electronic data system or if the hospital pharmacy is not able to provide remote electronic access to the patient information system, the hospital pharmacy may petition for a waiver of subrule 7.7(4) pursuant to 657—Chapter 34 and this subrule. In addition to the information required pursuant to 657—Chapter 34, the petition for waiver shall identify the hospital pharmacy's alternative to the electronic sharing of patient information, shall explain in detail how the alternative method will ensure timely provision of patient information necessary for the remote pharmacist to effectively review the patient's drug regimen and history, and shall detail the processes involved in the alternative proposal including identification of all individuals involved in each of those processes.

7.7(6) *Access to prescriber.* The remote pharmacist shall be able to contact the prescriber to discuss any concerns identified during the pharmacist's review of the patient's information.

7.7(7) *Pharmacist identified.* The record of each patient-specific drug or device order processed pursuant to this rule shall identify, by name or other unique identifier, each pharmacist involved in the preview and verification of the order. The record of each patient-specific drug or device visually verified pursuant to this rule shall identify, by name or other unique identifier, each pharmacist involved in the visual verification of the product.

[**ARC 9408B**, IAB 3/9/11, effective 4/13/11; **ARC 0502C**, IAB 12/12/12, effective 1/16/13]

657—7.8(124,126,155A) Drug distribution and control. Policies and procedures governing drug distribution and control shall be established pursuant to rule 657—8.3(155A) with input from other involved hospital staff such as physicians and nurses, from committees such as the pharmacy and therapeutics committee or its equivalent, and from any related patient care committee. It is essential that the pharmacist in charge or designee routinely be available to or on all patient care areas to establish rapport with the personnel and to become familiar with and contribute to medical and nursing procedures relating to drugs.

7.8(1) *Drug preparation.* Control and adequate quality assurance procedures needed to ensure that patients receive the correct drugs at the proper times shall be established pursuant to rule 657—8.3(155A).

a. Hospitals shall utilize a unit dose dispensing system pursuant to rule 657—22.1(155A). All drugs dispensed by the pharmacy for administration to patients shall be in single unit or unit dose

packages if practicable unless the dosage form or drug delivery device makes it impracticable to package the drug in a unit dose or single unit package.

(1) Established policies and procedures shall identify situations when drugs may be dispensed in other than unit dose or single unit packages outside the unit dose dispensing system.

(2) The need for nurses to manipulate drugs prior to their administration shall be minimized.

b. Pharmacy personnel shall, except as specified in policies and procedures, prepare all sterile products in conformance with 657—Chapter 20.

c. Pharmacy personnel shall compound or prepare drug formulations, strengths, dosage forms, and packages useful in the care of patients.

7.8(2) *Drug formulary.* Established policies and procedures shall include a current formulary of drug products approved for use in the institution and shall include specifications for those drug products.

7.8(3) *Medication orders.* Except as provided in subrule 7.8(14) or this subrule, a pharmacist shall receive a copy of an original written medication order for review except when the prescriber directly enters the medication order into an electronic medical record system or when the prescriber issues a verbal medication order directly to a registered nurse or pharmacist who then enters the order into an electronic medical record system.

a. *Verbal order.* The use of verbal orders shall be minimized. All verbal orders shall be read back to the prescriber, and the read back shall be documented with or on the order.

b. *Written order not entered by prescriber.* If an individual other than the prescriber enters a medication order into an electronic medical record system from an original written medication order, the pharmacist shall review and verify the entry against the original written order before the drug is dispensed except for emergency use, when the pharmacy is closed, or as provided in rule 657—7.7(155A).

c. *Order entered when pharmacy closed.* When the pharmacy is closed, a registered nurse or pharmacist may enter a medication order into an electronic medical record system for the purpose of creating an electronic medication administration record and a pharmacist shall verify the entry against the original written medication order, if such written order exists, as soon as practicable.

d. *System security.* Hospitalwide and pharmacy stand-alone computer systems shall be secure against unauthorized entry. System login or access credentials issued to an authorized system user shall not be shared or disclosed to any other individual.

e. *Abbreviations and chemical symbols on orders.* The use of abbreviations and chemical symbols on medication orders shall be discouraged but, if used, shall be limited to abbreviations and chemical symbols approved by the appropriate patient care committee.

7.8(4) *Stop order.* A written policy or other system concerning stop orders shall be established to ensure that medication orders are not inappropriately continued.

7.8(5) *Emergency drug supplies and floor stock.* Supplies of drugs for use in medical emergencies shall be immediately available at each nursing unit or service area as specified in policies and procedures. Authorized stocks shall be periodically reviewed in a multidisciplinary manner. All drug storage areas within the hospital shall be routinely inspected to ensure that no outdated or unusable items are present and that all stock items are properly labeled and stored.

7.8(6) *Disaster services.* The pharmacy shall be prepared to provide drugs and pharmaceutical services in the event of a disaster affecting the availability of drugs or internal access to drugs or access to the pharmacy.

7.8(7) *Drugs brought into the institution.* Established policies and procedures shall determine those circumstances when patient-owned drugs brought into the institution may be administered to a hospital patient and shall identify procedures governing the use and security of drugs brought into the institution. Procedures shall address identification of the drug and methods for ensuring the integrity of the product prior to permitting its use by the patient. The use of patient-owned drugs shall be minimized to the greatest extent possible.

7.8(8) *Samples.* The use of drug samples within the institution shall be eliminated to the extent possible. Sample use is prohibited for hospital inpatient use. If the use of drug samples is permitted for hospital outpatients, that use of samples shall be controlled and the samples shall be distributed through

the pharmacy or through a process developed in cooperation with the pharmacy and the institution's appropriate patient care committee, subject to oversight by the pharmacy.

7.8(9) *Investigational drugs.* If investigational drugs are used in the institution:

a. A pharmacist shall be a member of the institutional review board.

b. The pharmacy shall be responsible, in cooperation with the principal investigator, for providing information about investigational drugs used in the institution and for the distribution and control of those drugs.

7.8(10) *Hazardous drugs and chemicals.* Policies and procedures for handling drugs and chemicals that are known occupational hazards shall be established pursuant to rule 657—8.3(155A). The procedures shall maintain the integrity of the drug or chemical and protect hospital personnel.

7.8(11) *Leave meds.* Labeling of prescription drugs for a patient on leave from the facility for a period in excess of 24 hours shall comply with 657—subrule 6.10(1). The dispensing pharmacist shall be responsible for packaging and labeling leave meds in compliance with this subrule.

7.8(12) *Discharge meds.* Drugs authorized for a patient being discharged from the facility shall be labeled in compliance with 657—subrule 6.10(1) before the patient removes those drugs from the facility premises. The dispensing pharmacist shall be responsible for packaging and labeling discharge meds in compliance with this subrule.

7.8(13) *Own-use outpatient prescriptions.* If the hospital pharmacy dispenses own-use outpatient prescriptions, the pharmacist shall comply with all requirements of 657—Chapter 6 except rule 657—6.1(155A).

7.8(14) *Influenza and pneumococcal vaccines.* As authorized by federal law, a written or verbal patient-specific medication administration order shall not be required prior to administration to an adult patient of influenza and pneumococcal vaccines pursuant to physician-approved hospital policy and after the patient has been assessed for contraindications. Administration shall be recorded in the patient's medical record.

[**ARC 8170B**, IAB 9/23/09, effective 10/28/09; **ARC 9911B**, IAB 12/14/11, effective 1/18/12; **ARC 1961C**, IAB 4/15/15, effective 5/20/15; **ARC 2194C**, IAB 10/14/15, effective 11/18/15; **ARC 2197C**, IAB 10/14/15, effective 11/18/15]

657—7.9(124,155A) Drug information. Established policies and procedures shall include the provision to the institution's staff and patients of accurate, comprehensive information about drugs and their use. The pharmacy shall serve as the institution's center for drug information.

7.9(1) *Staff education.* The pharmacist shall keep the institution's staff well informed about the drugs used in the institution and their various dosage forms and packagings.

7.9(2) *Patient education.* The pharmacist shall help ensure that all patients are given adequate information about the drugs that they receive. This is particularly important for ambulatory, home care, and discharged patients. These patient education activities shall be coordinated with the nursing and medical staffs and patient education department, if any.

[**ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—7.10(124,155A) Ensuring rational drug therapy. An important aspect of pharmaceutical services is that of maximizing rational drug use. Policies and procedures for ensuring the quality of drug therapy shall be established pursuant to rule 657—8.3(155A).

7.10(1) *Patient profile.* Sufficient patient information shall be collected, maintained, and reviewed by the pharmacist to ensure meaningful and effective participation in patient care. This requires that a drug profile be maintained for each patient receiving care at the hospital. A pharmacist-conducted drug history from patients may be useful in this regard.

a. Appropriate clinical information about patients shall be available and accessible to the pharmacist for use in daily practice.

b. The pharmacist shall review each patient's current drug regimen and directly communicate any suggested changes to the prescriber.

7.10(2) *Adverse drug events.* Established policies and procedures shall include a mechanism for the reporting and review, by the committee or other appropriate medical group, of adverse drug events. The

pharmacist shall be informed of all reported adverse drug events occurring in the facility. Adverse drug events include but need not be limited to adverse drug reactions and medication errors.
[**ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—7.11(124,126,155A) Outpatient services. No prescription drugs shall be dispensed to patients in a hospital outpatient setting. If a need is established for the dispensing of a prescription drug to an outpatient, a prescription drug order shall be provided to the patient to be filled at a pharmacy of the patient's choice.

7.11(1) *Definitions.* For the purposes of this rule, the following definitions shall apply:

"Emergency department patient" means an individual who is examined and evaluated in the emergency department.

"Outpatient" means an individual examined and evaluated by a prescriber who determined the individual's need for the administration of a drug or device, which individual presents to the hospital outpatient setting with a prescription or order for administration of a drug or device. "Outpatient" does not include an emergency department patient.

"Outpatient medication order" means a written order from a prescriber or an oral or electronic order from a prescriber or the prescriber's authorized agent for administration of a drug or device. An outpatient medication order may authorize continued or periodic administration of a drug or device for a period of time and frequency determined by the prescriber or by hospital policy, not to exceed legal limits for the refilling of a prescription drug order.

7.11(2) *Administration in the outpatient setting.* Drugs shall be administered only to outpatients who have been examined and evaluated by a prescriber who determined the patient's need for the drug therapy ordered.

a. Accountability. Established policies and procedures shall include a system of drug control and accountability in the outpatient setting. The system shall ensure accountability of drugs incidental to outpatient nonemergency therapy or treatment. Drugs shall be administered only in accordance with the system.

b. Controlled substances. Controlled substances maintained in the outpatient setting are kept for use by or at the direction of prescribers for the nonemergency therapy or treatment of outpatients. In order to receive a controlled substance, a patient shall be examined in the outpatient setting or in an alternate practice setting or office by a prescriber who shall determine the patient's need for the drug. If the patient is examined in a setting outside the outpatient setting, the prescriber shall provide the patient with a written prescription or order to be presented at the hospital outpatient setting.

c. Outpatient medication orders. A prescriber may authorize, by outpatient medication order, the periodic administration of a drug to an outpatient.

(1) Schedule II controlled substance. An outpatient medication order for administration of a Schedule II controlled substance shall be written and, except as provided in rule 657—10.25(124) regarding the issuance of multiple Schedule II prescriptions, may authorize the administration of an appropriate amount of the prescribed substance for a period not to exceed 90 days from the date ordered.

(2) Schedule III, IV, or V controlled substance. An outpatient medication order for administration of a Schedule III, IV, or V controlled substance shall be written and may be authorized for a period not to exceed six months from the date ordered.

(3) Noncontrolled substance. An outpatient medication order for administration of a noncontrolled prescription drug may be authorized for a period not to exceed 18 months from the date ordered.
[**ARC 8909B**, IAB 6/30/10, effective 8/4/10; **ARC 0243C**, IAB 8/8/12, effective 9/12/12; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—7.12(124,126,155A) Drugs in the emergency department. Drugs maintained in the emergency department are kept for use by or at the direction of prescribers in the emergency department. Drugs shall be administered or dispensed only to emergency department patients. For the purposes of this rule, "emergency department patient" means an individual who is examined and evaluated in the emergency department.

7.12(1) *Accountability.* Established policies and procedures shall include a system of drug control and accountability in the emergency department. The system shall identify drugs of the nature and type to

meet the immediate needs of emergency department patients. Drugs shall be administered or dispensed only in accordance with the system.

7.12(2) *Controlled substances.* Controlled substances maintained in the emergency department are kept for use by or at the direction of prescribers in the emergency department.

a. In order to receive a controlled substance, a patient shall be examined in the emergency department by a prescriber who shall determine the need for the drug. It is not permissible under state and federal regulations for a prescriber to see a patient outside the emergency department setting, or talk to the patient on the telephone, and then proceed to call the emergency department and order the administration of a stocked controlled substance upon the patient's arrival at the emergency department except as provided in paragraph 7.12(2)*"c"* or *"d."*

b. A prescriber may authorize, without again examining the patient, the administration of additional doses of a previously authorized drug to a patient presenting to the emergency department within 24 hours of the patient's examination and treatment in the emergency department.

c. In an emergency situation when a health care practitioner authorized to prescribe controlled substances is not available on site, and regardless of the provisions of paragraph 7.12(2)*"a,"* the emergency department nurse may examine the patient in the emergency department and contact the on-call prescriber. The on-call prescriber may then authorize the nurse to administer a controlled substance to the patient pending the arrival of the prescriber at the emergency department. As soon as possible, the prescriber shall examine the patient in the emergency department and determine the patient's further treatment needs.

d. In an emergency situation when a health care practitioner authorized to prescribe controlled substances examines a patient in the prescriber's office and determines a need for the administration of a controlled substance, and regardless of the provisions of paragraph 7.12(2)*"a,"* the prescriber may direct the patient to present to the emergency department, with a valid written prescription or order for the administration of the controlled substance. As soon as possible, the prescriber shall examine the patient in the emergency department and determine the patient's further treatment needs.

7.12(3) *Drug dispensing.* In those facilities with 24-hour pharmacy services, only a pharmacist or prescriber may dispense any drugs to an emergency department patient. In those facilities located in an area of the state where 24-hour outpatient or 24-hour on-call pharmacy services are not available within 15 miles of the hospital, and which facilities are without 24-hour outpatient pharmacy services, the provisions of this rule shall apply.

a. *Responsibility.* Pursuant to rule 657—8.3(155A), the accuracy and labeling of prepackaged drugs shall be ensured and accurate records of dispensing of drugs from the emergency department shall be maintained.

(1) Prepackaging. Except as provided in subrule 7.12(4), drugs dispensed to an emergency department patient in greater than a 24-hour supply may be dispensed only in prepackaged quantities not to exceed a 72-hour supply or the minimum prepackaged quantity in suitable containers, except that a seven-day supply of doxycycline provided through the department of public health pursuant to the crime victim compensation program of the Iowa department of justice may be dispensed for the treatment of a victim of sexual assault. Prepackaged drugs shall be prepared pursuant to the requirements of rule 657—22.3(126).

(2) Labeling. Drugs dispensed pursuant to this paragraph shall be appropriately labeled as required in paragraph 7.12(3)*"b,"* including necessary auxiliary labels.

b. *Prescriber responsibility.* Except as provided in subrule 7.12(4), a prescriber who authorizes dispensing of a prescription drug to an emergency department patient is responsible for the accuracy of the dispensed drug and for the accurate completion of label information pursuant to this paragraph.

(1) Labeling. Except as provided in subrule 7.12(4), at the time of delivery of the drug the prescriber shall appropriately complete the label such that the dispensing container bears a label with at least the following information:

1. Name and address of the hospital;
2. Date dispensed;
3. Name of prescriber;

4. Name of patient;
5. Directions for use;
6. Name and strength of drug.

(2) Delivery of drug to patient. Except as provided in subrule 7.12(4), the prescriber, or a licensed nurse under the supervision of the prescriber, shall give the appropriately labeled, prepackaged drug to the patient or patient's caregiver. The prescriber, or a licensed nurse under the supervision of the prescriber, shall explain the correct use of the drug and shall explain to the patient that the dispensing is for an emergency or starter supply of the drug. If additional quantities of the drug are required to complete the needed course of treatment, the prescriber shall provide the patient with a prescription for the additional quantities.

7.12(4) *Use of InstyMeds dispensing system.* A hospital located in an area of the state where 24-hour outpatient pharmacy services are not available within 15 miles of the hospital may implement the InstyMeds dispensing system in the hospital emergency department only as provided by this subrule.

a. Persons with access to the dispensing machine for the purposes of stocking, inventory, and monitoring shall be limited to pharmacists, pharmacy technicians, and pharmacist-interns.

b. The InstyMeds dispensing system shall be used only in the hospital emergency department for the benefit of patients examined or treated in the emergency department.

c. The dispensing machine shall be located in a secure and professionally appropriate environment.

d. The stock of drugs maintained and dispensed utilizing the InstyMeds dispensing system shall be limited to acute care drugs provided in appropriate quantities for a 72-hour supply or the minimum commercially available package size, except that antimicrobials may be dispensed in a quantity to provide the full course of therapy.

e. Drugs dispensed utilizing the InstyMeds dispensing system shall be appropriately labeled as provided in 657—subrule 6.10(1), paragraphs *"a"* through *"g."*

f. Prior to authorizing the dispensing of a drug utilizing the InstyMeds dispensing system, the prescriber shall offer the patient the option of being provided a prescription that may be filled at the pharmacy of the patient's choice.

g. When appropriate for an acute condition, the prescriber shall provide to the patient or the patient's caregiver a prescription for the remainder of drug therapy beyond the supply available utilizing the InstyMeds dispensing system. During consultation with the patient or the patient's caregiver, the prescriber shall clearly explain the appropriate use of the drug supplied, the need to have a prescription for any additional supply of the drug filled at a pharmacy of the patient's choice, and the need to complete the full course of drug therapy.

h. The pharmacy shall, in conjunction with the hospital emergency department, implement policies and procedures to ensure that a patient utilizing the InstyMeds dispensing system has been positively identified.

i. The hospital pharmacist shall review the printout of drugs provided utilizing the InstyMeds dispensing system within 24 hours unless the pharmacy is closed, in which case the printout shall be reviewed during the first day the pharmacy is open following the provision of the drugs. The purpose of the review is to identify any dispensing errors, to determine dosage appropriateness, and to complete a retrospective drug use review of any antimicrobials dispensed in a quantity greater than a 72-hour supply. Any discrepancies found shall be addressed by the pharmacy's continuous quality improvement program.

[**ARC 8909B**, IAB 6/30/10, effective 8/4/10; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—7.13(124,155A) Records. Every inventory or other record required to be kept under this chapter or other board rules or under Iowa Code chapters 124 and 155A shall be kept by the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record unless a longer retention period is specified for the particular inventory or record.

7.13(1) *Medication order information.* Each original medication order contained in inpatient records shall bear the following information:

a. Patient name and identification number;

b. Drug name, strength, and dosage form;

c. Directions for use;

d. Date ordered;

e. Practitioner's signature or electronic signature or that of the practitioner's authorized agent.

7.13(2) *Medication order maintained.* The original medication order shall be maintained with the medication administration record in the medical records of the patient following discharge.

7.13(3) *Documentation of drug administration.* Each dose of medication administered shall be properly recorded in the patient's medical record.

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306, 126.10, 126.11, 155A.6, 155A.13, 155A.27, 155A.28, 155A.31, and 155A.33 through 155A.36.

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◊ Two or more ARCs

CHAPTER 10
CONTROLLED SUBSTANCES

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 8]

657—10.1(124) Who shall register. Any person or business located in Iowa that manufactures, distributes, dispenses, prescribes, imports or exports, conducts research or instructional activities, or conducts chemical analysis with controlled substances in the state of Iowa, or that proposes to engage in such activities with controlled substances in the state, shall obtain and maintain a registration issued by the board unless exempt from registration pursuant to rule 657—10.6(124). A person or business required to be registered shall not engage in any activity for which registration is required until the application for registration is granted and the board has issued a certificate of registration to such person or business.

Manufacturers, distributors, reverse distributors, importers and exporters, individual practitioners (M.D., D.O., D.D.S., D.V.M., D.P.M., O.D., P.A., resident physician, advanced registered nurse practitioner), pharmacies, hospitals and animal shelters, care facilities, researchers and dog trainers, analytical laboratories, and teaching institutions shall register on forms provided by the board office. To be eligible to register, individual practitioners must hold a current, active license in good standing, issued by the appropriate Iowa professional licensing board, to practice their profession in Iowa.

657—10.2(124) Application forms. Application forms may be obtained from the Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. Forms are also available on the board's Web site, www.state.ia.us/ibpe. Registration renewal forms will be mailed to each registrant approximately 60 days before the expiration date of the registration. A registrant who has not received a renewal form 45 days before the expiration date of the registration is responsible for contacting the board to request an application.

10.2(1) *Signature requirements.* Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

a. If the applicant is an individual practitioner, the practitioner shall sign the application and supporting documents.

b. If the applicant is a business, the application and supporting documents shall be signed by the person ultimately responsible for the security and maintenance of controlled substances at the registered location.

10.2(2) *Submission of multiple applications.* Any person or business required to obtain more than one registration may submit all applications in one package. Each application shall be complete and shall not refer to any accompanying application or any attachment to an accompanying application for required information.

657—10.3(124) Registration and renewal. For each registration or timely renewal of a registration to manufacture, distribute, dispense, prescribe, import or export, conduct research or instructional activities, or conduct chemical analysis with controlled substances listed in Schedules I through V of Iowa Code chapter 124, registrants shall pay a biennial fee of $90.

10.3(1) *Time and method of payment.* Registration and renewal fees shall be paid at the time the application for registration or renewal is submitted. Payment should be made in the form of a personal, certified, or cashier's check or a money order made payable to the Iowa Board of Pharmacy. Payments made in the form of foreign currency or third-party endorsed checks will not be accepted.

10.3(2) *Late renewal.* Any registered person or business may apply, on forms provided by the board office, for registration renewal not more than 60 days prior to the expiration of the registration. Failure to renew a registration prior to the first day of the month following expiration shall require payment of the renewal fee and a penalty fee of $90. Payment shall be made as specified in subrule 10.3(1).

[**ARC 0504C**, IAB 12/12/12, effective 1/16/13]

657—10.4(124) Exemptions—registration fee. The registration fee is waived for federal, state, and local law enforcement agencies and for the following federal and state institutions: hospitals, health care

or teaching institutions, and analytical laboratories authorized to possess, manufacture, distribute, and dispense controlled substances in the course of official duties.

10.4(1) *Law enforcement officials.* In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analysis, such laboratories shall maintain a registration to conduct chemical analysis. Such laboratories shall be exempt from payment of a fee for registration.

10.4(2) *Registration and duties not exempt.* Exemption from payment of a registration or registration renewal fee as provided in this rule does not relieve the agency or institution of registration or of any other requirements or duties prescribed by law.

657—10.5(124) Separate registration for independent activities; coincident activities. The following activities are deemed to be independent of each other and shall require separate registration. Any person or business engaged in more than one of these activities shall be required to separately register for each independent activity, provided, however, that registration in an independent activity shall authorize the registrant to engage in activities identified coincident with that independent activity.

10.5(1) *Manufacturing controlled substances.* A person or business registered to manufacture controlled substances in Schedules I through V may distribute any substances for which registration to manufacture was issued. A person or business registered to manufacture controlled substances in Schedules II through V may conduct chemical analysis and preclinical research, including quality control analysis, with any substances listed in those schedules for which the person or business is registered to manufacture.

10.5(2) *Distributing controlled substances.* This independent activity includes the delivery, other than by administering or dispensing, of controlled substances listed in Schedules I through V. No coincident activities are authorized.

10.5(3) *Dispensing or instructing with controlled substances.* This independent activity includes, but is not limited to, prescribing by individual practitioners, dispensing by pharmacies and hospitals, and conducting instructional activities with controlled substances listed in Schedules II through V. A person or business registered for this independent activity may conduct research and instructional activities with those substances for which the person or business is registered to the extent authorized under state law.

10.5(4) *Conducting research with controlled substances listed in Schedule I.* A researcher may manufacture or import the substances for which registration was issued provided that such manufacture or import is permitted under the federal Drug Enforcement Administration (DEA) registration. A researcher may distribute the substances for which registration was issued to persons or businesses registered or authorized to conduct research with that class of substances or registered or authorized to conduct chemical analysis with controlled substances.

10.5(5) *Conducting research with controlled substances listed in Schedules II through V.* A researcher may conduct chemical analysis with controlled substances in those schedules for which registration was issued, may manufacture such substances if and to the extent such manufacture is permitted under the federal DEA registration, and may import such substances for research purposes. A researcher may distribute controlled substances in those schedules for which registration was issued to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances, and to persons exempt from registration pursuant to Iowa Code subsection 124.302(3), and may conduct instructional activities with controlled substances.

10.5(6) *Conducting chemical analysis with controlled substances.* A person or business registered to conduct chemical analysis with controlled substances listed in Schedules I through V may manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempt from registration pursuant to Iowa Code subsection 124.302(3); may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

10.5(7) *Importing or exporting controlled substances.* A person or business registered to import controlled substances listed in Schedules I through V may distribute any substances for which such registration was issued.

657—10.6(124) Separate registrations for separate locations; exemption from registration. A separate registration is required for each principal place of business or professional practice location where controlled substances are manufactured, distributed, imported, exported, or dispensed unless the person or business is exempt from registration pursuant to Iowa Code subsection 124.302(3) or this rule.

10.6(1) *Warehouse.* A warehouse where controlled substances are stored by or on behalf of a registered person or business shall be exempt from registration except as follows:

a. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to registered locations other than the registered location from which the substances were delivered to the warehouse.

b. Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to persons exempt from registration pursuant to Iowa Code subsection 124.302(3).

10.6(2) *Sales office.* An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised shall be exempt from registration. Such office shall not contain controlled substances, except substances used for display purposes or for lawful distribution as samples, and shall not serve as a distribution point for filling sales orders.

10.6(3) *Prescriber's office.* An office used by a prescriber who is registered at another location and where controlled substances are prescribed but where no supplies of controlled substances are maintained shall be exempt from registration. However, a prescriber who practices at more than one office location where controlled substances are administered or otherwise dispensed as a regular part of the prescriber's practice shall register at each location wherein the prescriber maintains supplies of controlled substances.

10.6(4) *Prescriber in hospital.* A prescriber who is registered at another location and who treats patients and may order the administration of controlled substances in a hospital other than the prescriber's registered practice location shall not be required to obtain a separate registration for the hospital.

10.6(5) *Affiliated interns, residents, or foreign physicians.* An individual practitioner who is an intern, resident, or foreign physician may dispense and prescribe controlled substances under the registration of the hospital or other institution which is registered and by whom the registrant is employed provided that:

a. The hospital or other institution by which the individual practitioner is employed has determined that the practitioner is permitted to dispense or prescribe drugs by the appropriate licensing board;

b. Such individual practitioner is acting only in the scope of employment in the hospital or institution;

c. The hospital or other institution authorizes the intern, resident, or foreign physician to dispense or prescribe under the hospital registration and designates a specific internal code number, letters, or combination thereof which shall be appended to the institution's DEA registration number, preceded by a hyphen (e.g., AP1234567-10 or AP1234567-12); and

d. The hospital or institution maintains a current list of internal code numbers identifying the corresponding individual practitioner, available for the purpose of verifying the authority of the prescribing individual practitioner.

657—10.7 to **10.9** Reserved.

657—10.10(124,147,155A) Inspection. The board may inspect, or cause to be inspected, the establishment of an applicant or registrant. The board shall review the application for registration and other information regarding an applicant or registrant in order to determine whether the applicant or registrant has met the applicable standards of Iowa Code chapter 124 and these rules.

657—10.11(124) Modification or termination of registration. A registered individual or business may apply to modify a current registration as provided by this rule.

10.11(1) *Change of substances authorized.* Any registrant may apply to modify the substances authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, registration number, and the substances or schedules to be added to or removed from the registration and shall be signed by the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

10.11(2) *Change of address of registered location.*

a. Individual practitioner, researcher, analytical laboratory, or teaching institution. An entity registered under these classifications may apply to change the address of the registered location by submitting a written request to the board. The request shall include the registrant's name, current address, new address, telephone number, effective date of the address change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

b. Pharmacy, hospital, care facility, manufacturer, distributor, importer, or exporter. An entity registered under these classifications shall apply to change the address of the registered location by submitting a completed application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). The registration fee as provided in rule 657—10.3(124) shall accompany each completed application.

10.11(3) *Change of registrant's name.*

a. Individual practitioner, researcher, analytical laboratory, or teaching institution. An entity registered under these classifications may apply to change the registrant's name by submitting a written request to the board. The request shall include the registrant's current name, the new name, address, telephone number, effective date of the name change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification. Change of name, as used in this paragraph, refers to a change of the legal name of the registrant and does not authorize the transfer of a registration issued to an individual practitioner or researcher to another individual practitioner or researcher.

b. Pharmacy, hospital, care facility, manufacturer, distributor, importer, or exporter. An entity registered under these classifications shall apply to change the registrant name by submitting a completed application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). The registration fee as provided in rule 657—10.3(124) shall accompany each completed application.

10.11(4) *Change of ownership of registered business entity.* A change of immediate ownership of a pharmacy, hospital, care facility, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the completion of an application for registration. Applications may be obtained and shall be submitted as provided in rule 657—10.2(124). The registration fee as provided in rule 10.3(124) shall accompany each completed application.

10.11(5) *Change of responsible individual.* Any registrant, except an individual practitioner, a researcher, a hospital, or a pharmacy, may apply to change the responsible individual authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, the name and title of the current responsible individual and of the new responsible individual, the effective date of the change, and the registration number, and shall be signed by the new responsible individual. No fee shall be required for the modification.

a. Individual practitioners and researchers. Responsibility under a registration issued to an individual practitioner or researcher shall remain with the named individual practitioner or researcher. The responsible individual under such registration may not be changed.

b. Pharmacies and hospitals. The responsible pharmacist may execute a power of attorney for DEA order forms to change responsibility under the registration issued to the pharmacy or hospital. The power of attorney shall include the name, address, DEA registration number, and Iowa uniform controlled substances Act (CSA) registration number of the registrant. The power of attorney shall

identify the current and new responsible individuals and shall authorize the new responsible individual to execute applications and official DEA order forms to requisition Schedule II controlled substances. The power of attorney shall be signed by both individuals, shall be witnessed by two adults, and shall be maintained by the registrant and available for inspection or copying by representatives of the board or other state or federal authorities.

10.11(6) *Termination of registration.* A registration issued to an individual shall terminate upon the death of the individual. A registration issued to an individual or business shall terminate when the registered individual or business ceases legal existence, discontinues business, or discontinues professional practice.

657—10.12(124) Denial, modification, suspension, or revocation of registration.

10.12(1) *Grounds for suspension or revocation.* The board may suspend or revoke any registration upon a finding that the registrant:

a. Has furnished false or fraudulent material information in any application filed under this chapter;

b. Has had the registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended or revoked;

c. Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this rule only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even though entry of the judgment or sentence has been withheld and the individual has been placed on probation;

d. Has committed such acts as would render the registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined by that section; or

e. Has been subject to discipline by the registrant's respective professional licensing board and the discipline revokes, suspends, or modifies the registrant's authority regarding controlled substances (including, but not limited to, limiting or prohibiting the registrant from prescribing or handling controlled substances). A certified copy of the record of licensee discipline or a copy of the licensee's surrender of the professional license shall be conclusive evidence.

10.12(2) *Limited suspension or revocation.* If the board finds grounds to suspend or revoke a registration, the board may limit revocation or suspension of the registration to the particular controlled substance with respect to which the grounds for revocation or suspension exist. If the revocation or suspension is limited to a particular controlled substance or substances, the registrant shall be given a new certificate of registration for all substances not affected by revocation or suspension; no fee shall be required for the new certificate of registration. The registrant shall deliver the old certificate of registration to the board.

10.12(3) *Denial of registration or registration renewal.* If upon examination of an application for registration or registration renewal, including any other information the board has or receives regarding the applicant, the board determines that the issuance of the registration would be inconsistent with the public interest, the board shall serve upon the applicant an order to show cause why the registration should not be denied.

10.12(4) *Considerations in denial of registration.* In determining the public interest, the board shall consider all of the following factors:

a. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.

b. Compliance with applicable state and local law.

c. Any convictions of the applicant under any federal and state laws relating to any controlled substance.

d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion.

e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.

f. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.

g. Any other factors relevant to and consistent with the public health and safety.

10.12(5) *Order to show cause.* Before denying, modifying, suspending, or revoking a registration, the board shall serve upon the applicant or registrant an order to show cause why the registration should not be denied, modified, revoked, or suspended. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before an administrative law judge or the board at a time and place not less than 30 days after the date of service of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted. If the order to show cause involves the possible denial of registration renewal, the order shall be served not later than 30 days before the expiration of the registration. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing unless the board issues an order of immediate suspension pursuant to subrule 10.12(9).

10.12(6) *Hearing requested.* If an applicant or registrant who has received an order to show cause desires a hearing on the matter, the applicant or registrant shall file a request for a hearing within 30 days after the date of service of the order to show cause. If a hearing is requested, the board shall hold a hearing pursuant to 657—Chapter 35 at the time and place stated in the order and without regard to any criminal prosecution or other proceeding. Unless otherwise ordered by the board, an administrative law judge employed by the department of inspections and appeals shall be assigned to preside over the case and to render a proposed decision for the board's consideration.

10.12(7) *Waiver of hearing.* If an applicant or registrant entitled to a hearing on an order to show cause fails to file a request for hearing, or if the applicant or registrant requests a hearing but fails to appear at the hearing, the applicant or registrant shall be deemed to have waived the opportunity for a hearing unless the applicant or registrant shows good cause for such failure.

10.12(8) *Final board order when hearing waived.* If an applicant or registrant entitled to a hearing waives or is deemed to have waived the opportunity for a hearing, the executive director of the board may cancel the hearing and issue, on behalf of the board, the board's final order on the order to show cause.

10.12(9) *Order of immediate suspension.* The board may suspend any registration simultaneously with the service upon the registrant of an order to show cause why such registration should not be revoked or suspended if it finds there is an imminent danger to the public health or safety that warrants such action. If the board suspends a registration simultaneously with the service of the order to show cause upon the registrant, it shall serve an order of immediate suspension containing a statement of its findings regarding the danger to public health or safety upon the registrant with the order to show cause. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, under the provisions of the Iowa administrative procedure Act, unless sooner withdrawn by the board or dissolved by the order of the district court or an appellate court.

10.12(10) *Disposition of controlled substances.* If the board suspends or revokes a registration, the registrant shall promptly return the certificate of registration to the board. Also, upon service of the order of the board suspending or revoking the registration, the registrant shall deliver all affected controlled substances in the registrant's possession to the board or authorized agent of the board. Upon receiving the affected controlled substances from the registrant, the board or its authorized agent shall place all such substances under seal and retain the sealed controlled substances pending final resolution of any appeals or until a court of competent jurisdiction directs otherwise. No disposition may be made of the substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of proceeds of the sale with the court. Upon a revocation order's becoming final, all such controlled substances may be forfeited to the state.

10.12(11) *Notifications.* The board shall promptly notify the DEA and the Iowa department of public safety of all orders suspending or revoking registration and all forfeitures of controlled substances.

657—10.13 and **10.14** Reserved.

657—10.15(124,155A) Security requirements. All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a person has provided effective controls against diversion, the board shall use the security requirements set forth in these rules as standards for the physical security controls and operating procedures necessary to prevent diversion.

10.15(1) *Physical security.* Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operation. A registrant shall periodically review and adjust security measures based on rescheduling of substances or changes in the quantity of substances in the possession of the registrant.

a. Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet.

b. Controlled substances listed in Schedules II through V may be stored in a securely locked, substantially constructed cabinet. However, pharmacies and hospitals may disperse these substances throughout the stock of noncontrolled substances in a manner so as to obstruct the theft or diversion of the controlled substances.

10.15(2) *Factors in evaluating physical security systems.* In evaluating the overall security system of a registrant or applicant necessary to maintain effective controls against theft or diversion of controlled substances, the board may consider any of the following factors it deems relevant to the need for strict compliance with the requirements of this rule:

a. The type of activity conducted;

b. The type, form, and quantity of controlled substances handled;

c. The location of the premises and the relationship such location bears to security needs;

d. The type of building construction comprising the facility and the general characteristics of the building or buildings;

e. The type of vault, safe, and secure enclosures available;

f. The type of closures on vaults, safes, and secure enclosures;

g. The adequacy of key control systems or combination lock control systems;

h. The adequacy of electric detection and alarm systems, if any;

i. The adequacy of supervision over employees having access to controlled substances, to storage areas, or to manufacturing areas;

j. The extent of unsupervised public access to the facility, including the presence and characteristics of perimeter fencing, if any;

k. The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel;

l. The availability of local police protection or of the registrant's or applicant's security personnel; and

m. The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution, and disposition of controlled substances.

10.15(3) *Manufacturing and compounding storage areas.* Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in any schedule shall be stored pursuant to federal laws and regulations.

657—10.16(124) Report of theft or loss. A registrant shall report to the board and the DEA any theft or significant loss of controlled substances when the loss is attributable to other than inadvertent error. Thefts or other losses of controlled substances shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them.

10.16(1) *Immediate notice to board.* If the theft was committed by a registrant or licensee of the board, or if there is reason to believe that the theft was committed by a registrant or licensee of the board, the registrant from whom the controlled substances were stolen shall notify the board immediately upon discovery of the theft and shall identify to the board the registrant or licensee suspected of the theft.

10.16(2) *Immediate notice to DEA.* A registrant shall deliver notice, immediately upon discovery of a reportable theft or loss of controlled substances, to the Des Moines DEA field office via telephone, facsimile, or a brief written message explaining the circumstances of the theft or loss.

10.16(3) *Timely report submission.* Within 14 calendar days of discovery of the theft or loss, a registrant shall submit directly to the DEA a Form 106 or alternate required form via the DEA Web site at http://www.deadiversion.usdoj.gov/. A copy of the report that was completed and submitted to the DEA shall be immediately submitted to the board via facsimile, e-mail attachment, or personal or commercial delivery.

10.16(4) *Record maintained.* A copy of the report shall be maintained in the registrant's files for a minimum of two years following the date the report was completed.

[**ARC 1787C**, IAB 12/10/14, effective 1/14/15]

657—10.17(124) Accountability of stock supply. An individual who administers a controlled substance from a non-patient-specific, stock supply in an institutional setting shall personally document on a separate readily retrievable record system each dose administered, wasted, or returned to the pharmacy. Such documentation shall not be delegated to another individual. Wastage documentation shall include the signature or unique electronic signature or identification of a witnessing licensed health care practitioner.

Distribution records for non-patient-specific, floor-stocked controlled substances shall bear the following information:

1. Patient's name;
2. Prescriber who ordered drug;
3. Name of drug, dosage form, and strength;
4. Time and date of administration to patient and quantity administered;
5. Signature or unique electronic signature of individual administering controlled substance;
6. Returns to the pharmacy;
7. Waste, which is required to be witnessed and cosigned by another licensed health care practitioner.

[**ARC 9912B**, IAB 12/14/11, effective 1/18/12]

657—10.18(124) Disposal. Any persons legally authorized to possess controlled substances in the course of their professional practice or the conduct of their business shall dispose of such drugs pursuant to the procedures and requirements of this rule. Disposal records shall be maintained in the files of the registrant.

10.18(1) *Registrant stock supply.* Pharmacy personnel, registrants, and registrant staff shall remove from current inventory and dispose of controlled substances by one of the following procedures.

a. The responsible individual shall utilize the services of a DEA-registered and Iowa-licensed disposal firm.

b. The board may authorize and instruct the registrant to dispose of the controlled substances in one of the following manners:

(1) By delivery to an agent of the board or to the board office;

(2) By destruction of the drugs in the presence of a board officer, agent, inspector, or other authorized individual; or

(3) By such other means as the board may determine to ensure that drugs do not become available to unauthorized persons.

10.18(2) *Waste.* Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant's stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant or a pharmacist in witness of one other licensed health care provider or a registered pharmacy technician 18 years of age or older pursuant to this subrule. A written record of the wastage shall be made and maintained by the registrant for a minimum of two years following the destruction or other disposal. The record shall include the signatures of the individual

destroying or otherwise disposing of the waste controlled substance and of the witnessing licensed health care provider or registered pharmacy technician and shall identify the following:

a. The controlled substance wasted;

b. The date of destruction or other disposition;

c. The quantity or estimated quantity of the wasted controlled substance;

d. The source of the controlled substance, including identification of the patient to whom the substance was administered or the drug compounding process utilizing the controlled substance; and

e. The reason for the waste.

10.18(3) *Previously dispensed controlled substances.* Controlled substances dispensed to or for a patient and subsequently requiring destruction due to discontinuance of the drug, death of the patient, or other reasons necessitating destruction may be destroyed or otherwise disposed of by a pharmacist in witness of one other responsible adult pursuant to this subrule. All licenses and registrations issued to the pharmacy, the pharmacist, and any individual witnessing the destruction or other disposition shall not be subject to sanctions relating to controlled substances at the time of the destruction or disposition. The individuals involved in the destruction or other disposition shall not have been subject to any criminal, civil, or administrative action relating to violations of controlled substances laws, rules, or regulations within the past five years. The pharmacist in charge shall be responsible for designating pharmacists authorized to participate in the destruction or other disposition pursuant to this subrule. The authorized pharmacist shall prepare and maintain in the pharmacy a readily retrievable record of the destruction or other disposition, which shall be clearly marked to indicate the destruction or other disposition of noninventory or patient drugs. The record shall include, at a minimum, the following:

a. The source of the controlled substance (patient identifier or administering practitioner, if applicable, prescription number or other unique identification number, and date of return);

b. The name, strength, and dosage form of the substance;

c. The quantity returned and destroyed or otherwise disposed of;

d. The date the substance is destroyed or otherwise disposed of;

e. The signatures or other unique identification of the pharmacist and the witness;

f. The name and address of the dispensing pharmacy or practitioner if the controlled substance was not dispensed by the pharmacy completing the destruction.

[**ARC 0749C**, IAB 5/29/13, effective 7/3/13]

657—10.19 and **10.20** Reserved.

657—10.21(124,126,155A) Prescription requirements. All prescriptions for controlled substances shall be dated as of, and signed on, the day issued. Controlled substances prescriptions shall be valid for six months following date of issue. A prescription for a Schedule III, IV, or V controlled substance may include authorization to refill the prescription no more than five times within the six months following date of issue. A prescription for a Schedule II controlled substance shall not be refilled.

10.21(1) *Form of prescription.* All prescriptions shall bear the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; and the name, address, and DEA registration number of the prescriber. All prescriptions issued by individual prescribers shall include the legibly preprinted, typed, or hand-printed name of the prescriber as well as the prescriber's written or electronic signature. When an oral order is not permitted, or when a prescriber is unable to prepare and transmit an electronic prescription in compliance with DEA requirements for electronic prescriptions, prescriptions shall be written with ink, indelible pencil, or typed print and shall be manually signed by the prescriber. If the prescriber utilizes an electronic prescription application that meets DEA requirements for electronic prescriptions, the prescriber may electronically prepare and transmit a prescription for a controlled substance to a pharmacy that utilizes a pharmacy prescription application that meets DEA requirements for electronic prescriptions. A prescriber's agent may prepare a prescription for the review, authorization, and manual or electronic signature of the prescriber but the prescribing practitioner is responsible for the accuracy, completeness, and validity of the prescription. An electronic prescription for a controlled substance shall not be transmitted to a pharmacy except by

the prescriber in compliance with DEA regulations. A prescriber shall securely maintain the unique authentication credentials issued to the prescriber for utilization of the electronic prescription application and authentication of the prescriber's electronic signature. Unique authentication credentials issued to any individual shall not be shared with or disclosed to any other prescriber, agent, or individual. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this rule.

10.21(2) *Verification by pharmacist.* The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in each case when a written or oral prescription for a Schedule II controlled substance is presented for filling and neither the prescribing individual practitioner issuing the prescription nor the patient or patient's agent is known to the pharmacist. The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in any case when the pharmacist questions the validity of, including the legitimate medical purpose for, the prescription. The pharmacist is required to record the manner by which the prescription was verified and include the pharmacist's name or unique identifier.

10.21(3) *Intern, resident, foreign physician.* An intern, resident, or foreign physician exempt from registration pursuant to subrule 10.6(5) shall include on all prescriptions issued the hospital's registration number and the special internal code number assigned by the hospital in lieu of the prescriber's registration number required by this rule. Each prescription shall include the stamped or legibly printed name of the intern, resident, or foreign physician as well as the prescriber's signature.

10.21(4) *Valid prescriber/patient relationship.* Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or to oversee the patient's use of the controlled substance, a prescription shall lose its validity. A prescriber/patient relationship shall be deemed broken when the prescriber dies, retires, or moves out of the local service area or when the prescriber's authority to prescribe is suspended, revoked, or otherwise modified to exclude authority for the schedule in which the prescribed substance is listed. The pharmacist, upon becoming aware of the situation, shall cancel the prescription and any remaining refills. However, the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

10.21(5) *Schedule II prescriptions.* With appropriate verification, a pharmacist may add information provided by the patient or patient's agent, such as the patient's address, to a Schedule II controlled substance prescription. A pharmacist shall never change the patient's name, the controlled substance prescribed except for generic substitution, or the name or signature of the prescriber. After consultation with the prescriber or the prescriber's agent and documentation of such consultation, a pharmacist may change or add the following information on a Schedule II controlled substance prescription:

a. The drug strength;

b. The dosage form;

c. The drug quantity;

d. The directions for use;

e. The date the prescription was issued; and

f. The prescriber's address or DEA registration number.

[**ARC 9912B**, IAB 12/14/11, effective 1/18/12]

657—10.22(124) Schedule II emergency prescriptions.

10.22(1) *Emergency situation defined.* For the purposes of authorizing an oral or facsimile transmission of a prescription for a Schedule II controlled substance listed in Iowa Code section 124.206, the term "emergency situation" means those situations in which the prescribing practitioner determines that all of the following apply:

a. Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user.

b. No appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance.

c. It is not reasonably possible for the prescribing practitioner to provide a manually signed written prescription to be presented to the pharmacy before the pharmacy dispenses the controlled substance or the prescribing practitioner is unable to provide a DEA-compliant electronic prescription to the pharmacy before the pharmacy dispenses the controlled substance.

10.22(2) *Requirements of emergency prescription.* In the case of an emergency situation as defined in subrule 10.22(1), a pharmacist may dispense a controlled substance listed in Schedule II pursuant to a facsimile transmission or upon receiving oral authorization of a prescribing individual practitioner provided that:

a. The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner or a DEA-compliant electronic prescription.

b. If the pharmacist does not know the prescribing individual practitioner, the pharmacist shall make a reasonable effort to determine that the authorization came from an authorized prescriber. The pharmacist shall record the manner by which the authorization was verified and include the pharmacist's name or unique identification.

c. The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the facsimile transmission or a written record of the oral transmission authorizing the emergency dispensing. A written record is not required to consist of a handwritten record and may be a printed facsimile or a print of a computer-generated record of the prescription if the printed record includes all of the required elements for the prescription. If the emergency prescription is transmitted by the practitioner's agent, the record shall include the first and last names and title of the individual who transmitted the prescription.

d. If the emergency prescription is transmitted via facsimile transmission, the means of transmission shall not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the written prescription, and the hard-copy record of the facsimile transmission shall not be obscured or rendered illegible due to such security features.

e. Within seven days after authorizing an emergency prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of 657—10.21(124,126,155A), the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the emergency order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the seven-day period. The written prescription shall be attached to and maintained with the temporary written record prepared pursuant to paragraph *"c."*

f. The pharmacist shall notify the board and the DEA if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to so notify the board and the DEA, or failure of the prescribing individual to deliver the required written prescription as herein required, shall void the authority conferred by this subrule.

[**ARC 7636B**, IAB 3/11/09, effective 4/15/09; **ARC 9410B**, IAB 3/9/11, effective 4/13/11; **ARC 9912B**, IAB 12/14/11, effective 1/18/12]

657—10.23(124) Schedule II prescriptions—partial filling. The partial filling of a prescription for a controlled substance listed in Schedule II is permitted as provided in this rule.

10.23(1) *Insufficient supply on hand.* If the pharmacist is unable to supply the full quantity called for in a prescription and makes a notation of the quantity supplied on the prescription record, a partial fill of the prescription is permitted. The remaining portion of the prescription must be filled within 72 hours of the first partial filling. If the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescriber. No further quantity may be supplied beyond 72 hours without a new prescription.

10.23(2) *Long-term care or terminally ill patient.* A prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a medical

diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units as provided by this subrule.

a. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient.

b. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient." For each partial filling, the dispensing pharmacist shall record on the back of the prescription, or on another appropriate uniformly maintained and readily retrievable record, the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

c. The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

d. Information pertaining to current Schedule II prescriptions for patients in a LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system pursuant to rule 657—21.4(124,155A).

657—10.24(124) Schedule II medication order. Schedule II controlled substances may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.18(124,155A), as applicable.

657—10.25(124) Schedule II—issuing multiple prescriptions. An individual prescriber may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance pursuant to the provisions and limitations of this rule.

10.25(1) *Refills prohibited.* The issuance of refills for a Schedule II controlled substance is prohibited. The use of multiple prescriptions for the dispensing of Schedule II controlled substances, pursuant to this rule, ensures that the prescriptions are treated as separate dispensing authorizations and not as refills of an original prescription.

10.25(2) *Legitimate medical purpose.* Each separate prescription issued pursuant to this rule shall be issued for a legitimate medical purpose by an individual prescriber acting in the usual course of the prescriber's professional practice.

10.25(3) *Dates and instructions.* Each prescription issued pursuant to this rule shall be dated as of and manually signed by the prescriber on the day the prescription is issued. Each separate prescription, other than the first prescription if that prescription is intended to be filled immediately, shall contain written instructions indicating the earliest date on which a pharmacist may fill each prescription.

10.25(4) *Authorized fill date unalterable.* Regardless of the provisions of subrule 10.21(5), when a prescription contains instructions from the prescriber indicating that the prescription shall not be filled before a certain date, a pharmacist shall not fill the prescription before that date. The pharmacist shall not contact the prescriber for verbal authorization to fill the prescription before the fill date originally indicated by the prescriber pursuant to this rule.

10.25(5) *Number of prescriptions and authorized quantity.* An individual prescriber may issue for a patient as many separate prescriptions, to be filled sequentially pursuant to this rule, as the prescriber deems necessary to provide the patient with adequate medical care. The cumulative effect of the filling of each of these separate prescriptions shall result in the receipt by the patient of a quantity of the Schedule II controlled substance not exceeding a 90-day supply.

10.25(6) *Prescriber's discretion.* Nothing in this rule shall be construed as requiring or encouraging an individual prescriber to issue multiple prescriptions pursuant to this rule or to see the prescriber's patients only once every 90 days when prescribing Schedule II controlled substances. An individual prescriber shall determine, based on sound medical judgment and in accordance with established medical

standards, how often to see patients and whether it is appropriate to issue multiple prescriptions pursuant to this rule.
[**ARC 8172B**, IAB 9/23/09, effective 10/28/09]

657—10.26 Reserved.

657—10.27(124,155A) Facsimile transmission of a controlled substance prescription. With the exception of an authorization for emergency dispensing as provided in rule 657—10.22(124), a prescription for a controlled substance may be transmitted via facsimile from a prescriber to a pharmacy as provided in rule 657—21.9(124,155A).

10.27(1) *Schedule II prescription.* A prescription for a Schedule II controlled substance may be transmitted via facsimile to the pharmacy only as provided in rules 657—21.12(124,155A) to 657—21.16(124,155A).

10.27(2) *Schedule III, IV, or V prescription.* A prescription for a Schedule III, IV, or V controlled substance may be transmitted via facsimile to the pharmacy only as provided in rule 657—21.9(124,155A).
[**ARC 9912B**, IAB 12/14/11, effective 1/18/12]

657—10.28(124,155A) Schedule III, IV, or V refills. No prescription for a controlled substance listed in Schedule III, IV, or V shall be filled or refilled more than six months after the date on which it was issued nor be refilled more than five times.

10.28(1) *Record.* Each filling and refilling of a prescription shall be entered on the prescription or on another uniformly maintained and readily retrievable record.

a. The following information shall be retrievable by the prescription number: the name and dosage form of the controlled substance, the date filled or refilled, the quantity dispensed, the unique identification of the dispensing pharmacist for each refill, and the total number of refills authorized for that prescription.

b. If the pharmacist merely initials or affixes the pharmacist's unique identifier and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed.

10.28(2) *Oral refill authorization.* The prescribing practitioner may authorize additional refills of Schedule III, IV, or V controlled substances on the original prescription through an oral refill authorization transmitted to the pharmacist provided the following conditions are met:

a. The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issuance of the original prescription.

b. The pharmacist who obtains the oral authorization records from the prescriber who issued the original prescription records on or with the original prescription the date, the quantity of each refill, the number of additional refills authorized, and the pharmacist's unique identification.

c. The quantity of each additional refill is equal to or less than the quantity authorized for the initial filling of the original prescription.

d. The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five-refill, six-month limitation.

10.28(3) *Automated data processing record system.* An automated data processing record system may be used for the storage and retrieval of Schedule III, IV, and V controlled substance prescription fill and refill information subject to the conditions and requirements of rules 657—21.4(124,155A) and 657—21.5(124,155A).

657—10.29(124,155A) Schedule III, IV, or V partial fills. The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible provided that each partial fill is recorded in the same manner as a refill. The total quantity dispensed in all partial fills shall not exceed the total quantity prescribed. No dispensing shall occur later than six months after the date on which the prescription was issued.

657—10.30(124,155A) Schedule III, IV, and V medication order. A Schedule III, IV, or V controlled substance may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.

657—10.31(124,155A) Dispensing Schedule V controlled substances without a prescription. A controlled substance listed in Schedule V, which substance is not a prescription drug as determined under the federal Food, Drug and Cosmetic Act, and excepting products containing ephedrine, pseudoephedrine, or phenylpropanolamine, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.31(1) *Who may dispense.* Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

10.31(2) *Frequency and quantity.* Dispensing at retail to the same purchaser in any 48-hour period shall be limited to no more than one of the following quantities of a Schedule V controlled substance:

a. 240 cc (8 ounces) of any controlled substance containing opium.

b. 120 cc (4 ounces) of any other controlled substance.

c. 48 dosage units of any controlled substance containing opium.

d. 24 dosage units of any other controlled substance.

10.31(3) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.31(4) *Identification.* The pharmacist shall require every purchaser under this rule not known by the pharmacist to present a government-issued photo identification, including proof of age when appropriate.

10.31(5) *Record.* A bound record book (i.e., with pages sewn or glued to the spine) for dispensing of Schedule V controlled substances pursuant to this rule shall be maintained by the pharmacist. The book shall contain the name and address of each purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the substance to the purchaser.

10.31(6) *Prescription not required under other laws.* No other federal or state law or regulation requires a prescription prior to distributing or dispensing a Schedule V controlled substance.

657—10.32(124,155A) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription. A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.32(1) *Who may dispense.* Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

10.32(2) *Packaging of nonliquid forms.* A nonliquid form of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine includes gel caps. Nonliquid forms of these products to be sold pursuant to this rule shall be packaged either in blister packaging with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches.

10.32(3) *Frequency and quantity.* Dispensing at retail to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine, pseudoephedrine, or phenylpropanolamine; dispensing at retail to the same purchaser within a single calendar day shall not exceed 3,600 mg.

10.32(4) *Age of purchaser.* The purchaser shall be at least 18 years of age.

10.32(5) *Identification.* The pharmacist shall require every purchaser under this rule to present a current government-issued photo identification, including proof of age when appropriate. The pharmacist shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

10.32(6) *Record.* Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor's office of drug control policy pursuant to 657—Chapter 100. If the real-time electronic repository is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

a. *Alternate record contents.* The alternate record shall contain the following:

(1) The name, address, and signature of the purchaser.

(2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.

(3) The date and time of the purchase.

(4) The name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the product.

b. *Alternate record format.* The record shall be maintained using one of the following options:

(1) A hard-copy record.

(2) A record in the pharmacy's electronic prescription dispensing record-keeping system that is capable of producing a hard-copy printout of a record.

(3) A record in an electronic data collection system that captures each of the data elements required by this subrule and that is capable of producing a hard-copy printout of a record.

c. *PTS records retrieval.* Pursuant to 657—subrule 100.4(6), the pharmacy shall be able to produce a hard-copy printout of transactions recorded in the PTS by the pharmacy for one or more specific products for a specified period of time upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

10.32(7) *Notice required.* The pharmacy shall ensure that the following notice is provided to purchasers of ephedrine, pseudoephedrine, or phenylpropanolamine products and that the notice is displayed with or on the electronic signature device or is displayed in the dispensing area and visible to the public:

"WARNING: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than $250,000 if an individual or $500,000 if an organization, imprisoned not more than five years, or both."

[**ARC 8892B**, IAB 6/30/10, effective 9/1/10]

657—10.33(124,155A) Schedule II perpetual inventory in pharmacy. Each pharmacy located in Iowa that dispenses Schedule II controlled substances shall maintain a perpetual inventory system for all Schedule II controlled substances pursuant to the requirements of this rule. All records relating to the perpetual inventory shall be maintained by the pharmacy and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record.

10.33(1) *Record format.* The perpetual inventory record may be maintained in a manual or an electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed.

10.33(2) *Information included.* The perpetual inventory record shall identify all receipts for and disbursements of Schedule II controlled substances by drug or by national drug code (NDC) number. The record shall be updated to identify each prescription filled and each shipment received. The record shall also include incident reports and reconciliation records pursuant to subrules 10.33(3) and 10.33(4).

10.33(3) *Changes to a record.* If a perpetual inventory record is able to be changed, the individual making a change to the record shall complete an incident report documenting the change. The incident report shall identify the specific information that was changed including the information before and after the change, shall identify the individual making the change, and shall include the date and the reason the record was changed. If the electronic record system documents within the perpetual inventory record all of the information that must be included in an incident report, a separate report is not required.

10.33(4) *Reconciliation.* The pharmacist in charge shall be responsible for reconciling the physical inventory of all Schedule II controlled substances with the perpetual inventory balance on a periodic basis but no less frequently than annually. In case of any discrepancies between the physical inventory and the perpetual inventory, the pharmacist in charge shall determine the need for further investigation, and significant discrepancies shall be reported to the board pursuant to rule 657—10.16(124) and to the DEA pursuant to federal DEA regulations. Periodic reconciliation records shall be maintained and available for review and copying by the board or agents of the board for a period of two years from the date of the record. The reconciliation process may be completed using either of the following procedures or a combination thereof:

a. The dispensing pharmacist verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. If controlled substances are maintained on the patient care unit, the nurse or other responsible licensed health care provider verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. All discrepancies shall be reported to the pharmacist in charge. If any Schedule II controlled substances in the pharmacy's current inventory have been dispensed and verified in this manner within the year, and there are no discrepancies noted, no additional reconciliation action is required. A drug that has had no activity within the year shall be reconciled pursuant to paragraph *"b"* of this subrule.

b. A physical count of each Schedule II controlled substance stocked by the pharmacy shall be completed at least once each year, and that count shall be reconciled with the perpetual inventory record balance. The physical count and reconciliation may be completed over a period of time not to exceed one year in a manner that ensures that the perpetual inventory and the physical inventory of Schedule II controlled substances are annually reconciled. The individual performing the reconciliation shall record the date, the time, the individual's initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory. Any discrepancies between the physical inventory and the perpetual inventory shall be reported to the pharmacist in charge.

657—10.34(124,155A) Records. Every inventory or other record required to be kept under this chapter or under Iowa Code chapter 124 shall be kept by the registrant and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record except as otherwise required in these rules. Controlled substances records shall be maintained in a readily retrievable manner that establishes the receipt and distribution of all controlled substances. Original hard-copy prescription and other pharmacy records more than 12 months old may be maintained in a secure storage area outside the licensed pharmacy department unless such remote storage is prohibited under federal law. A remote storage area shall be located within the same physical structure containing the licensed pharmacy department.

10.34(1) *Schedule I and II records.* Inventories and records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the registrant.

10.34(2) *Schedule III, IV, and V records.* Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the required information is readily retrievable from the ordinary business records of the registrant.

10.34(3) *Date of record.* The date on which a controlled substance is actually received, imported, distributed, exported, or otherwise transferred shall be used as the date of receipt or distribution.

10.34(4) *Receipt and disbursement records.* Each record of receipt or disbursement of controlled substances, unless otherwise provided in these rules or pursuant to federal law, shall include the following:

a. The name of the substance;

b. The strength and dosage form of the substance;

c. The number of units or commercial containers acquired from other registrants, including the date of receipt and the name, address, and DEA registration number of the registrant from whom the substances were acquired;

d. The number of units or commercial containers distributed to other registrants, including the date of distribution and the name, address, and DEA registration number of the registrant to whom the substances were distributed; and

e. The number of units or commercial containers disposed of in any other manner, including the date and manner of disposal and the name, address, and DEA registration number of the registrant to whom the substances were distributed for disposal, if appropriate.

10.34(5) *Dispensing records.* Each record of dispensing of controlled substances to a patient or research subject shall include the following information:

a. The name and address of the person to whom dispensed;

b. The date of dispensing;

c. The name of the substance;

d. The quantity of the substance dispensed; and

e. The name or unique identification of the individual who dispensed or administered the substance.

10.34(6) *Ordering or distributing Schedule I or II controlled substances - DEA Form 222.* Except as otherwise provided by subrule 10.34(7) and under federal law, a DEA Form 222 is required for each distribution of a Schedule I or II controlled substance. An order form may be executed only on behalf of the registrant named on the order form and only if the registrant's DEA and Iowa registrations for the substances being purchased have not expired or been revoked or suspended by the issuing agency.

a. Order forms shall be obtained, executed, and filled pursuant to DEA requirements. Each form shall be complete, legible, and properly prepared, executed, and endorsed and shall contain no alteration, erasure, or change of any kind.

b. The purchaser shall submit Copy 1 and Copy 2 of the order form to the supplier.

c. The purchaser shall maintain Copy 3 of the order form in the files of the registrant. Upon receipt of the substances from the supplier, the purchaser shall record on Copy 3 of the order form the quantity of each substance received, and the date of receipt, and shall initial each line identifying a substance received.

d. The supplier shall record on Copy 1 and Copy 2 of the order form the quantity of each substance distributed to the purchaser and the date on which the shipment is made. The supplier shall maintain Copy 1 of the order form in the files of the supplier and shall forward Copy 2 of the order form to the DEA district office.

e. Order forms shall be maintained separately from all other records of the registrant.

f. Each unaccepted, defective, or otherwise "void" order form and any attached statement or other documents relating to any order form shall be maintained in the files of the registrant.

g. If the registration of any purchaser of Schedule I or II controlled substances is terminated for any reason, or if the name or address of the registrant as shown on the registration is changed, the registrant shall return all unused order forms to the DEA district office.

10.34(7) *Ordering or distributing Schedule I or II controlled substances - electronic ordering system.* A registrant authorized to order or distribute Schedule I or II controlled substances via the DEA Controlled Substances Ordering System (CSOS) shall comply with the requirements of the DEA relating to that system, including the maintenance and security of digital certificates, signatures, and passwords and all record-keeping and reporting requirements.

a. For an electronic order to be valid, the purchaser shall sign the electronic order with a digital signature issued to the purchaser or the purchaser's agent by the DEA.

b. An electronic order may include controlled substances that are not in Schedules I and II and may also include noncontrolled substances.

c. A purchaser shall submit an order to a specific wholesale distributor appropriately licensed to distribute in Iowa.

d. Prior to filling an order, a supplier shall verify the integrity of the signature and the order, verify that the digital certificate has not expired, check the validity of the certificate, and verify the registrant's authority to order the controlled substances.

e. The supplier shall retain an electronic record of every order, including a record of the number of commercial or bulk containers furnished for each item and the date on which the supplier shipped the containers to the purchaser. The shipping record shall be linked to the electronic record of the order. Unless otherwise provided under federal law, a supplier shall ship the controlled substances to the registered location associated with the digital certificate used to sign the order.

f. If an order cannot be filled for any reason, the supplier shall notify the purchaser and provide a statement as to the reason the order cannot be filled. When a purchaser receives such a statement from a supplier, the purchaser shall electronically link the statement of nonacceptance to the original electronic order. Neither a purchaser nor a supplier may correct a defective order; the purchaser must issue a new order for the order to be filled.

g. When a purchaser receives a shipment, the purchaser shall create a record of the quantity of each item received and the date received. The record shall be electronically linked to the original order and shall identify the individual reconciling the order. A purchaser shall, for each order filled, retain the original signed order and all linked records for that order for two years. The purchaser shall also retain all copies of each unfilled or defective order and each linked statement.

h. A supplier shall retain each original order filled and all linked records for two years. A supplier shall, for each electronic order filled, forward to the DEA within two business days either a copy of the electronic order or an electronic report of the order in a format specified by the DEA.

i. Records of CSOS electronic orders and all linked records shall be maintained by a supplier and a purchaser for two years following the date of shipment or receipt, respectively. Records may be maintained electronically or in hard-copy format. Records that are maintained electronically shall be readily retrievable from all other records, shall be easily readable or easily rendered into a readable format, shall be readily retrievable at the registered location, and shall be made available to the board, to the board's agents, or to the DEA upon request. Records maintained in hard-copy format shall be maintained in the same manner as DEA Form 222.

[**ARC 8539B**, IAB 2/24/10, effective 4/1/10]

657—10.35(124,155A) Physical count and record of inventory. Responsibility for ensuring that a required inventory is timely completed shall rest with the registrant or, in the case of a registered business, shall rest with the owner of the business. A registrant or owner of a registered business may delegate the actual taking of any inventory. The person or persons responsible for taking the inventory shall sign the completed inventory record.

10.35(1) *Record and procedure.* Each inventory record, except the periodic count and reconciliation required pursuant to subrule 10.33(4), shall comply with the requirements of this subrule and shall be maintained for a minimum of two years from the date of the inventory.

a. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date and at the time the inventory is taken.

b. Each inventory shall be maintained in a handwritten, typewritten, or electronically printed form at the registered location. An inventory of Schedule II controlled substances shall be maintained separately from an inventory of all other controlled substances.

c. Controlled substances shall be deemed to be on hand if they are in the possession of or under the control of the registrant. These shall include prescriptions prepared for dispensing to a patient but not yet delivered to the patient, substances maintained in emergency medical services programs or care facility emergency supplies, outdated or adulterated substances pending destruction, and substances stored in a warehouse on behalf of the registrant.

d. A separate inventory shall be made for each registered location and for each independent activity registered except as otherwise provided under federal law.

e. The inventory shall be taken either prior to opening or following the close of business on the inventory date, and the inventory record shall identify either opening or close of business.

f. The inventory record, unless otherwise provided under federal law, shall include the following information:

(1) The name of the substance;

(2) The strength and dosage form of the substance; and

(3) The quantity of the substance.

g. For all substances listed in Schedule I or II, and for all solid oral and injectable hydrocodone-containing products, the quantity shall be an exact count or measure of the substance.

h. For all substances listed in Schedule III, IV, or V, except for hydrocodone-containing products identified in paragraph *"g"* herein, the quantity may be an estimated count or measure of the substance unless the container has been opened and originally held more than 100 dosage units. If the opened commercial container originally held more than 100 dosage units, an exact count of the contents shall be made. Liquid oral hydrocodone-containing products packaged in incremented containers shall be measured to the nearest increment; products packaged in nonincremented containers may be estimated to the nearest one-fourth container.

10.35(2) *Initial inventory.* A new registrant shall take an inventory of all stocks of controlled substances on hand on the date the new registrant first engages in the manufacture, distribution, or dispensing of controlled substances. If the registrant commences business or the registered activity with no controlled substances on hand, the initial inventory shall record that fact.

10.35(3) *Annual inventory.* After the initial inventory is taken, a registrant shall take a new inventory of all stocks of controlled substances on hand at least annually. The annual inventory may be taken on any date that is within one year or seven days after the date of the previous annual inventory.

10.35(4) *Change of ownership.* Both the current owner and the prospective owner shall be responsible for ensuring that an inventory of all controlled substances is timely completed whenever there is a change of ownership of any pharmacy or drug wholesaler licensed pursuant to Iowa Code section 155A.13 or 155A.17, respectively. The inventory shall be taken following the close of business the last day under terminating ownership and prior to opening for business the first day under the new ownership. The inventory shall serve as the ending inventory for the terminating owner as well as a record of beginning inventory for the new owner.

10.35(5) *Change of pharmacist in charge (PIC).* An inventory of all controlled substances shall be completed whenever there is a change of PIC. The inventory shall be taken following the close of business the last day of the terminating PIC's employment and prior to opening for business the first day of the new PIC's employment. A single inventory shall be sufficient if there is no lapse between employment of the terminating PIC and the new PIC.

10.35(6) *Change of registered location.* A registrant shall take an inventory of all controlled substances whenever there is a change of registered location. The inventory shall be taken following the close of business the last day at the location being vacated. This inventory shall serve as the ending inventory for the location being vacated as well as a record of beginning inventory for the new location.

10.35(7) *Discontinuing registered activity.* A registrant shall take an inventory of controlled substances at the close of business the last day the registrant is engaged in registered activities. If the registrant is selling or transferring the remaining controlled substances to another registrant, this inventory shall serve as the ending inventory for the registrant discontinuing business as well as a record of additional or starting inventory for the registrant to whom the substances are transferred.

10.35(8) *Newly controlled substances.* On the effective date of the addition of a previously noncontrolled substance to any schedule of controlled substances, any registrant who possesses the newly controlled substance shall take an inventory of all stocks of the substance on hand. That initial inventory record shall be maintained with the most recent controlled substances inventory record. Thereafter, the newly controlled substance shall be included in each inventory made by the registrant.

[**ARC 1575C**, IAB 8/20/14, effective 9/24/14]

657—10.36(124) Samples and other complimentary packages—records. Complimentary packages and samples of controlled substances may be distributed to practitioners pursuant to federal and state law only if the person distributing the items leaves with the practitioner a specific written list of the items delivered.

10.36(1) *Distribution record.* The record form for the distribution of complimentary packages of controlled substances shall contain the following information:

a. The name, address, and DEA registration number of the supplier;

b. The name, address, and DEA registration number of the practitioner;

c. The name, strength, and quantity of the specific controlled substances delivered; and

d. The date of delivery.

10.36(2) *Reports to the board.* Any person who distributes controlled substances pursuant to this rule shall report all such distributions to the board. Reports shall:

a. Include the information identified in subrule 10.36(1). Reports may consist of copies of those distribution records or may be computer-generated listings identifying those distributions.

b. Be submitted as soon as practicable after distribution to the practitioner but no less often than once each calendar quarter.

10.36(3) *Practitioner records.* A practitioner who regularly administers or dispenses controlled substances shall keep records of the receipt and disbursement of such drugs, including complimentary packages and samples. Records shall be filed in a readily retrievable manner in accordance with federal requirements and shall be made available for inspection and copying by agents of the board or other authorized individuals for at least two years from the date of the record.

657—10.37(124,126) Revision of controlled substances schedules.

10.37(1) *Application for exception.* Any person seeking to have any compound, mixture, or preparation containing any depressant or stimulant substance listed in any of the schedules in Iowa Code chapter 124 excepted from the application of all or any part of that chapter may apply to the board for such exception.

a. An application for an exception under this rule shall provide evidence that an exception has been granted under the federal Controlled Substances Act.

b. The board shall permit any interested person to file written comments on or objections to the proposal for exception and shall designate the time during which such filings may be made. After consideration of the application and any comments on or objections to the proposal for exception, the board shall issue its findings on the application.

10.37(2) *Designation of new controlled substance.* The board may designate any new substance as a controlled substance to be included in any of the schedules in Iowa Code chapter 124 no sooner than 30 days following publication in the Federal Register of a final order so designating the substance under federal law. Designation of a new controlled substance under this subrule shall be temporary as provided in Iowa Code section 124.201, subsection 4.

10.37(3) *Objection to designation of a new controlled substance.* The board may object to the designation of any new substance as a controlled substance within 30 days following publication in the Federal Register of a final order so designating the substance under federal law. The board shall file objection to the designation of a substance as controlled, shall afford all interested parties an opportunity to be heard, and shall issue the board's decision on the new designation as provided in Iowa Code section 124.201, subsection 4.

657—10.38(124) Temporary designation of controlled substances.

10.38(1) Amend Iowa Code section 124.204 by adding the following new subsection 9:

9. Temporary listing of substances subject to Schedule I. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: UR-144, 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole.

b. [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 5-fluoro-UR-144, 5-F-UR-144, XLR11, 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole.

c. N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: APINACA, AKB48.

10.38(2) Amend Iowa Code subsection 124.204(4) by adding the following new paragraphs:

al. 4-methyl-N-ethylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 4-MEC, 2-(ethylamino)-1-(4-methylphenyl)propan-1-one.

am. 4-methyl-alpha-pyrrolidinopropiophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 4-MePPP, MePPP, 4-methyl-[alpha]-pyrrolidinopropiophenone, 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one.

an. Alpha-pyrrolidinopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: [alpha]-PVP, [alpha]-pyrrolidinovalerophenone, 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one.

ao. Butylone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: bk-MBDB, 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one.

ap. Pentedrone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: [alpha]-methylaminovalerophenone, 2-(methylamino)-1-phenylpentan-1-one.

aq. Pentylone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: bk-MBDP, 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one.

ar. 4-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 4-FMC, flephedrone, 1-(4-fluorophenyl)-2-(methylamino)propan-1-one.

as. 3-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 3-FMC, 1-(3-fluorophenyl)-2-(methylamino)propan-1-one.

at. Naphyrone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: naphthylpyrovalerone, 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one.

au. Alpha-pyrrolidinobutiophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: [alpha]-PBP, 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one.

10.38(3) Amend Iowa Code subsection 124.204(9) by adding the following new paragraphs:

g. Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: PB-22, QUPIC.

h. Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 5-fluoro-PB-22, 5F-PB-22.

i. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: AB-FUBINACA.

j. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: ADB-PINACA.

10.38(4) Amend Iowa Code subsection 124.208(5), paragraph *"a,"* by rescinding subparagraphs (3) and (4) and by renumbering remaining subparagraphs (5) through (8) as subparagraphs (3) through (6).

10.38(5) Amend Iowa Code subsection 124.210(2) by adding the following new paragraph:

c. 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers (including tramadol).

10.38(6) Amend Iowa Code subsection 124.210(3) by adding the following new paragraphs:

bb. Alfaxalone.

bc. Suvorexant.

[**ARC 7906B**, IAB 7/1/09, effective 6/22/09; **ARC 8411B**, IAB 12/30/09, effective 12/1/09; **ARC 8989B**, IAB 8/11/10, effective 7/21/10; **ARC 9091B**, IAB 9/22/10, effective 8/30/10; **ARC 0893C**, IAB 8/7/13, effective 7/9/13; **ARC 1408C**, IAB 4/2/14, effective 3/13/14; **ARC 1787C**, IAB 12/10/14, effective 1/14/15]

657—10.39(124,126) Excluded substances. The Iowa board of pharmacy hereby excludes from all schedules the current list of "Excluded Nonnarcotic Products" identified in Title 21, CFR Part 1308, Section 22. Copies of the list of excluded products may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

657—10.40(124,126) Anabolic steroid defined. Anabolic steroid, as defined in Iowa Code section 126.2, paragraph 2, includes any substance identified as such in Iowa Code section 124.208, paragraph 6, or in Iowa Code section 126.2, paragraph 2.

657—10.41(124A) Designation of imitation controlled substances. Rescinded **ARC 2195C**, IAB 10/14/15, effective 11/18/15.

These rules are intended to implement Iowa Code sections 124.201, 124.301 to 124.308, 124.402, 124.403, 124.501, 126.2, 126.11, 147.88, 155A.13, 155A.17, 155A.26, 155A.37, and 205.3.

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CHAPTER 13
STERILE COMPOUNDING PRACTICES

Rescinded **ARC 2194C**, IAB 10/14/15, effective 11/18/15

CHAPTER 15
CORRECTIONAL PHARMACY PRACTICE

657—15.1(155A) Purpose and scope. It is the intent of these rules to authorize the department of corrections to distribute prescription drugs to patients in correctional facilities from one or more correctional pharmacies. Each correctional pharmacy shall be responsible for the provision of pharmacy services for a specific number of correctional facilities. The correctional pharmacies may be located on the grounds of a correctional facility or may be located off site from all facilities. The correctional pharmacies shall be licensed by the board with limited-use pharmacy licenses designated as correctional pharmacy licenses. Pharmacists shall be responsible for any delegated act performed by supportive personnel under the pharmacists' supervision. The requirements of these rules for correctional pharmacy practice are in addition to the requirements of 657—Chapter 8 and other rules of the board relating to the services provided by the pharmacies.
[**ARC 8670B**, IAB 4/7/10, effective 5/12/10]

657—15.2(126,155A) Definitions. For purposes of this chapter, the following definitions shall apply:

"Board" means the Iowa board of pharmacy.

"Department" means the Iowa department of corrections.

"Emergency/first dose drug supply" means a limited inventory of drugs stored outside the correctional pharmacy and accessible to designated health care staff for the purpose of initiating emergency or first dose prescription drug orders issued during periods when the pharmacist is unavailable.

"Medication administration record" means the record of the administration of drugs to patients.

"Med-pak" means a customized patient medication package prepared for a specific patient which comprises a series of immediate containers containing prescribed solid oral dosage forms, each container being labeled with the time or the appropriate period for the patient to take its contents.

"Prescription drug order" means an order that is for a drug or device for a patient in custody status in a correctional facility, that is originated by a practitioner authorized to prescribe, and that meets the information requirements for a prescription drug order but is recorded, distributed, and administered as though it were a medication order.

"Qualified individual" means a pharmacist, a person who has successfully completed a medication administration course, or a person specifically authorized under pertinent sections of the Iowa Code to administer prescription drugs.

"Single unit package" means a package that contains one discrete pharmaceutical dosage form.

"Unit dose dispensing system" means a drug distribution system utilizing single unit, unit dose, or unit of issue packaging in a manner that helps reduce or remove traditional drug stocks from resident care areas and enables the selection and distribution of drugs to be pharmacy-based and controlled.

"Unit dose package" means a package that contains that particular dose of a drug ordered for the patient for one administration time. A unit dose package is not always a single unit package.

"Unit of issue package" means a package that provides multiple units or doses attached to each other but separated in a card or specifically designed container.
[**ARC 8670B**, IAB 4/7/10, effective 5/12/10]

657—15.3(155A) Responsibilities. In any correctional pharmacy, the following responsibilities, which are in addition to the responsibilities required by all applicable federal and state laws, rules and regulations and the responsibilities as described in rule 657—8.3(155A), shall be assigned as follows:

1. The pharmacist in charge or designee shall ensure that a quarterly inspection of all pharmaceuticals located at the correctional facility, including any emergency/first dose drug supply located outside the confines of the pharmacy, is completed and documented.

2. The pharmacist in charge or a pharmacist shall provide drug information to other health professionals, to other caregivers, and to patients as required or requested.
[**ARC 8670B**, IAB 4/7/10, effective 5/12/10; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—15.4(155A) Reference library. References may be printed or computer-accessed. Each correctional pharmacy shall have on site, at a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. A reference including all pertinent Iowa laws, rules, and regulations that impact the pharmacy's practice.
2. A patient information reference that includes or provides patient information in compliance with rule 657—6.14(155A).
3. A reference on drug interactions.
4. A general information reference.
5. A drug equivalency reference.
6. A reference on natural or herbal medicines.
7. The readily accessible telephone number of a poison control center that serves the area.
8. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

[**ARC 8670B**, IAB 4/7/10, effective 5/12/10; **ARC 2196C**, IAB 10/14/15, effective 11/18/15]

657—15.5(124,155A) Security. The pharmacy shall be located in an area or areas that provide for effective control against theft of, diversion of, and unauthorized access to prescription drugs and pharmacy records. The following conditions shall be met to ensure appropriate control over drugs and chemicals in the pharmacy:

15.5(1) *Locked areas.* All areas occupied by the correctional pharmacy or where drugs or devices are maintained or stored shall be lockable by a key, combination, or electronic device so as to prevent access by unauthorized personnel and shall be locked when unoccupied or unattended.

15.5(2) *Access when pharmacist absent.* Pursuant to rule 657—8.3(155A), the pharmacy shall have policies and procedures for the security of the correctional pharmacy. Policies and procedures shall identify who will have access to the pharmacy, what areas may be accessed, and the procedures to be followed for obtaining drugs and chemicals when the pharmacist is absent from the pharmacy.

15.5(3) *Pharmacist responsibility.* Each pharmacist, while on duty, shall be responsible for the security of the correctional pharmacy. This responsibility includes provisions for effective control against theft of, diversion of, or unauthorized access to prescription drugs or devices, controlled substances, records for such drugs and devices, and patient records as provided in 657—Chapter 21 and rule 657—8.16(124,155A). Policies and procedures shall identify the days and hours the pharmacy shall be open. A pharmacist shall be on site during all times that the pharmacy is open.

15.5(4) *Drugs in the correctional facility.* All drugs distributed from the pharmacy to areas of the correctional facility for subsequent administration to patients shall be kept in locked storage when not in use. Policies and procedures shall identify the qualified individuals who are authorized to access these drugs and the process to be followed for their removal.

[**ARC 8670B**, IAB 4/7/10, effective 5/12/10; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—15.6 Reserved.

657—15.7(124,126,155A) Training and utilization of pharmacy technicians or pharmacy support persons. Pharmacy technician and pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of pharmacy technician and pharmacy support person training shall be available for inspection by the board or an agent of the board.

[**ARC 8670B**, IAB 4/7/10, effective 5/12/10; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—15.8(124,126,155A) Drug distribution and dispensing controls. Prescription drugs shall be distributed or dispensed only from the original or a properly verified prescription drug order. There shall be no transcribing of prescription drug orders by nursing staff or clerical staff except for their own records.

15.8(1) *Required information.* Prescription drug orders written in patient health records shall include the following information:

a. Patient name, identification number, and correctional facility location;

b. Drug name, strength, dosage form, and quantity or duration;

c. Directions for use of the drug;

d. Date the prescription drug order is authorized;

e. Prescriber's name, signature, and office address;

f. Prescriber's DEA number for controlled substances.

15.8(2) *Original maintained.* The original prescription drug order and the medication administration record shall be maintained for a minimum of two years in the patient's health record.

15.8(3) *Effect upon transfer of patient.* Current prescription drug orders remain in effect when a patient is transferred to another correctional facility.

15.8(4) *Unit dose dispensing.* Drugs dispensed in a unit dose dispensing system for subsequent administration by nurses or other qualified individuals shall be packaged and labeled by pharmacy staff in compliance with the provisions of rule 657—22.1(155A). Policies and procedures shall be implemented that include, but are not limited to, the following:

a. Return and reuse of drugs;

b. Expiration dating;

c. Record keeping.

15.8(5) *Med-pak dispensing.* Drugs may be dispensed in med-pak dispensing systems for subsequent administration by nurses or other qualified individuals. Policies and procedures shall be implemented that are in accordance with rule 657—22.5(155A) and include, but are not limited to, the following:

a. Return and reuse of containers;

b. Expiration dating;

c. Record keeping.

15.8(6) *Drug administration.* Only a licensed health care professional authorized to administer drugs or a qualified individual shall administer to a patient prepackaged drugs from the supply distributed by the pharmacy. Documentation of administration shall be recorded in the medication administration record. The single unit, unit dose, or med-pak packaging shall remain intact to the point of administration.

15.8(7) *Dispensing for patient self-administration.* Drugs dispensed for self-administration by a patient shall be packaged and labeled in accordance with rule 657—6.10(126,155A).

15.8(8) *Labeling of drugs under special circumstances.*

a. *Insulin, ophthalmics, otic preparations, inhalers, nasal sprays, topicals, and other similarly packaged drugs.* A label shall be affixed to the immediate container showing at least the patient's name and ID number. A label that complies with 657—subrule 6.10(1) shall be affixed to the outer container.

b. *Leave and release drugs.* Labeling of prescription drugs for patients leaving the correctional facility for temporary absences in excess of 24 hours, such as court appearances, and for patients being released from custody shall comply with 657—subrule 6.10(1) before the drug is removed from the facility. The dispensing pharmacy shall be responsible for packaging and labeling leave and release drugs in compliance with this paragraph.

15.8(9) *Drug product selection.* Correctional pharmacies shall be exempt from the patient notification requirements of Iowa Code section 155A.32 when exercising drug product selection.

15.8(10) *Emergency/first dose drug supply.* An emergency/first dose drug supply of prescription drugs may be supplied to a correctional facility for use by authorized personnel pursuant to rule 657—22.7(124,155A). Only pharmacists, pharmacist-interns, and pharmacy technicians may restock, replace, or return drugs to the emergency/first dose drug supply. A drug shall be removed from the emergency/first dose drug supply only pursuant to a valid prescription drug order. The pharmacy shall be notified of the removal and administration of a drug from the emergency/first dose drug supply. The pharmacist shall perform drug use review prior to the administration of a second dose. All drugs removed from the emergency/first dose drug supply that are not administered, including any wastage,

shall be returned to the pharmacy. A written or electronic record shall be made of all removals from the emergency/first dose drug supply. The record shall include the following information:

a. Patient's name and identification number;
b. Prescriber;
c. Name, strength, dosage form, and quantity of the drug removed;
d. Signature, unique identification, or initials of the authorized person removing the drug;
e. Date and time the drug was removed;
f. Returns of unused drugs to the pharmacy.

[**ARC 8670B**, IAB 4/7/10, effective 5/12/10]

657—15.9 Reserved.

657—15.10(124,126,155A) Policies and procedures. Pharmacy policies and procedures, established, implemented, and complied with pursuant to rule 657—8.3(155A), shall address, but not be limited to, the following:

1. Controlled substances;
2. Formulary or drug list;
3. Stop orders;
4. Drug sample use and distribution;
5. Drug recalls;
6. Outdated drugs;
7. Patient records;
8. Inspection of drug inventories;
9. Adverse reaction reports;
10. Leave and release drugs;
11. Emergency/first dose drug supply;
12. Drugs brought into the facility;
13. Medication administration and records;
14. Drug compounding;
15. Sterile products;
16. Access to the pharmacy in the absence of the pharmacist;
17. Transfers of drugs between facilities and correctional pharmacies;
18. Transfers of prescription drug orders between correctional pharmacies;
19. Delivery of drugs;
20. Notification when a drug or device is not available;
21. Drug destruction within the pharmacy;
22. Return of unused drugs.

[**ARC 8670B**, IAB 4/7/10, effective 5/12/10; **ARC 1961C**, IAB 4/15/15, effective 5/20/15]

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306, 124.308, 126.10, 126.11, 155A.6A, 155A.13, 155A.27, 155A.28, 155A.31, 155A.32, and 155A.34 through 155A.36 and 2009 Iowa Code Supplement section 155A.6B.

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CHAPTER 16
NUCLEAR PHARMACY PRACTICE

[Prior to 12/14/88, see Pharmacy Examiners Board 657—8.8(155A)]

657—16.1(155A) Purpose and scope. It is unlawful to receive, possess or transfer radioactive drugs except in accordance with the provisions of Iowa Code chapter 155A. It is also unlawful for any person to provide radiopharmaceutical services unless the person is a pharmacist or a person acting under the direct supervision of a pharmacist acting in accordance with the provisions of Iowa Code chapter 155A, board rules and rules of the environmental protection commission. It is not unlawful for a medical practitioner to receive, possess, or transfer radioactive drugs for administration to patients as provided in Iowa Code chapter 148. No person may receive, acquire, possess, use, transfer, or dispose of any radioactive material except in accordance with the conditions set forth by the environmental protection commission pursuant to the provisions of Iowa Code chapter 455B. The requirements of these nuclear pharmacy rules are in addition to and not in substitution for 657—Chapter 8 and other applicable provisions of rules of the board and the environmental protection commission or the public health department.

657—16.2(155A) Definitions.

"Authentication of product history" means, but is not limited to, identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.

"Board" means the Iowa board of pharmacy examiners.

"Internal test assessment" means, but is not limited to, conducting those tests of quality assurance necessary to ensure the integrity of the test.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"Qualified nuclear pharmacist" means a person currently licensed to practice pharmacy in Iowa who meets the qualifications established by rule 657—16.3(155A).

"Radiopharmaceutical quality assurance" means, but is not limited to, the performance of appropriate chemical, biological and physical tests on potential radiopharmaceuticals and the interpretation of the resulting data to determine the radiopharmaceuticals' suitability for use in humans and animals, including internal test assessment authentication of product history and the keeping of proper records.

"Radiopharmaceutical service" means, but is not limited to, the preparation, dispensing, labeling and delivery of radiopharmaceuticals; the compounding of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, as necessary or required, of the therapeutic values, hazards and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a nuclear pharmacy.

657—16.3(155A) General requirements for qualified nuclear pharmacist. A qualified nuclear pharmacist shall meet all requirements of either alternative one or alternative two established in subrules 16.3(1) and 16.3(2), respectively.

16.3(1) *Alternative one.* A qualified nuclear pharmacist shall:

a. Meet minimum standards of training for medical uses of radioactive materials; and

b. Be a currently licensed pharmacist in the state of Iowa; and

c. Submit an affidavit of experience and training to the board; and

d. Have completed one of the following nuclear pharmacy training alternatives:

(1) Received a minimum of 90 contact hours of didactic instruction in nuclear pharmacy from an accredited college of pharmacy. In addition, the pharmacist shall have attained a minimum of 160 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy that provides nuclear pharmacy services or in a structured clinical nuclear pharmacy training program of an accredited college of pharmacy.

(2) Successfully completed a nuclear pharmacy residency accredited by the American Society of Health-System Pharmacists (ASHP).

(3) Successfully completed a certificate program in nuclear pharmacy accredited by the Accreditation Council on Pharmaceutical Education (ACPE).

16.3(2) *Alternative two.* A qualified nuclear pharmacist shall:

a. Be a currently licensed pharmacist in the state of Iowa; and

b. Be certified by the Board of Pharmaceutical Specialties as a board-certified nuclear pharmacist (BCNP); and

c. Submit an affidavit of BCNP credentials to the board.

657—16.4(155A) General requirements for pharmacies providing radiopharmaceutical services.

16.4(1) *Qualified nuclear pharmacist.* A license to operate a pharmacy providing radiopharmaceutical services shall be issued only to a qualified nuclear pharmacist who shall be the pharmacist in charge of the pharmacy. The pharmacist in charge shall be responsible for, at a minimum, the requirements in rule 657—6.2(155A). All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct personal supervision of a qualified nuclear pharmacist. A qualified nuclear pharmacist is responsible for all operations of the pharmacy and, except in emergency situations, shall be in personal attendance at all times that the pharmacy is open for business.

16.4(2) *Space requirements.* Nuclear pharmacies shall have adequate space, commensurate with the scope of services required and provided. The nuclear pharmacy area shall be separate from the pharmacy areas for nonradioactive drugs and shall be secured from unauthorized personnel. All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area, occupying at least 25 square feet of space, separate from and exclusive of the hot laboratory, compounding, dispensing, quality assurance, and office areas.

16.4(3) *Personnel appropriately trained.* The pharmacist in charge shall be responsible for ensuring that all pharmacy personnel have been appropriately and adequately trained for their assigned tasks.

16.4(4) *Pharmacy support persons.* A pharmacy support person shall register with the board pursuant to the registration requirements of 657—Chapter 5. Alternatively, a pharmacy support person may register with the board as a pharmacy technician pursuant to the registration and national certification requirements of 657—Chapter 3.

16.4(5) *Records required.* Nuclear pharmacies shall maintain records of acquisition and disposition of all radioactive drugs in accordance with rules of the board and the environmental protection commission.

16.4(6) *Compliance with laws.* Nuclear pharmacies shall comply with all applicable laws and regulations of federal and state agencies, including those laws and regulations governing nonradioactive drugs.

16.4(7) *Prescription and office use.* Radioactive drugs shall be dispensed only upon a prescription order from a licensed medical practitioner authorized to possess, use and administer radiopharmaceuticals. A nuclear pharmacy may also furnish radiopharmaceuticals to practitioners for office use.

16.4(8) *Outer-container label.* In addition to any of the board's labeling requirements for nonradioactive drugs, the immediate outer container of a radioactive drug to be dispensed shall also be labeled with:

a. The standard radiation symbol;

b. The words "Caution — Radioactive Material";

c. The name of the radionuclide;

d. The chemical form;

e. The amount of radioactive material contained, in millicuries or microcuries;

f. If the radioactive drug is a liquid, the volume in cubic centimeters;

g. The requested calibration time for the amount of radioactivity contained.

16.4(9) *Immediate-container label.* The immediate container shall be labeled with:

a. The standard radiation symbol;
b. The words "Caution — Radioactive Material";
c. The name of the pharmacy; and
d. The prescription number.

16.4(10) *Radioactivity.* The amount of radioactivity for each individual preparation shall be determined by radiometric methods immediately prior to dispensing.

16.4(11) *Redistribution.* A nuclear pharmacy may redistribute to another nuclear pharmacy or authorized party radioactive drugs that are the subject of an approved new drug application if the pharmacy does not process the radioactive drugs in any manner or violate the product packaging.
[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

657—16.5(155A) Library. Each nuclear pharmacy shall have access to the following references. References may be printed or computer-accessed and shall be current editions or revisions.

1. United States Pharmacopoeia/National Formulary, with supplements;
2. A reference including all pertinent Iowa laws, rules, and regulations that impact the pharmacy's practice;
3. State rules and federal regulations governing the use of applicable radioactive materials;
4. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

[**ARC 2196C**, IAB 10/14/15, effective 11/18/15]

657—16.6(155A) Minimum equipment requirements. Each nuclear pharmacy shall maintain the following equipment for use in the provision of radiopharmaceutical services:

1. Laminar flow hood;
2. Dose calibrator;
3. Refrigerator;
4. Single-channel scintillation counter;
5. Microscope;
6. Autoclave, or access to one;
7. Incubator, or access to one;
8. Radiation survey meter;
9. Other equipment necessary for the radiopharmaceutical services provided as required by the board.

A pharmacy may request waiver or variance from a provision of this rule pursuant to the procedures and requirements of 657—Chapter 34.

657—16.7(155A) Training and utilization of pharmacy support persons. Nuclear pharmacies utilizing pharmacy support persons shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy support persons. Pharmacy policies shall specify the frequency of review. Pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Such policies and procedures and documentation of pharmacy support person training shall be available for inspection by the board or an agent of the board.
[**ARC 8673B**, IAB 4/7/10, effective 6/1/10]

These rules are intended to implement Iowa Code sections 155A.4, 155A.13, 155A.28, and 155A.31.

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CHAPTER 20
COMPOUNDING PRACTICES

657—20.1(124,126,155A) Purpose and scope. The requirements of this chapter apply to compounded preparations that are dispensed, distributed, or administered to an ultimate user in the state of Iowa, regardless of the location of the pharmacy or outsourcing facility where the preparation was compounded. This chapter applies to compounded preparations intended for humans and animals. In addition to the requirements in this chapter, all pharmacies and outsourcing facilities engaged in compounding shall comply with all applicable federal laws and regulations governing compounding and all applicable state laws, rules and regulations governing the practice of pharmacy. In the event the requirements in this chapter directly conflict with any federal law or regulation, the federal law or regulation shall supersede the requirements in this chapter. The requirements of 657—Chapter 16 apply to the compounding of radiopharmaceuticals.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.2(124,126,155A) Definitions. For purposes of this chapter, the following definitions apply:

"Anticipatory compounding" means the compounding of preparations in advance of the pharmacy's receipt of patient-specific prescriptions.

"Batch preparation compounding" means anticipatory compounding, compounding preparations intended for multiple disbursements, or compounding preparations in a multiple-dose container for administration to more than one patient.

"Beyond-use date" means the date after which a compounded preparation should not be used, determined from the date that the preparation is compounded.

"Bulk drug substance" means any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug. The term does not include intermediates used in the synthesis of such substances.

"Compounding" means the combining, mixing, diluting, pooling, flavoring, or otherwise altering of a drug or bulk drug substance to create a drug. Compounding includes the preparation of drugs or devices in which all bulk drug substances and components are nonprescription products. Compounding does not include the use of a flavoring agent to flavor a drug pursuant to rule 657—20.13(124,126,155A), nor does it include mixing or reconstituting a drug according to the product's manufacturer label.

"FDA" means the Food and Drug Administration of the U.S. Department of Health and Human Services.

"Flavoring agent" means a therapeutically inert, nonallergenic substance consisting of inactive ingredients that is added to a drug to improve the drug's taste and palatability.

"Outsourcing facility" means a facility that is located at a single geographic location and has registered with the FDA as an outsourcing facility in accordance with Section 503B of the Federal Food, Drug, and Cosmetic Act.

"USP" means United States Pharmacopeia.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.3(124,126,155A) Nonsterile compounding. Iowa-licensed pharmacies that compound nonsterile preparations for ultimate users in the state of Iowa shall follow the current revision of USP Chapter 795 standards. Additional USP chapters incorporated by reference into USP Chapter 795 shall also be followed.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.4(124,126,155A) Sterile compounding. Iowa-licensed pharmacies that compound sterile preparations for ultimate users in the state of Iowa shall follow the current revision of USP Chapter 797 standards. Additional USP chapters incorporated by reference into USP Chapter 797 shall also be followed.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.5(126,155A) Delayed compliance. A pharmacy that is unable to meet the requirements for full compliance with these rules and with USP Chapter 795 or USP Chapter 797 by May 18, 2016, shall, prior to that date, request and obtain from the board a waiver of the specific requirement or requirements that the pharmacy is unable to meet. A pharmacy that cannot meet the requirements for full compliance with these rules, including applicable USP chapters, and that has not obtained from the board a waiver of the specific requirement or requirements shall not engage in compounding until the pharmacy is in full compliance with all requirements or the board has approved a waiver of the specific requirement or requirements.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.6(126,155A) Compounding standards for outsourcing facilities. An FDA-registered outsourcing facility shall be properly licensed in Iowa and shall follow the FDA's current good manufacturing practices (cGMPs) for outsourcing facilities when compounding preparations for hospitals, practitioners, or patients in the state of Iowa.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.7 and **20.8** Reserved.

657—20.9(124,155A) Prescriber/patient/pharmacist relationship. All compounded preparations shall be dispensed pursuant to a patient-specific prescription unless the compounded preparation is distributed pursuant to rule 657—20.15(124,126,155A) or 657—20.16(124,126,155A). A prescription for a compounded preparation shall be authorized by the prescriber for a specific patient. Prescriptions for all compounded preparations shall be maintained on file at the dispensing pharmacy.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.10(126,155A) Anticipatory compounding.

20.10(1) *Outsourcing facilities.* Outsourcing facilities are authorized to engage in anticipatory compounding. Outsourcing facilities are not required to obtain patient-specific prescriptions in order to distribute compounded preparations.

20.10(2) *Pharmacies.* Pharmacies may engage in anticipatory compounding only if the anticipatory compounding is based on a history of receiving valid prescriptions generated solely within an established prescriber/patient/pharmacist relationship, so long as each compounded preparation is dispensed pursuant to a patient-specific prescription.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.11(126,155A) Prohibition on resale of compounded preparations. The sale of compounded preparations to other pharmacies, prescribers, or facilities, except as explicitly authorized by this chapter, is considered manufacturing.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.12(126,155A) Compounding copies of an approved drug. A pharmacy or outsourcing facility may only compound preparations that are essentially copies of approved drugs if the compounded preparation is changed to produce for an individual patient a clinically significant difference to meet a medical need as determined and authorized by the prescriber. A pharmacy or outsourcing facility may compound a preparation that is essentially a copy of an approved drug if the approved drug is identified as currently in shortage on the FDA drug shortages database published on the FDA Web site, http://www.accessdata.fda.gov/scripts/drugshortages/default.cfm.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.13(124,126,155A) Use of flavoring agents. A flavoring agent may be added to a drug at the discretion of the pharmacist or upon the request of the prescriber, the patient, or the patient's agent. The pharmacist may add flavoring agents not to exceed 5 percent of the total volume of the drug to which the flavoring agents are added. The pharmacist shall label the flavored drug with a beyond-use date no greater than 14 days past the date the flavoring agent is added if the drug is required to be stored in a refrigerator. A different beyond-use date or alternate storage conditions may be indicated if

such variation is supported by peer-reviewed medical literature. The pharmacist shall electronically or manually document that a flavoring agent was added to a drug, and such documentation shall be made available for inspection and copying upon the request of the board or an agent of the board.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.14 Reserved.
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.15(124,126,155A) Compounding for office use.

20.15(1) *Human compounded preparations.* Only an FDA-registered outsourcing facility properly licensed in Iowa may distribute to a practitioner for office use human compounded preparations without a patient-specific prescription.

20.15(2) *Veterinary compounded preparations.* Veterinary compounded preparations may be sold to a practitioner for office use if compounded by an Iowa-licensed pharmacy and sold directly to the practitioner by the compounding pharmacy.

20.15(3) *Office administration.* Compounded preparations distributed for office use pursuant to subrule 20.15(1) or 20.15(2) and in accordance with the labeling requirements of subrule 20.15(4) do not require a patient-specific prescription but do require that the compounded preparation be administered to an individual patient in the practitioner's office. Compounded preparations distributed for office use pursuant to this rule shall not be further distributed to other practitioners or to patients for administration outside of the office.

20.15(4) *Labeling.* Compounded preparations for office use, in addition to the labeling requirements specified in rule 657—20.19(124,126,155A), shall include on the prescription label the practitioner's name in place of the patient's name. The label shall state "For Office Use Only—Not for Resale." If the sterility or integrity of the compounded preparation cannot be maintained after the initial opening of the container, the label shall state "Single-Dose Only."
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.16(124,126,155A) Compounding for hospital use. Compounded preparations distributed or dispensed to a hospital or hospital pharmacy pursuant to this rule shall be administered to an individual patient in the hospital.

20.16(1) *By an FDA-registered outsourcing facility.* Only an FDA-registered outsourcing facility properly licensed in Iowa may distribute human compounded preparations to a hospital or hospital pharmacy in the absence of a patient-specific prescription. The compounded preparation shall be labeled in compliance with subrule 20.19(3).

20.16(2) *By a pharmacy that is not an FDA-registered outsourcing facility.* Human compounded preparations that are not compounded at an FDA-registered outsourcing facility may be dispensed to a hospital or hospital pharmacy by an Iowa-licensed pharmacy pursuant to a prescriber's authorization for administration to a specific patient. The compounded preparation shall be labeled in compliance with subrule 20.19(2).
[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.17 and **20.18** Reserved.

657—20.19(124,126,155A) Labeling. The label, or attached auxiliary labeling if necessary, affixed to the container of any compounded preparation dispensed or distributed into or within Iowa shall contain at least the information identified in one of the following subrules, as applicable.

20.19(1) *General pharmacy or outpatient dispensing.* The label shall meet the labeling requirements of 657—subrule 6.10(1) and shall include the following additional information:

a. The name and concentration of each active ingredient.

b. The date that the preparation was compounded.

c. The beyond-use date of the compounded preparation.

d. Special storage and handling instructions, if applicable.

e. The statement "COMPOUNDED PREPARATION" or a reasonable comparable alternative statement that prominently identifies the drug as a compounded preparation.

f. If the compounded preparation is sterile, the word "STERILE."

g. If the compounded preparation was prepared from batch preparation compounding, the batch identification or control number.

20.19(2) *Hospital pharmacy or inpatient administration.* The label shall meet the labeling requirements of 657—subrule 22.1(3) and shall include the following additional information:

a. The name and concentration of each active ingredient.

b. The date that the preparation was compounded.

c. The beyond-use date of the compounded preparation.

d. If the compounded preparation was prepared from batch preparation compounding, the batch identification or control number.

e. Special storage and handling instructions, if applicable.

20.19(3) *Outsourcing facility distribution or dispensing.* The label, or auxiliary labeling if necessary, shall include the following information:

a. The statement "THIS IS A COMPOUNDED DRUG" or a reasonable comparable alternative statement that prominently identifies the drug as a compounded preparation.

b. The name, address, and telephone number of the outsourcing facility that compounded the preparation.

c. The established name of the preparation.

d. The dosage form and strength.

e. The quantity of the preparation.

f. The date that the preparation was compounded.

g. The beyond-use date of the compounded preparation.

h. Storage and handling instructions.

i. The lot or batch identification or control number.

j. The national drug code number, if available.

k. The statement "Not for resale" and, if the preparation is dispensed or distributed other than pursuant to a prescription for an individual identified patient, the statement "OFFICE USE ONLY."

l. The following additional information, which can be included on the labeling of a container (such as a plastic bag containing individual product syringes) from which individual units of the drug are removed for dispensing or for administration if there is not space on the label for such information:

(1) Directions for use including, as appropriate, dosage and administration;

(2) A list of the active and inactive ingredients, identified by established name and quantity or proportion of each ingredient;

(3) FDA contact information (www.fda.gov/medwatch and 1-800-FDA-1088 or successor Web site or telephone number) to facilitate adverse event reporting.

m. If the preparation is compounded pursuant to a prescription for a specific patient, the label shall also include the label requirements in 657—subrule 6.10(1).

n. If the preparation is compounded for office use, the label shall also include the label requirements in subrule 20.15(4).

[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.20(126,155A) Labeling for batch preparation compounding. Compounded preparations resulting from batch preparation compounding shall be labeled with the following information until such time as the preparations are labeled pursuant to rule 657—20.19(124,126,155A) for distribution to hospitals or practitioners or for dispensing or administration to patients:

1. The date that the preparation was compounded.
2. Compounded preparation name or formula.
3. Dosage form.
4. Strength.
5. Quantity per container.

6. Unique internal batch identification or control number.
7. Beyond-use date.
8. Special storage and handling instructions, if applicable.

[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

657—20.21 and **20.22** Reserved.

657—20.23(124,126,155A) Records. All records required by this chapter shall be retained as original records of the pharmacy or outsourcing facility and shall be readily available for inspection and photocopying by agents of the board or other authorized authorities for at least two years following the date of the record. Records shall allow for the identification of all ingredients used in compounding, all personnel involved in compounding, and all personnel involved in reviewing compounded preparations. The pharmacy or outsourcing facility shall maintain records documenting the disbursements from each batch of a compounded preparation.

[**ARC 2194C**, IAB 10/14/15, effective 11/18/15]

These rules are intended to implement Iowa Code sections 124.302, 124.303, 124.306, 124.308, 124.501, 126.9, 126.10, 126.18, 155A.2, 155A.13, 155A.28, 155A.33, and 155A.35.

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CHAPTER 23
LONG-TERM CARE PHARMACY PRACTICE

657—23.1(155A) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Consultant pharmacist" in a long-term care facility means a pharmacist licensed to engage in the practice of pharmacy in this state who is responsible for developing, coordinating, and supervising pharmaceutical services in a long-term care facility on a regularly scheduled basis. A consultant pharmacist:

1. Reviews the distribution and storage of drugs and devices and assists facilities in establishing the policies and procedures for the distribution and storage of drugs and devices and makes appropriate recommendations to the facility and the provider pharmacist;
2. Monitors the therapeutic response and utilization of all drugs and devices prescribed for each resident. The following shall be used as minimum guidelines supplementing the pharmacist's professional expertise:
   - Regulations and interpretive guidelines of the Centers for Medicare and Medicaid Services, if applicable;
   - Rules of the Iowa department of inspections and appeals; and
   - Other state rules and regulations;
3. Serves as a resource for pharmacy-related education services within the facility;
4. Participates in quality management of resident care in the facility;
5. Communicates with the provider pharmacist regarding areas of mutual concern and resolution thereof.

"Long-term care facility" or *"facility"* means:

1. A facility licensed by the Iowa department of inspections and appeals under Iowa Code chapter 135C or Iowa Code chapter 135H;
2. A hospital-based long-term care unit certified under 42 CFR, Part 483, Subpart B;
3. An inpatient hospice certified under 42 CFR, Part 418;
4. A group living facility wherein health care related services are provided by the facility; or
5. A health care facility registered with the board under Iowa Code chapter 124.

"Long-term care pharmacy" or *"provider pharmacy"* means a hospital pharmacy, a general pharmacy, a limited use pharmacy, or a nonresident pharmacy in which drugs, chemicals, or poisons are prepared, compounded, dispensed, vended, distributed, or sold on a regular and recurring basis to or for the use of residents of a long-term care facility and from which related pharmacy services are delivered.

"Medication order," as used in these rules, means a written order from a practitioner or an oral order from a practitioner or the practitioner's authorized agent for administration of a drug or device. For purposes of this chapter, "medication order" includes a prescription.

"Provider pharmacist" means a pharmacist licensed to engage in the practice of pharmacy who is employed by or contracted to a long-term care pharmacy or a provider pharmacy and who is responsible for supervising the accurate dispensing and proper delivery of drugs and devices to a long-term care facility located within this state. These services shall include, at a minimum, proper medication labeling, storage, transport, record keeping, and prospective drug utilization review in compliance with all federal and state laws and regulations.

"Single unit package" means a package that contains one discrete pharmaceutical dosage form.

"Unit dose dispensing system" means a drug distribution system utilizing single unit, unit dose, or unit of issue packaging in a manner that helps reduce or remove traditional drug stocks from resident care areas and enables the selection and distribution of drugs to be pharmacy-based and controlled.

"Unit dose package" means a package that contains that particular dose of a drug ordered for a resident for one administration time. A unit dose package is not always a single unit package.

"Unit of issue package" means a package that provides multiple units or doses attached to each other but separated in a card or specifically designed container.

657—23.2(124,155A) Applicability of rules. Nothing in these rules shall be deemed to constitute a waiver or abrogation of any of the provisions of board rules or other applicable provisions of state and federal laws and rules, nor should these rules be construed as authorizing or permitting any person not licensed as a pharmacist to engage in the practice of pharmacy.

657—23.3(124,155A) Freedom of choice. Pursuant to 657—subrule 8.11(5), no pharmacist or pharmacy shall participate in any agreement or plan that infringes on any resident's right to freedom of choice as to the provider of pharmacy services. A resident in a long-term care facility shall have a choice of long-term care pharmacy so long as the pharmacy's drug delivery system provides for the timely delivery of drugs compatible with the established system currently used by the facility. Determination of compatibility may consider medication administration, accessibility, and payment system.

657—23.4(124,155A) Responsibilities. The pharmacist in charge and staff pharmacists in any pharmacy providing pharmaceutical services to long-term care facility patients shall share responsibility for:

1. Providing drugs pursuant to a medication order for an individual resident, properly labeled for that resident, as addressed in rule 657—22.1(155A) or 657—23.13(124,155A).
2. Dispensing drugs for residents of long-term care facilities consistent with the drug distribution system described in the facility's policies and procedures.
3. Affixing labels to each container of drugs for residents in long-term care facilities, in compliance with rule 657—22.1(155A), 657—23.13(124,155A), or 657—23.14(124,155A).
4. Maintaining records of all transactions of the long-term care pharmacy as may be required by law and maintaining accurate control over and accountability for all drugs and prescription devices.
5. Complying with a drug recall procedure, established pursuant to rule 657—8.3(155A), that protects the health and safety of residents including immediate discontinuation of any recalled drug or device and subsequent notification of the prescriber and director of nursing of the facility.
6. Providing 24-hour emergency service either directly or by contract with another pharmacy.
7. Reviewing patient profiles to ensure the appropriateness of therapy for that resident and the compatibility of the drug and dosage for that resident when processing new medication orders.
8. Providing sufficient and accurate information to facility staff regarding the appropriate administration and use of all dispensed drugs and devices.
9. Communicating with the consultant pharmacist and the facility regarding concerns and resolution thereof.

[**ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—23.5(124,155A) Emergency drugs. A supply of emergency drugs may be provided by one or more long-term care provider pharmacies to the facility pursuant to rule 657—22.7(124,155A).

23.5(1) *Emergency medication order—pharmacist review.* When an emergency drug is provided pursuant to rule 657—22.7(124,155A), the medication order shall be reviewed by the resident's dispensing pharmacist prior to the administration of a second dose.

23.5(2) *Other emergency drugs and devices.* In addition to one or more emergency boxes or stat drug boxes, a long-term care facility staffed by one or more persons licensed to administer drugs may maintain a stock of intravenous fluids, irrigation fluids, heparin flush kits, medicinal gases, sterile water and saline, and prescription devices. Such stock shall be limited to a listing to be determined by the provider pharmacist in consultation with the consultant pharmacist and the medical director and director of nursing of the facility.

[**ARC 0749C**, IAB 5/29/13, effective 7/3/13]

657—23.6(124,155A) Space, equipment, and supplies. Pursuant to rule 657—8.3(155A), each pharmacy serving a long-term care facility shall have adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy and to meet the needs of the residents

served. The pharmacy shall also comply with all reference, environment, and equipment requirements contained in rules 657—6.3(155A) and 657—8.5(155A).
[**ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—23.7(124,155A) Policies and procedures. Pursuant to rule 657—8.3(155A), each pharmacy shall have policies and procedures related to all aspects of the pharmacy's packaging and dispensing responsibilities to the residents of the long-term care facility. The policies and procedures shall be maintained at the provider pharmacy and shall be available to the facility and the consultant pharmacist. Policies and procedures shall include, at a minimum:

1. Methods used to dispense and deliver drugs and devices to the facility in a timely fashion;
2. Proper notification to the facility when a drug or device is not readily available;
3. Proper labeling requirements to meet the needs of the facility and which are consistent with state and federal laws and regulations;
4. Appropriate drug destruction or return of unused drugs, or both, consistent with state and federal laws and regulations.

[**ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—23.8 Reserved.

657—23.9(124,155A) Medication orders. Drugs and prescription devices may be dispensed only upon orders of an authorized prescriber.

23.9(1) *Requirements.* New orders transmitted to the pharmacy for drugs for residents of the facility shall, at a minimum, contain resident name, drug name and strength, directions for use, date of order, and name of prescriber. Orders for Schedule II controlled substances shall comply with the requirements of rule 657—23.18(124,155A).

23.9(2) *Abbreviations.* Abbreviations or chemical symbols utilized in medication orders shall be only those abbreviations or symbols that are customarily used in the practice of medicine and pharmacy or those on a list of approved abbreviations developed by the appropriate committee or representative of the facility.

23.9(3) *Who may transmit medication orders.* An authorized prescriber or prescriber's agent or any person who is employed by a long-term care facility and who is authorized by the facility's policies and procedures may transmit to the long-term care pharmacy a medication order lawfully ordered by a practitioner authorized to prescribe drugs and devices. An order transmitted by the prescriber's agent shall include the agent's first and last names and title.

23.9(4) *Influenza and pneumococcal vaccines.* As authorized by federal law, a written or verbal patient-specific medication administration order shall not be required prior to administration to an adult patient of influenza and pneumococcal vaccines pursuant to physician-approved facility policy and after the patient has been assessed for contraindications. Administration shall be recorded in the patient's record. The facility shall submit to the provider pharmacy a listing of those residents or staff members who have been immunized utilizing vaccine from each vial supplied by the provider pharmacy.
[**ARC 9912B**, IAB 12/14/11, effective 1/18/12; **ARC 2197C**, IAB 10/14/15, effective 11/18/15]

657—23.10(124,155A) Stop orders. To ensure that drug orders are not continued inappropriately, the pharmacy's policies and procedures, established pursuant to rule 657—8.3(155A) and in consultation with the medical director and the appropriate committee or representative of the facility, shall include an automatic stop order policy. Drugs not specifically limited when ordered as to duration of therapy or number of doses shall be controlled by the automatic stop order policy in accordance with the status of the patient.
[**ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—23.11(124,155A) Drugs dispensed—general requirements.

23.11(1) *Labeling.* All prescription containers, other than those dispensed pursuant to rule 657—22.1(155A), 657—23.13(124,155A), or 657—23.14(124,155A), shall be properly labeled in accordance with 657—subrule 6.10(1).

a. If a label change is required to reflect a change in directions, the pharmacy shall be responsible for affixing the correct label to the container. Long-term care facility personnel shall not be authorized to affix such a label to the drug container.

b. Direction change labels that notify long-term care facility personnel that a change in directions for the drug has taken place may be used and affixed to the container by facility personnel so as not to deface the original label.

23.11(2) *Medication order required.* Dispensing of all drugs to the facility shall be pursuant to a medication order for an individual resident except as provided in rules 657—23.5(124,155A) and 657—23.14(124,155A) and in subrule 23.9(4).

23.11(3) *Prescription containers.* All prescription containers, including but not limited to single unit, unit dose, and unit of issue containers utilized for distribution within a long-term care facility, shall meet minimum requirements as established by the United States Pharmacopoeia. When applicable, light-resistant packaging shall be used.

23.11(4) *Floor stock.* Prescription drugs, as defined by Iowa Code section 155A.3(30), shall not be floor-stocked in a long-term care facility except as provided in this subrule or in subrule 23.5(2). Bulk supplies of nonprescription drugs may be maintained as provided in subrule 23.13(3). Any pharmacy that utilizes a floor stock distribution system pursuant to this subrule shall develop and implement procedures to accurately establish proof of use of prescription drugs and shall maintain a perpetual inventory, whether by electronic or manual means, of all prescription drugs so dispensed. A floor stock distribution system for prescription drugs may be permitted only under the following circumstances:

a. A licensed pharmacy under the direct supervision and control of a pharmacist is established in the facility; or

b. The facility and the hospital wherein the licensed pharmacy is located are both licensed under Iowa Code chapter 135B with a single hospital license.

657—23.12 Reserved.

657—23.13(124,155A) Labeling drugs under special circumstances.

23.13(1) *Insulin, ophthalmics, otic preparations, biologicals, and other injectables for individual patients.* These drugs shall be dispensed with a label affixed to the immediate container showing at least the resident's name and location.

23.13(2) *Legend solutions—irrigation and infusion.* Legend irrigation solutions and infusion solutions supplied by a licensed pharmacy may be stored in the locked medication area of a long-term care facility provided that:

a. The facility uses the solution only within the confines of the facility and under the orders of an authorized prescriber;

b. Upon use, the container is identified by resident name and is used exclusively for that resident;

c. The container is dated and initialed upon opening;

d. The solution is stored appropriately after opening according to facility policy.

23.13(3) *Floor-stocked, nonprescription drug containers.* All such nonprescription drugs intended for use within the facility shall be in appropriate containers and adequately labeled to identify, at a minimum, brand name or generic name and manufacturer, strength, lot number, and expiration date. An internal code that centrally references manufacturer and lot number may be utilized.

23.13(4) *Leave meds.* Labeling of prescription drugs for residents on leave from the facility for a period in excess of 24 hours shall comply with 657—subrule 6.10(1). The dispensing pharmacist shall be responsible for packaging and labeling leave meds in compliance with this subrule.

23.13(5) *Discharge meds.* Drugs authorized for a resident being discharged from the facility shall be labeled in compliance with 657—subrule 6.10(1) before the resident removes those drugs from the facility premises. The dispensing pharmacist shall be responsible for packaging and labeling discharge meds in compliance with this subrule.

[**ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—23.14(124,155A) Labeling of biologicals and other injectables supplied to a facility. Labeling of biologicals and other injectables supplied to a facility for a health immunization or ongoing screening program, such as influenza vaccine, tuberculin skin test, or hepatitis-B, and intended for use in the facility, shall include the following information in addition to the manufacturer's label. The pharmacy label shall be affixed so as not to obscure the manufacturer's label.

1. Identification of pharmacy;
2. Name of facility;
3. Name of biological or drug;
4. Route of administration when necessary for clarification;
5. Strength of biological or drug;
6. Auxiliary labels as needed;
7. Date dispensed.

657—23.15(124,155A) Return and reuse of drugs and devices. Pharmacists and pharmacies shall not accept from residents or their agents for reuse or resale any drugs, prescribed drugs, chemicals, poisons or medical devices unless, in the professional judgment of the pharmacist, the integrity of the prescription drug has not in any way been compromised. Under no circumstances shall a pharmacist accept from a patient or patient's agent any controlled substances for return, exchange, or resale except to the same patient. Prescription drugs, excluding controlled substances, dispensed in unit dose, unit of issue, or single unit packaging pursuant to 657—22.1(155A) may, however, be returned and reused as authorized in 657—subrule 22.1(6). No items of a personal contact nature which have been removed from the original package or container after sale shall be accepted for return, exchanged, or resold by any pharmacist.

657—23.16(124,155A) Destruction of outdated and improperly labeled drugs. The pharmacy, pursuant to rule 657—8.3(155A) and in consultation with a facility representative, shall have written policies and procedures to ensure that all discontinued, outdated, deteriorated, or improperly labeled drugs and all containers with worn, illegible or missing labels are destroyed or disposed of so as to render them unusable. Drugs shall be destroyed by means that will ensure protection against unauthorized possession or use.

[**ARC 1961C**, IAB 4/15/15, effective 5/20/15]

657—23.17(124,155A) Accountability of controlled substances.

23.17(1) *Proof of use.* Documentation of use of Schedule II controlled substances shall be upon proof-of-use forms. A committee or representative of the facility may also require that Schedule III, IV, or V controlled substances or any other drugs be accounted for on proof-of-use forms. Proof-of-use forms shall specify at a minimum:

a. Name of drug;
b. Dose;
c. Name of ordering prescriber;
d. Name of resident;
e. Date and time of administration to resident;
f. Identification of individual administering;
g. Documentation of destruction, return to the pharmacy, or other disposition of all unused portions of single doses including the signatures of two individuals, at least one of whom is a licensed health care professional.

23.17(2) *Container requirement.* Any drug required to be counted and accounted for with proof-of-use forms shall be dispensed in a container that allows visual verification of quantity. Containers for solid oral doses must allow visual identification of individual doses and individual accountability.

657—23.18(124,155A) Schedule II orders. This rule shall not apply to Schedule II controlled substances orders in facilities that utilize a floor stock distribution system as provided in subrule

23.11(4). Schedule II controlled substances in all other facilities shall be dispensed only upon receipt of an electronic prescription prepared, transmitted, and received in compliance with DEA regulations for electronic prescriptions or an original written order signed by the prescribing individual practitioner or upon receipt of a facsimile transmission of an original written order signed by the prescribing individual practitioner pursuant to rule 657—21.15(124,155A). In emergency situations as defined in 657—subrule 10.22(1), Schedule II controlled substances may be dispensed in compliance with the requirements of rule 657—10.22(124) or rule 657—21.13(124,155A), as applicable. In all cases, any order for a Schedule II controlled substance shall specify the total quantity authorized by the prescriber.
[**ARC 9912B**, IAB 12/14/11, effective 1/18/12]

657—23.19(124,155A) Dispensing Schedule II controlled substances. A pharmacy that dispenses Schedule II controlled substances shall advise facility personnel that federal and state laws and regulations governing such drugs require that accurate records be kept of their administration or their ultimate disposition in compliance with rule 657—23.17(124,155A). The pharmacy shall further advise facilities that stored Schedule II substances shall be double-locked in accordance with rules of the Iowa department of inspections and appeals. The requirement for double-locking Schedule II controlled substances shall not apply to periods during which drugs are being administered to residents; however, these substances shall be secured during such administration periods.

657—23.20(124,155A) Partial filling of Schedule II controlled substances. A medication order for a Schedule II controlled substance for a resident in a long-term care facility (LTCF) may be filled in partial quantities to include individual dosage units. The pharmacist shall record on the written or electronic medication order that the patient is an "LTCF patient." A medication order that is partially filled and does not contain the notation "LTCF patient" shall be deemed to have been filled in violation of the controlled substances Act.

23.20(1) *Partial filling record.* For each partial filling, the dispensing pharmacist shall record on the back of the medication order (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

23.20(2) *Total dispensed.* The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed.

23.20(3) *Duration.* Schedule II medication orders for residents in a long-term care facility shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

23.20(4) *Requirements of computerized system.* Information pertaining to current Schedule II medication orders for residents in a long-term care facility may be maintained in a computerized system if this system has the capability to permit:

a. Output (display and printout) of the original prescription number, date of issue, identification of prescribing individual practitioner, identification of resident, address of the long-term care facility, identification of the drug authorized (to include dosage form, strength and quantity), listing of the partial fillings that have been dispensed under each medication order, and the information required in this rule.

b. Immediate (real-time) updating of the medication order record each time a partial filling of the medication order is conducted.

c. Retrieval of partially filled Schedule II medication order information as required in rule 657—21.4(124,155A).
[**ARC 9912B**, IAB 12/14/11, effective 1/18/12]

657—23.21(124,155A) Destruction of controlled substances. Controlled substances dispensed to a resident in a long-term care facility and subsequently requiring destruction due to discontinuance of the drug, death of the resident, or other reasons necessitating destruction shall be destroyed by one of the following methods.

23.21(1) *Destruction in the facility.* In facilities staffed by one or more persons licensed to administer drugs, a licensed health care professional (pharmacist, registered nurse, licensed practical nurse) may

destroy controlled substances in witness of one other responsible adult. The professional destroying or otherwise disposing of the drug shall prepare and maintain a readily retrievable record of the destruction or other disposition which shall be clearly marked to indicate the destruction or other disposition of resident drugs. The record shall include, at a minimum, the following:

a. Resident name and unique identification or number assigned by the dispensing pharmacy to the prescription;

b. The name, strength, and dosage form of the substance;

c. The quantity destroyed or otherwise disposed of;

d. The date the substance is destroyed or otherwise disposed of;

e. The signature or uniquely identifying initials or other unique identification of the professional and the witness;

f. The name and address of the dispensing pharmacy or the dispensing practitioner.

23.21(2) *Destruction or other disposition in the long-term care pharmacy.* Controlled substances returned to the pharmacy for destruction or other disposition may be destroyed or otherwise disposed of pursuant to the requirements of 657—subrule 10.18(3).

[**ARC 0749C**, IAB 5/29/13, effective 7/3/13]

These rules are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 155A.2, 155A.13, 155A.15, 155A.21, 155A.27, 155A.28, 155A.33, 155A.35, and 155A.36.

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